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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2019–0126]

RIN 3150–AK35

List of Approved Spent Fuel Storage Casks: Holtec International Storage, Transport and Repository (HI–STAR) 100 Storage System, Certificate of Compliance No. 1008, Amendment No. 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of November 5, 2019, for the direct final rule that was published in the **Federal Register** on August 22, 2019. This direct final rule amended the NRC's spent fuel storage regulations by revising the Holtec International Storage, Transport and Repository (HI–STAR) 100 Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1008.

DATES: *Effective date:* The effective date of November 5, 2019, for the direct final rule published August 22, 2019 (84 FR 43669), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2019–0126 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0126. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 proposed amendment to the certificate, proposed changes to the technical specifications, and preliminary safety evaluation report are available in ADAMS under Accession No. ML19137A299. The final amendment to the certificate, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML19270D276.
- *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: Bernard H. White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or Solomon Sahle, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–3781; email: *Solomon.Sahle@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On August 22, 2019 (84 FR 43669), the NRC published a direct final rule amending § 72.214 of title 10 of the *Code of Federal Regulations,* ''List of approved spent fuel storage casks,'' to include Amendment No. 3 to Certificate of Compliance No. 1008 for the Holtec International Storage, Transport and Repository (HI–STAR) 100 Storage System. Specifically, Amendment No. 3 revises the technical specifications to: Include the multipurpose canister (MPC)–32 for storage of pressurized-water reactor spent fuel in the HI–STAR 100 Storage System; include the Metamic neutron absorber for MPC–32, MPC–24, and MPC–68; credit the soluble boron in criticality analyses for both MPC–32 and MPC–24; incorporate standard system features and ancillaries such as the forced helium dehydration; allow for horizontal storage of the casks; provide updated drawings; and revise the MPC design pressure for accident condition to 200 pounds per square inch gauge. Amendment No. 3 also makes other administrative changes to the technical specifications.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on November 5, 2019. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 4th day of October, 2019.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–22148 Filed 10–9–19; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket ID OCC–2018–0011]

RIN 1557–AE22

FEDERAL RESERVE SYSTEM

12 CFR Parts 212 and 238

[Docket No. R–1641]

RIN 7100–AF31

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AE57

Thresholds Increase for the Major Assets Prohibition of the Depository Institution Management Interlocks Act Rules

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

ACTION: Final rule.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) are issuing a final rule that increases the thresholds in the major assets prohibition for management interlocks for purposes of the Depository Institution Management Interlocks Act (DIMIA). The DIMIA major assets prohibition prohibits a management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization). DIMIA provides that the agencies may adjust, by regulation, the major assets prohibition thresholds in order to allow for inflation or market changes. The final rule increases both major assets prohibition thresholds to $10 billion to account for changes in the United States banking market since the current thresholds were established in 1996.

DATES: The final rule is effective on October 10, 2019.

FOR FURTHER INFORMATION CONTACT:

OCC: Daniel Perez, Senior Attorney, Christopher Rafferty, Attorney, Chief Counsel's Office, (202) 649–5490; or for persons who are deaf or hearing-impaired, TTY, (202) 649–5597; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Claudia Von Pervieux, Senior Counsel, (202) 452–2552; or Andrew Hartlage, Counsel, (202) 452–6483, of the Legal Division; Katie Cox, Manager, (202) 452–2721; or Melissa Clark, Lead Financial Institution Policy Analyst, (202) 452–2277, of the Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf, (202) 263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Karen Jones Currie, Senior Examination Specialist, Division of Risk Management Supervision, (202) 898–3981; Mark Mellon, Counsel, Legal Division, (202) 898–3884; Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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I. Introduction

A. Summary of Final Rule and Policy Objectives

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing a final rule that increases the major assets prohibition thresholds for management interlocks for purposes of the Depository Institution Management Interlocks Act (DIMIA).[1] The increase in the thresholds accounts for changes in the United States banking market since Congress established the current thresholds in 1996. Prior to this final rule, a management official[2] of a depository organization[3] (or any affiliate of such organization) with total assets exceeding $2.5 billion could not serve as a management official of an unaffiliated depository organization (or any affiliate of such organization) with total assets exceeding $1.5 billion without seeking an exemption. The final rule increases both thresholds to $10 billion.

By increasing the major assets prohibition thresholds, the final rule reduces the number of depository organizations subject to the major assets prohibition. This will reduce burden by relieving depository organizations below the increased thresholds from having to ask the agencies for exemptions from the major assets prohibition. The agencies anticipate that raising the asset thresholds will assist small depository organizations in finding qualified directors by eliminating the need to file requests for exemptions from the major assets prohibition.

B. Background

DIMIA—implemented in the agencies' respective rules at 12 CFR parts 26, 212, 238 subpart J, and 348—fosters competition by prohibiting a management official from serving at the same time as a management official of an unaffiliated depository organization in situations where the management interlock may have an anticompetitive effect.[4] DIMIA achieves this purpose through three statutory prohibitions, which are implemented in the agencies' rules.

The first prohibition, the community prohibition, precludes a management official of a depository organization from serving at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or any depository institution affiliate thereof) have offices in the same community.[5] The second prohibition, the relevant metropolitan statistical area (RMSA) prohibition, precludes a management official of a depository organization from serving at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or any depository institution affiliate thereof) have offices in the same RMSA[6] and each depository organization has total assets of $50 million or more. The third prohibition, the major assets prohibition, precludes

[1] 12 U.S.C. 3201 *et seq.*

[2] The agencies' rules define ''management official'' to include directors; advisory or honorary directors of a depository institution with total assets of $100 million or more; ''senior executive officers,'' as that term is defined in the agencies' rules regarding notice of addition or change of directors and senior executive officers; branch managers; trustees of depository organizations under the control of trustees; and any persons who have a ''representative or nominee'' (as the agencies' rules define that term) serving in any of the capacities described above. 12 CFR 26.2(j)(1) (OCC); 12 CFR 212.2(j)(1) and 238.92(j)(1) (Board); and 12 CFR 348.2(k)(1) (FDIC).

[3] The agencies' rules define ''depository organization'' to mean a depository institution or a depository holding company. The agencies' rules define ''depository institution'' to mean a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, the agencies' rules define ''depository institution'' also to mean a United States office of a foreign commercial bank, including a branch or agency. The agencies' rules define ''depository holding company'' to mean a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States. 12 CFR 26.2 (OCC); 12 CFR 212.2 and 238.92 (Board); and 12 CFR 348.2 (FDIC).

[4] 12 CFR 26.1(b) (OCC); 12 CFR 212.1(b) and 238.91(b) (Board); and 12 CFR 348.1(b) (FDIC).

[5] The agencies' rules define ''community'' to mean a city, town, or village, and contiguous and adjacent cities, towns, or villages. 12 CFR 26.2(c) (OCC); 12 CFR 212.2(c) and 238.92(c) (Board); and 12 CFR 348.2(c) (FDIC).

[6] The agencies' rules define ''RMSA'' to mean an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget. 12 CFR 26.2(m) (OCC); 12 CFR 212.2(m) and 238.92(m) (Board); and 12 CFR 348.2(c) (FDIC).

a management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. While the first two prohibitions capture the risk of anticompetitive effects from management interlocks between depository organizations that operate within overlapping geographical areas, the major assets prohibition addresses management interlocks between depository organizations that are large enough that a management interlock may present anticompetitive concerns despite the fact that the involved organizations may not have offices in the same community or RMSA.

DIMIA allows the agencies to prescribe regulations that permit otherwise prohibited interlocks under certain circumstances.[7] Pursuant to the implementing regulations, the appropriate agency may exempt a prohibited interlock in response to an application by a depository organization if the appropriate agency finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.[8]

The $1.5 billion and $2.5 billion thresholds in the major assets prohibition were enacted through amendments to DIMIA in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[9] During hearings on EGRPRA, it was noted that the increase of the asset thresholds to $1.5 billion and $2.5 billion was made because the previous asset threshold numbers did not ''realistically reflect the size of large institutions in today's market.'' [10]

DIMIA, as amended, also provides that the agencies may adjust the thresholds as necessary ''to allow for inflation or market changes.'' [11] Unadjusted since 1996, the major assets prohibition thresholds set forth in EGRPRA do not reflect the growth and consolidation among U.S. depository organizations that has occurred in the intervening years and do not realistically reflect the size of large institutions today. For instance, based on regulatory reporting, total assets at depository organizations have grown by more than 250 percent between the fourth quarter of 1996 and the fourth quarter of 2018. Moreover, in a March 2017 report to Congress mandated by EGRPRA, the agencies stated that they intended to reduce regulatory burden by adjusting the major assets thresholds in the agencies' DIMIA regulations.[12]

II. Proposed Rule and Comments Received

On January 31, 2019, the agencies published for comment a notice of proposed rulemaking (proposed rule or proposal) to amend the agencies' DIMIA regulations.[13] The proposed rule would have increased the major assets prohibition thresholds from $1.5 billion and $2.5 billion to $10 billion each. Alternatively, the proposed rule requested comment on three calibrations that would have increased the major assets prohibition thresholds based on market changes or inflation that had occurred during the period following the establishment of the thresholds. The proposed rule also described the procedures the agencies would use to increase the thresholds to reflect inflation in the future.

In response to the proposed rule, the agencies received six comment letters,[14] five of which were responsive. Four of the five comment letters expressed support for increasing the major assets prohibition thresholds, while the fifth comment letter, without expressing an opinion about the thresholds, suggested that the agencies use clear language and consider ''the most recent developments for measuring market change.'' Two of the five comment letters also included a suggestion that was outside the scope of the proposal—namely, that the agencies expand the number of exemptions from the definition of ''management official.''

Comments Regarding the Major Assets Prohibition Thresholds

Two commenters specifically expressed support for the agencies' proposal to increase the major assets prohibition thresholds to $10 billion. One commenter noted that increasing the thresholds in such a manner would help community banks find qualified management officials, especially in rural areas. The second commenter supported the $10 billion thresholds but suggested that the agencies tie further, periodic threshold adjustments to an asset growth index, rather than to inflation.[15] The commenter suggested that such periodic adjustments could be made through a direct final rule without notice and comment.

Two commenters generally supported increasing the thresholds but provided alternatives to the proposal. One commenter suggested that the agencies adjust the thresholds based on a depository organization's share of total industry assets, centered on the growth of average assets per bank from 1996 to 2018. The second commenter suggested that the agencies adjust the thresholds based on asset growth and stated that Congress intended for DIMIA to have two separate thresholds, rather than a single, consistent threshold in order to make it more difficult for a larger depository organization to control a smaller depository organization. Both commenters suggested that their proposed alternative methods for adjusting the thresholds would better reflect the anticompetitive concerns embodied in DIMIA.

As explained in more detail in the following section, the agencies believe that the proposed $10 billion asset thresholds appropriately capture the anticompetitive risk that the major assets prohibition is intended to address by prohibiting interlocks between larger depository organizations while exempting smaller or community-banking-organization-sized depository organizations. A $10 billion asset threshold is consistent with thresholds that Congress and the agencies have used to distinguish between small institutions and larger institutions. Further, establishing identical asset

[7] 12 U.S.C. 3207.

[8] 12 CFR 26.6(a) (OCC); 12 CFR 212.6(a) and 238.96(a) (Board); and 12 CFR 348.6(a) (FDIC). The agencies have published an interagency interpretation that explains which agency is the appropriate agency for purposes of filing a request for a general exemption under the agencies' rules. *See Permissible Interlocks—Regulatory Exceptions; Agency Approval,* 1 Fed. Res. Reg. Serv. (Bd. of Governors of the Fed. Reserve Sys.) § 3–831 (Nov. 18, 1992), 2006 WL 3928616.

[9] *See* Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104–208, Title II, 110 Stat. 3009–9, § 2210(a).

[10] *The Economic Growth and Regulatory Paperwork Reduction Act—S. 650: Hearings Before the Subcomm. on Fin. Insts. & Regulatory Relief of the S. Comm. on Banking, Hous., & Urban Affairs,* 104 Cong. 90 (1995) (statement of Eugene A. Ludwig, Comptroller of the Currency). Initially, the thresholds were set at $500,000,000 and $1,000,000,000. *See* Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95–630, Title II, Depository Institutions Management Interlocks Act, 92 Stat. 3641, 3672 (Nov. 10, 1978).

[11] 12 U.S.C. 3203.

[12] Federal Financial Institutions Examination Council, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act, 82 FR 15900, 15903 (Mar. 30, 2017), *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[13] 84 FR 604 (Jan. 31, 2019).

[14] Three comment letters were submitted by industry groups, and three comment letters were submitted by individuals.

[15] Specifically, the commenter recommended that the agencies adjust the thresholds based on the annual percentage change in commercial bank assets reflected in the Federal Reserve's ''H.8 Assets and Liabilities of Commercial Banks in the United States.''

threshold levels will enable depository organizations to ascertain more easily whether they may be subject to the major assets prohibition. DIMIA does not require the agencies to set the thresholds at two different levels, nor do the agencies believe that setting the thresholds at different levels would better serve the purpose of DIMIA's major assets prohibition. In consideration of these factors, the agencies believe increasing both asset thresholds to $10 billion is appropriate.

With regard to the suggestion that the agencies tie future threshold adjustments to an asset growth index, the agencies believe that changes to the methodology for future, periodic adjustments are outside the scope of this rulemaking, which requested comment on a one-time adjustment to the asset thresholds to account for market changes. The agencies have existing authority under DIMIA and the agencies' DIMIA regulations to make periodic, discretionary adjustments to the thresholds to account for inflation through direct final rules without notice and comment.[16] In the proposal, the agencies stated that, following adjustment of the thresholds by the proposed rule and consistent with existing authority, the agencies would make further adjustments to the thresholds to account for inflation by publishing a direct final rule without notice and comment.[17] The agencies noted that if further adjustments to the thresholds are warranted for reasons other than inflation, the agencies would propose another adjustment through a subsequent notice of proposed rulemaking and seek public comment on the proposal.[18] As a reference for future, periodic adjustments, the agencies believe that making future adjustments based on the inflation measure in the agencies' rules would be less volatile than making future adjustments based on asset growth and would be more appropriate for a recurring process.

Comments Discussing Other Aspects of DIMIA

Two commenters suggested that the agencies expand the current list of exemptions from the definition of ''management official'' contained in the agencies' rules. One of the commenters suggested that the agencies revise the definition to exempt management officials at non-depository affiliates and management officials of foreign affiliates. Another commenter suggested that the agencies exempt depository organizations' foreign affiliates that do not engage in business or activities in the United States.

The proposed rule did not contemplate changes to the definition of ''management official,'' and the agencies are not adopting the commenters' suggestions at this time; however, the agencies will consider incorporating these suggestions in a future revision to the agencies' rules.

III. Description of Final Rule

After considering the comments received, the agencies are adopting without change the proposal to increase the major assets prohibition thresholds from $1.5 billion and $2.5 billion to $10 billion each. As finalized, the major assets prohibition will prohibit management interlocks between unaffiliated depository organizations with total assets exceeding $10 billion (or any affiliates of such organizations).

The final rule's increase to the major assets prohibition thresholds, and the application of the major assets prohibition to larger depository organizations rather than small depository organizations (*i.e.,* community banking organizations), is consistent with the purpose of the major assets prohibition of DIMIA.[19] A major assets prohibition with a $10 billion asset threshold will prohibit interlocks between larger depository organizations, which could present a risk of anticompetitive conduct at the level of the U.S. banking market, while exempting smaller or community-banking-organization-sized depository organizations, which generally operate in regional markets and do not present the same competitive risks to the broader U.S. banking market.[20]

In addition, the final rule is consistent with the current thresholds that Congress and the agencies have used to distinguish between small institutions and larger institutions. For example, sections 201 and 203 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 provide certain burden relief for institutions with less than $10 billion in total consolidated assets.[21] Additionally, the Dodd-Frank Wall Street Reform and Consumer Protection Act uses a $10 billion threshold to distinguish between large banks subject to supervision by the Consumer Financial Protection Bureau and small banks subject to prudential regulator supervision.[22] A $10 billion threshold also is consistent with the asset threshold used by the Board to distinguish between community banking organizations and larger banking organizations for supervisory and regulatory purposes,[23] the asset threshold used by the FDIC to distinguish between ''small'' and ''large'' institutions for purposes of its deposit insurance assessment regulations,[24] and the asset threshold used by the OCC to distinguish community banks from midsize and large banks for supervisory purposes.[25] Further, having a single, consistent asset threshold will simplify the agencies' DIMIA regulations and enable depository organizations to identify more easily whether they may be subject to the major assets prohibition.

The final rule increases the number of depository organizations that would no longer be subject to the major assets prohibition and therefore reduces the number of institutions that need to seek an exemption from the major assets prohibition from the appropriate agency.

As of December 31, 2018, 981 depository organizations had total assets of more than $1.5 billion and were

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[17] ''The [agencies] will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The [agencies] will announce the revised thresholds by publishing a final rule without notice and comment in the **Federal Register**.'' 12 CFR 26.3(c), 212.3(c), 238.93(c), and 348.3(c).

[18] *See* 84 FR 604 at 607 (Jan. 31, 2019).

[19] Legislative history indicates that Congress intended for the major assets prohibition to apply to ''larger'' organizations. *See* H.R. Rep. No. 95–1383, at 5 (1978); S. Rep. No. 95–323, at 13 (1977).

[20] While depository organizations with $10 billion or less in total assets will not be covered by the major assets prohibition against management interlocks, those depository organizations are still subject to the community and RMSA prohibitions.

[21] Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, Public Law 115–174, § 201, 203, 132 Stat. 1296, 1306, 1309 (2018) (enacting a ''Community Bank Leverage Ratio'' capital simplification framework that is generally available to depository institutions and depository institution holding companies with $10 billion or less in total consolidated assets and exempting generally from the prohibitions of section 13 of the Bank Holding Company Act of 1956, also known as the ''Volcker Rule,'' certain entities with $10 billion or less in total consolidated assets).

[22] Public Law 111–203, § 1025 & 1026, 124 Stat. 1376, 1990–95 (2010).

[23] Bd. of Governors of the Fed. Reserve Sys., Commercial Bank Examination Manual (rev. Jan. 2018), *https://www.federalreserve.gov/publications/files/cbem.pdf.*

[24] *See* 12 CFR 327.8(e) and (f). For the purposes of the FDIC's assessment regulations, a ''small institution'' generally is an insured depository institution with less than $10 billion in total assets. Generally, a ''large institution'' is an insured depository institution with $10 billion or more in total assets or that is treated as a large institution for assessment purposes under section 327.16(f).

[25] Comptroller's Handbook, ''OCC Community Bank Supervision'' (June 2018), *https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/community-bank-supervision/pub-ch-community-bank-supervision.pdf.*

subject to the major assets prohibition.[26] In addition, 751 depository organizations with total assets of more than the $2.5 billion threshold were subject to restrictions on management interlocks with unaffiliated depository organizations with total assets exceeding the $1.5 billion threshold. Raising the $1.5 billion asset threshold to $10 billion would exempt 672 depository organizations from the major assets prohibition as of December 31, 2018. As of December 31, 2018, 309 depository organizations reported total assets greater than $10 billion and would remain subject to the major assets prohibition.

IV. Regulatory Analysis

A. Administrative Procedure Act and Effective Date

The agencies are issuing the final rule without the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[27] Pursuant to section 553(d) of the APA, the required publication of a substantive rule shall be made not less than 30 days before its effective date, except for, among other things, ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' [28]

The final rule increases the asset thresholds for the major assets prohibition, which will increase the number of depository organizations that are no longer subject to the prohibition and therefore reduce the number of depository organizations that will need to seek an exemption from the prohibition. The effect of the final rule will be to relieve certain depository organizations from the restrictions of the DIMIA major assets prohibition. Accordingly, the agencies are issuing the final rule with an immediate effective date.

B. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. Section 302(b) requires that new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on depository institutions generally shall take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, subject to certain exceptions that are not relevant here.

The final rule does not impose additional reporting, disclosure, or other requirements on depository institutions, including small depository institutions or customers of depository institutions; therefore, section 302 of CDRI does not apply. The agencies note, however, that in determining the effective date and administrative compliance requirements for this final rule, they considered the administrative burdens and benefits of the rule, including that the rule reduces burden on the depository organizations to which it applies.

C. Paperwork Reduction Act of 1995

Certain provisions of the final rule contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0014; and the FDIC's is 3064–0118. These information collections will be extended for three years, with revision. Although the Board has previously included these collections of information under OMB control number 7100–0134, the collections of information are not currently cleared under the PRA. Therefore, the Board is implementing a new collection of information in connection with this final rule. The agencies did not receive any specific comments on the PRA. The information collection requirements contained in the proposed rulemaking were submitted by the OCC and FDIC to OMB under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). OMB filed a comment in response to the submissions, instructing the OCC and FDIC to resubmit at the final rule stage and discuss the reason for any increase in burden. The OCC and FDIC have resubmitted the information collection requirements to OMB in connection with the final rule. The Board reviewed the final rule under the authority delegated to the Board by OMB. The FDIC's and OCC's burden increased slightly through an effort to conform its burden estimates to those of the other agencies. In addition, the agencies have increased their estimates for the burden associated with recordkeeping from the initial proposal to reflect the fact that the number of respondents that may engage in recordkeeping would not be decreased by the final rule. Additionally, the agencies have removed from their burden table estimates references to 12 CFR 26.6(b) (OCC); 12 CFR 212.6(b) and 238.96(b) (Board); and 12 CFR 248.6(b) (FDIC), as those sections do not contain an information collection. This change has not impacted the estimated burden calculation.

PRA Burden Estimates

OCC

OMB control number: 1557–0014.
Estimated number of respondents: 2.
Estimated average hours per response:
Reporting Sections 26.4(h)(1)(i)–4.
Recordkeeping Section 26.5(b)–3.
Estimated annual burden hours: 14.

Board

OMB control number: 7100–NEW (The current management official interlocks reporting and recordkeeping requirements are housed under OMB control number 7100–0134 and will be separated out in a new OMB control number).
Estimated number of respondents: 4 for reporting requirements and 8 for recordkeeping requirements.
Estimated average hours per response:
Reporting Sections 212.4(h)(1)(i) and 238.94(h)(1)(i)–4.
Recordkeeping Section 212.5(b) and 238.95(b)–3.
Estimated annual burden hours: 40.

FDIC

OMB control number: 3064–0118.
Estimated number of respondents: 6.
Estimated average hours per response:
Reporting Sections 348.4(h)(1)(i)–4.
Recordkeeping Section 348.5(b)–3.
Estimated annual burden hours: 42.

[26] The analysis in this preamble reflecting changes in the number of depository organizations exempted does not incorporate credit unions because this final rule does not apply to credit unions. Data used in this analysis were drawn from the December 31, 1996, and December 31, 2018, Consolidated Reports of Condition and Income (Call Reports), Consolidated Financial Statements for Holding Companies, Parent Company Only Financial Statements for Large Holding Companies, Parent Company Only Financial Statements for Small Holding Companies, and Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[27] 5 U.S.C. 553.

[28] 5 U.S.C. 553(d)(1).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act [29] (RFA) requires an agency either to provide a final regulatory flexibility analysis with a final rule for which general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[30] Under regulations issued by the SBA, the size standard to be considered a small business for banking entities subject to the proposed rule is $600 million or less in consolidated assets.[31] Under 5 U.S.C. 605(b), this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

OCC: The OCC currently supervises approximately 782 small entities.[32] Currently, the major assets prohibition of DIMIA prevents a management official of a depository organization with total assets exceeding $2.5 billion (depository organization threshold) or any affiliate of such organization from serving as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (unaffiliated organization threshold). This final rule will increase both thresholds to $10 billion in assets, which will only impact banking organizations with total consolidated assets between the current thresholds of $1.5 billion and $2.5 billion and the new threshold of $10 billion. No OCC-regulated small entities are impacted by these changes. Additionally, the changes in this final rule do not impose any new reporting, recordkeeping, or other compliance requirements. For these reasons, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Board: In accordance with section 603(a) of the RFA,[33] the Board published an Initial Regulatory Flexibility Analysis (IFRA) with the proposal.[34] The Board solicited comment on the effect of the proposal on small entities. The Board did not receive any comment on the IFRA.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities. The FRFA must contain: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency.

1. Statement of the need for, and objectives of, the final rule.

As discussed in the *Supplementary Information,* the final rule increases the major assets prohibition thresholds for management interlocks in the Board's rules implementing DIMIA. Under the current major assets prohibition, a management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) is prohibited from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. For these purposes, the term ''depository organization'' means a depository institution or a depository holding company. ''Depository institution'' means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution. ''Depository holding company'' means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of DIMIA) having its principal office located in the United States.[35] As discussed above, the Board's objective in issuing this rule is to reduce the number of depository organizations subject to the major assets prohibition. The Board has authority under DIMIA to prescribe regulations necessary to carry out DIMIA with respect to state banks that are members of the Federal Reserve System, bank holding companies, and savings and loan holding companies.[36]

2. A discussion of the significant issues raised by public comments in response to the IRFA, and the Board's response to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

The Board did not receive any comments on the IRFA that it published in connection with the proposal. In addition, the Chief Counsel for Advocacy of the SBA did not file any comments in response to the proposal. Accordingly, no changes were made to the proposal as a result of RFA-related comments.

3. Description and estimate of the number of entities to which the rule will apply.

The rule applies to state member banks, bank holding companies, and savings and loan holding companies having their principal offices in the United States. Under regulations issued by the SBA, a small entity includes a state member bank, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with

[29] 5 U.S.C. 601 *et seq.*

[30] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[31] *See* 13 CFR 121.201.

[32] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[33] 5 U.S.C. 603.

[34] 84 FR 604 (Jan. 31, 2019).

[35] 12 CFR 212.2 and 231.92.

[36] 12 U.S.C. 3207(2).

total assets of $41.5 million or less.[37] On average since the second quarter of 2018, there were approximately 2,976 small bank holding companies, 133 small savings and loan holding companies, and 70 small state member banks. The rule increases the total asset level at which depository organizations and their affiliates become subject to the major assets prohibition from $1.5 billion and $2.5 billion to $10 billion and $10 billion, respectively.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule.

The changes to the major assets prohibition do not impose any new reporting, recordkeeping, and other compliance requirements.

5. Description of the steps take to minimize any significant economic impact on small entities.

Based on its analysis and for the reasons stated above, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rulemaking on small entities.[38] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets less than or equal to $600 million.[39] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. The FDIC supervises 3,489 depository institutions,[40] of which 2,741 are defined as small banking entities by the terms of the RFA.[41]

The final rule only affects institutions with total consolidated assets between the current thresholds of $1.5 billion and $2.5 billion and the new threshold of $10 billion. Therefore, the final rule will likely affect zero small entities.

Accordingly, the FDIC believes that the final rule will not have a significant impact on a substantial number of small entities. For the reasons described above and pursuant to 5 U.S.C. 605(b), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The final rule will relieve burden and will not impose any new mandates. Therefore, the OCC concludes that the proposed rule will not result in an expenditure of $100 million or more annually by state, local, and tribal governments or by the private sector.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies received one comment that generally suggested that the agencies use clear language in this final rule. The agencies believe the final rule is presented in a simple and straightforward manner. Accordingly, the agencies are issuing the final rule without change.

G. The Congressional Review Act

Pursuant to the Congressional Review Act, the Office of Management and Budget's Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined at 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 26

Antitrust, Banks, banking, Holding companies, Management official interlocks, National banks.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks.

12 CFR Part 238

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

Authority and Issuance

For the reasons stated in the preamble, the OCC amends 12 CFR part 26, the Board amends 12 CFR parts 212 and 238, and the FDIC amends 12 CFR part 348 as follows:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 3201–3208, 5412(b)(2)(B).

■ 2. Section 26.3 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 26.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $10 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $10 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. * * *

Federal Reserve System

PART 212—MANAGEMENT OFFICIAL INTERLOCKS (REGULATION L)

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

■ 4. Section 212.3 is amended by revising the first sentence of paragraph (c) to read as follows:

[37] *See* 13 CFR 121.201.

[38] 5 U.S.C. 601 *et seq.*

[39] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[40] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[41] Call Report, December 31, 2018.

§ 212.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $10 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $10 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. * * *

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 5. The authority citation for part 238 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972, 3201–3208; 15 U.S.C. 78*l*.

■ 6. Section 238.93 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 238.93 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $10 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $10 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. * * *

Federal Deposit Insurance Corporation

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

■ 7. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 3207, 12 U.S.C. 1823(k).

■ 8. Section 348.3 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 348.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $10 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $10 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. * * *

Dated: October 1, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 27, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 20, 2019.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–21840 Filed 10–9–19; 8:45 am]

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 46

[Docket ID OCC–2018–0035]

RIN 1557–AE55

Amendments to the Stress Testing Rule for National Banks and Federal Savings Associations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule.

SUMMARY: The OCC is adopting a final rule to amend the OCC's company-run stress testing requirements for national banks and Federal savings associations, consistent with section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Specifically, the final rule revises the minimum threshold for national banks and Federal savings associations to conduct stress tests from $10 billion to $250 billion, revises the frequency by which certain national banks and Federal savings associations will be required to conduct stress tests, and reduces the number of required stress testing scenarios from three to two.

DATES: This final rule is effective November 24, 2019.

FOR FURTHER INFORMATION CONTACT: Hein Bogaard, Lead Economic Expert, International Analysis and Banking Condition, (202) 649–5450; or Henry Barkhausen, Counsel, or Daniel Perez, Senior Attorney, (202) 649–5490, Chief Counsel's Office; or for persons who are deaf or hearing-impaired, TTY, (202) 649–5597; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),[1] as initially enacted, required a national bank or Federal savings association (FSA) (collectively, banks) with total consolidated assets of more than $10 billion to conduct an annual stress test. Section 165(i)(2)(B) required these banks to provide a report to the Office of the Comptroller of the Currency (OCC) at such time, in such form, and containing such information as the OCC may require.[2] In addition, section 165(i)(2)(C) required the OCC to issue regulations that establish methodologies for banks conducting their stress test and required the methodologies to include at least three different stress testing scenarios: ''baseline,'' ''adverse,'' and ''severely adverse.''[3]

In October 2012, the OCC published in the **Federal Register** its rule implementing the Dodd-Frank Act stress testing requirement (stress testing rule).[4] The OCC's stress testing rule established two subgroups for covered institutions—''$10 to $50 billion covered institutions'' and ''$50 billion or over covered institutions''—and subjected the two subgroups to different stress test requirements and deadlines for reporting and disclosures. In February 2018, the OCC published a second rulemaking to implement additional technical and conforming changes to the OCC's stress testing rule.[5]

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amends certain aspects of the company-run stress testing requirement in section 165(i)(2) of the Dodd-Frank Act.[6] Specifically, section 401 of EGRRCPA raises the minimum asset threshold for financial companies covered by the company-run stress testing requirement from $10 billion to $250 billion in total consolidated assets; revises the requirement that financial companies conduct stress tests on an ''annual'' basis and instead requires them to be ''periodic''; and no longer requires the OCC to provide an ''adverse'' stress-testing scenario, thus reducing the number of required stress test scenarios from three to two. The amendments made by section 401 of EGRRCPA

[1] Public Law 111–203, 124 Stat. 1376 (2010), codified at 12 U.S.C. 5365.

[2] 12 U.S.C. 5365(i)(2)(B).

[3] 12 U.S.C. 5365(i)(2)(C).

[4] 77 FR 61238 (Oct. 9, 2012).

[5] 83 FR 7951 (Feb. 23, 2018).

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

applicable to depository institutions are effective on November 24, 2019.

II. Proposed Rule

On February 12, 2019, consistent with section 401 of EGRRCPA, the OCC published a notice of proposed rulemaking (proposed rule or proposal) in the **Federal Register** to amend the stress testing rule.[7] The proposed rule would have revised the minimum threshold for banks to conduct stress tests from $10 billion to $250 billion, revised the frequency by which certain banks would be required to conduct stress tests from annual to biennial, and reduced the number of required stress testing scenarios from three to two by eliminating the requirement for an adverse scenario. The proposed rule would also have made certain additional technical and facilitating changes to the stress testing rule.

In response to the proposed rule, the OCC received two substantive comment letters. The OCC appreciates the concerns raised by these comments but, for the reasons described below, the OCC does not believe that they warrant changes to the proposal.

The first commenter requested that the OCC immediately eliminate stress testing requirements that would no longer be in effect upon finalization of the proposal or that are not appropriate for any firm of any size. In particular, this commenter argued that the OCC should immediately eliminate the adverse scenario from the scenarios required for purposes of the 2019 stress test. The EGRRCPA amendments to the stress testing requirements will become effective on November 24, 2019. While EGRRCPA specifically provided an immediate effective date for bank holding companies with total consolidated assets of less than $100,000,000,000, it did not provide immediate relief for banks that have consolidated assets above the threshold or that meet certain other specified criteria. Accordingly, the OCC did not consider it appropriate to eliminate this requirement from the 2019 stress tests. The stress test scenarios for the 2019 Dodd-Frank Act stress tests were issued in February 2019.

The second commenter argued that the OCC should not reduce the frequency of Dodd-Frank Act stress testing from annual to biennial for any subset of banks. The OCC believes, based on its experience overseeing and reviewing the results of company-run stress testing, that biennial stress testing is appropriate under most conditions for a bank not consolidated under a holding company that is required to conduct a stress test annually. For these covered institutions, the OCC expects a biennial stress test to provide the OCC and the covered institution with information that is sufficient to satisfy the purposes of stress testing, including assisting in an overall assessment of a covered institution's capital adequacy, identifying risks and the potential impact of adverse financial and economic conditions on the covered institution's capital adequacy, and determining whether additional analytical techniques and exercises are appropriate for a covered institution to employ in identifying, measuring, and monitoring risks to the soundness of the covered institution. As described further below, the OCC believes that annual stress testing is appropriate only for depository institution subsidiaries of the largest and most complex banking organizations. In addition, the OCC will continue to review the covered intuition's stress testing processes and procedures.

In the event of a sudden, material change in bank or market conditions or forecasts, the OCC retains its ability to require more frequent stress testing, pursuant to its reservation of authority under the OCC's stress testing rule.[8]

II. Description of the Final Rule

The OCC is adopting the proposed revisions to the OCC's stress testing rule without change. These revisions are described in more detail below.

A. Covered Institutions

As described above, section 401 of EGRRCPA amends section 165 of the Dodd-Frank Act by raising the minimum asset threshold for banks required to conduct stress tests from $10 billion to $250 billion. The final rule implements this change by eliminating the two existing subcategories of ''covered institution''—''$10 to $50 billion covered institution'' and ''$50 billion or over covered institution''—and revising the term ''covered institution'' to mean a national bank or FSA with average total consolidated assets greater than $250 billion. In addition, the final rule makes certain technical changes to the rule in order to consolidate requirements that were applied differently to ''$10 to $50 billion covered institutions'' and ''$50 billion or over covered institutions.''

B. Frequency of Stress Testing

EGRRCPA eliminates the requirement under section 165 of the Dodd-Frank Act for covered institutions to conduct stress tests on an ''annual'' basis and, instead, requires that they be ''periodic.'' The term ''periodic'' is not defined in EGRRCPA. The final rule requires that, in general, a covered institution will be required to conduct, report, and publish a stress test once every two years, beginning on January 1, 2020, and continuing every even-numbered year thereafter (*i.e.,* 2022, 2024, 2026, etc.). However, a covered institution that is consolidated under a holding company that is required to conduct a stress test at least once every calendar year (pursuant to regulations of the Board of Governors of the Federal Reserve System (the Board)) will be required to conduct, report, and publish its stress test annually. The final rule adds a new defined term, ''reporting year,'' to the definitions at § 46.2. A covered institution's reporting year is the year in which a covered institution must conduct, report, and publish its stress test.

Subsequent to these changes, covered institutions may be subject to either a biennial reporting year (biennial stress testing covered institutions) or an annual reporting year (annual stress testing covered institutions). In either case, the dates and deadlines in the OCC's stress testing rule would be interpreted relative to the covered institution's reporting year. For example, if a biennial stress testing covered institution is preparing a stress test for the 2022 reporting year, the covered institution would rely on financial data available as of December 31, 2021; use stress test scenarios that would be provided by the OCC no later than February 15, 2022; provide its report of the results of the stress test to the OCC by April 5, 2022; and publish a summary of the results of the stress test in the period starting June 15 and ending July 15 of 2022.

Under the final rule, all biennial stress testing covered institutions will be required to conduct stress tests in the same reporting year. By requiring these covered institutions to conduct their stress tests in the same year, the final rule will allow the OCC to continue to make comparisons across banks for supervisory purposes and assess macroeconomic trends and risks to the banking industry.

Certain covered institutions will be required to conduct annual stress tests under the final rule. This subset is limited to covered institutions that are consolidated under holding companies that are required to conduct stress tests more frequently than once every other year. This treatment aligns with the OCC's, Board's, and FDIC's long-standing policy of applying similar

[7] 84 FR 3345 (Feb. 12, 2019).

[8] *See* 12 CFR 46.4.

standards to holding companies and their subsidiary banks. It also reflects the OCC's expectation that covered institutions that will be required to stress test on an annual basis are subsidiaries of the largest and most systemically important holding companies.

On November 29, 2018, the Board published a proposed rule that would establish four risk-based categories of standards for large holding companies to determine the application of prudential standards, including stress testing.[9] Holding companies subject to Category I or Category II standards would be required to conduct annual company-run stress tests while holding companies subject to Category III standards would be required to conduct biennial company-run stress tests.[10] (Holding companies with less than $250 billion in consolidated assets, including those subject to Category IV standards, would not be required to stress test.) Because the OCC's final stress testing rule would require a covered institution to conduct stress tests annually if its parent holding company is required, under Board regulations, to conduct stress tests annually, the OCC's stress testing regulation would adopt by reference any potential changes to stress testing frequency in the Board's regulations, including from the Board's proposed rule.

C. Removal of ''Adverse'' Scenarios

Section 165(i)(2)(C) of the Dodd-Frank Act required the OCC to establish methodologies for covered institutions conducting a stress test and requires the methodologies to include at least three different stress testing scenarios: ''baseline,'' ''adverse,'' and ''severely adverse.'' Subsequently, EGRRCPA amended section 165 to no longer require the OCC to include an ''adverse'' stress-testing scenario. Accordingly, the final rule removes references to the ''adverse'' stress test scenario in the OCC's stress testing rule. In the OCC's experience, the ''adverse'' stress-testing scenario has provided limited incremental information to the OCC and market participants beyond what the ''baseline'' and ''severely adverse'' stress testing scenarios provide. The final rule maintains the requirement for the OCC to conduct supervisory stress tests under both a ''baseline'' and ''severely adverse'' stress-testing scenario.

D. Transition Process for Covered Institutions

Section 46.3 of the OCC's stress testing rule provides a transition period between when a bank becomes a covered institution and when the bank must report the results of its first stress test. The final rule amends the transition period in § 46.3(b) to conform to the other changes in this rulemaking, including the establishment of annual and biennial stress testing covered institutions. Under the final rule, a bank that becomes a covered institution will be required to conduct its first stress test under the stress testing rule in the first reporting year that begins more than three calendar quarters after the date the bank becomes a covered institution, unless otherwise determined by the OCC in writing. For example, if a covered institution that conducts stress tests on a biennial basis becomes a covered institution on March 31 of a non-reporting year (*e.g.,* 2023), the bank must report the results of its first stress test in the subsequent calendar year (*i.e.,* 2024), which is its first reporting year. If the same bank becomes a covered institution on April 1 of a non-reporting year, it skips the subsequent calendar year and reports the results of its first stress test in the next reporting year (*i.e.,* 2026). As with other aspects of the stress testing rule, the OCC may change the transition period for particular covered institutions, as appropriate in light of the nature and level of the activities, complexity, risks, operations, and regulatory capital of the covered institutions, in addition to any other relevant factors.

The final rule does not include a transition period for a covered institution that moves from a biennial stress testing requirement to an annual stress testing requirement. Accordingly, a covered institution that becomes an annual stress testing covered institution is required to begin stress testing annually as of the next reporting year. The OCC expects covered institutions to anticipate and make arrangements for this development. To the extent that particular circumstances warrant the extension of a transition period, the OCC can extend one based on its reservation of authority and supervisory discretion.

E. Review by Board of Directors

Section 46.6 of the stress testing rule required the board of directors of a covered institution, or a committee thereof, to review and approve the covered institution's stress testing policies and procedures as frequently as economic conditions or the condition of the institution may warrant, but no less than annually. The final rule revises the frequency of this requirement from ''annual'' to ''once every reporting year'' in order to align review by the board of directors with the covered institution's stress testing cycle.

F. Reservation of Authority

Section 46.4 of the stress testing rule states the OCC's reservation of the authority, pursuant to which the OCC may revise the frequency and methodology of the stress testing requirement as appropriate for particular covered institutions. The final rule clarifies the OCC's reservation of authority by providing that the OCC may exempt a covered institution from the requirement to conduct a stress test in a particular reporting year.

G. Removal of Transition Language

The final rule removes certain transition language that was present in the stress testing rule and that is no longer current. For example, the final rule strikes the following sentence from paragraph (a)(2) of § 46.6: ''Until December 31, 2015, or such other date specified by the OCC, a covered institution is not required to calculate its risk-based capital requirements using the internal ratings-based and advanced measurement approaches as set forth in 12 CFR part 3, subpart E.''

IV. Regulatory Analysis

A. Riegle Community Development and Regulatory Improvement Act (RCDRIA)

The RCDRIA requires that the OCC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (''IDIs''), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[11] In addition, in order to provide an adequate transition period, new regulations that impose additional

[9] *See* ''Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies,'' 83 FR 61408 (Nov. 29, 2018).

[10] Under the Board's proposal, Category I standards would apply to U.S. global systemically important bank holding companies (G–SIBs). Category II standards would apply to depository holding companies that are not G–SIBs and that have (1) $700 billion or more in consolidated assets or (2) $100 billion or more in consolidated assets and $75 billion or more in cross-jurisdictional activity. Category III standards would apply to a depository holding company that is not subject to Category II standards and that has (1) $250 billion or more in average total consolidated assets or (2) $100 billion or more in average total consolidated assets and $75 billion or more in total consolidated assets in one of three risk indicators.

[11] 12 U.S.C. 4802(a).

reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[12]

The final rule imposes no additional reporting, disclosure, or other requirements on IDIs, including small depository institutions, nor on the customers of depository institutions. The final rule reduces the frequency of company-run stress tests for a subset of banks, raises the threshold for covered institutions from $10 billion to $250 billion, reduces the number of required stress test scenarios from three to two for all banks, and makes technical changes that do not substantively IDIs or their customers. Accordingly, the RCDRIA does not apply to the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), requires an agency, in connection with a final rule, to prepare a final Regulatory Flexibility Analysis describing the impact of the final rule on small entities (defined by the Small Business Administration (''SBA'') for purposes of the RFA to include banking entities with total assets of $600 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 782 small entities.[13] Because the final rule only applies to banking organizations with total consolidated assets greater than $10 billion, it will not impact any OCC-supervised small entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements in the final rule are found in §§ 46.6 through 46.8. The OCC submitted the information collection requirements to OMB at the proposed rule stage (OMB Control No. 1557–0343). OMB filed a comment requesting that the OCC examine public comment in response to the proposed rule and include in the supporting statement of the submission to OMB at the final rule stage a description of how the agency has responded to any public comments on the information collection, including comments on maximizing the practical utility of the collection and minimizing the burden. The OCC did not receive any comments on the information collection requirements contained in the proposed rule and the OCC has resubmitted them to OMB in connection with the final rule.

Section 46.6(c) of the OCC's stress testing rule, as revised by this final rule, requires that each covered institution establish and maintain a system of controls, oversight, and documentation, including policies and procedures, describing the covered institution's stress test practices and methodologies, and processes for validating and updating the covered institution's stress test practices. The stress testing rule requires the board of directors of a covered institution to approve and review these policies at least annually. Section 46.7(a) requires each covered institution to report the results of their stress tests to the OCC annually. Section 46.8(a) requires that a covered institution publish a summary of the results of its annual stress tests on its website or in any other forum that is reasonably accessible to the public.

The increase in the applicability threshold effected by this final rule will reduce the estimated number of respondents for these requirements. In addition, the final rule decreases the frequency of these reporting, recordkeeping, and disclosure requirements for some institutions to once every other year.

Title of the Collection: Stress Testing Rules for National Banks and Federal Savings Associations.

Frequency of Response: Annual/biennial.

Affected Public: National banks and federal savings associations.

Type of Review: Regular.

Estimated number of respondents: 8 (biennial testing: 4; annual testing: 4).

Estimated total annual burden: 6,240 hours.

D. Unfunded Mandates Reform Act of 1995

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted annually for inflation. The OCC has determined that there are no expenditures for the purposes of UMRA. Therefore, the OCC concludes that the final rule will not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. At the rule proposal stage, the OCC invited comment on how to make this rule easier to understand. No comments responsive to this issue were received.

F. The Congressional Review Act

Pursuant to the Congressional Review Act, the Office of Management and Budget's Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 46

Banking, banks, Capital, Disclosures, National banks, Recordkeeping, Reporting, Risk, Stress test.

Authority and Issuance

For the reasons stated in the preamble, the OCC amends 12 CFR part 46 as follows:

PART 46—STRESS TESTING

■ 1. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

■ 2. The heading for part 46 is revised to read as set forth above.

■ 3. Section 46.2 is amended by:

■ a. Removing the definitions for ''$10 to $50 billion covered institution'' and ''$50 billion or over covered institution'';

■ b. Revising the definition of ''Covered institution'';

■ c. Adding a definition for ''Reporting year'' in alphabetical order; and

■ d. Revising the definition of ''Scenarios''.

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

[13] The OCC bases its estimate of the number of small entities on the SBA's size thresholds. For commercial banks and savings institutions, the size threshold is $600 million. For trust companies, the threshold is $41.5 million. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

The revisions and addition read as follows:

§ 46.2 Definitions.

* * * * *

Covered institution means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are greater than $250 billion.

* * * * *

Reporting year means the calendar year in which a covered institution must conduct, report, and publish its stress test.

Scenarios means sets of conditions that affect the U.S. economy or the financial condition of a covered institution that the OCC determines are appropriate for use in the stress tests under this part, including, but not limited to, baseline and severely adverse scenarios.

* * * * *

■ 4. Section 46.3 is amended by revising paragraphs (b) and (c) and removing paragraph (d).

The revisions read as follows:

§ 46.3 Applicability.

* * * * *

(b) *Covered institutions that become subject to stress testing requirements.* A national bank or Federal savings association that becomes a covered institution shall conduct its first stress test under this part in the first reporting year that begins more than three calendar quarters after the date the national bank or Federal savings association becomes a covered institution, unless otherwise determined by the OCC in writing.

(c) *Ceasing to be a covered institution or changing categories.* A covered institution shall remain subject to the stress test requirements until total consolidated assets of the covered institution falls below the relevant size threshold for each of four consecutive quarters as reported by the covered institution's most recent Call Reports, effective on the ''as of'' date of the fourth consecutive Call Report.

■ 5. Section 46.4 is amended by adding a sentence at the end of paragraph (a)(2) to read as follows:

§ 46.4 Reservation of authority.

(a) * * *

(2) * * * The OCC may also exempt one or more covered institutions from the requirement to conduct a stress test in a particular reporting year.

* * * * *

■ 6. Section 46.5 is amended by:

■ a. Revising the section heading;

■ b. Removing the word ''annual'' in the introductory text;

■ c. Revising paragraphs (a) and (b); and

■ d. Adding paragraph (e).

The revisions and addition read as follows:

§ 46.5 Stress testing.

* * * * *

(a) *Financial data.* A covered institution must use financial data available as of December 31 of the calendar year prior to the reporting year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of two sets of economic and financial conditions, including baseline and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than February 15 of the reporting year.

* * * * *

(e) *Frequency.* A covered institution that is consolidated under a holding company that is required, pursuant to applicable regulations of the Board of Governors of the Federal Reserve, to conduct a stress test at least once every calendar year must treat every calendar year as a reporting year, unless otherwise determined by the OCC. All other covered institutions must treat every even-numbered calendar year beginning January 1, 2020 (*i.e.,* 2022, 2024, 2026, etc.), as a reporting year, unless otherwise determined by the OCC.

§ 46.6 [Amended]

■ 7. Section 46.6 is amended:

■ a. In paragraph (a)(2), by removing the last sentence; and

■ b. In paragraph (c)(2), by removing the word ''annually'' and adding in its place the phrase ''once every reporting year''.

■ 8. Section 46.7 is amended by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b); and

■ c. Redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 46.7 Reports to the Office of the Comptroller of the Currency and the Federal Reserve Board.

(a) *Timing.* A covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before April 5 of the reporting year, the results of the stress test in the manner and form specified by the OCC.

* * * * *

■ 9. Section 46.8 is amended by:

■ a. Redesignating paragraph (a)(1) as paragraph (a) introductory text and revising it;

■ b. Removing paragraph (a)(2);

■ c. Redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2), respectively; and

■ d. In paragraph (b):

■ i. Removing the phrase ''an annual company-run'' and adding the phrase ''a company-run'' in its place; and

■ ii. Removing the phrase ''annual stress test'' in the second sentence and adding the phrase ''stress test'' in its place.

The revision reads as follows:

§ 46.8 Publication of disclosures.

(a) *Publication date.* A covered institution must publish a summary of the results of its stress test in the period starting June 15 and ending July 15 of the reporting year, provided:

* * * * *

Dated: October 2, 2019.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2019–21843 Filed 10–9–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2019–0805; Special Condition No. 23–298–SC]

Special Conditions: Diamond Aircraft Industries of Canada Model DA–62 Airplanes; Diesel Cycle Engine Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Diamond Aircraft Industries of Canada DA–62 airplane. This airplane will have novel or unusual design features associated with the installation of a diesel cycle engine utilizing turbine fuel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective October 10, 2019.

The FAA must receive your comments by November 12, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0805 using any of the following methods:

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

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

Special condition No. [2]	Company/airplane model
23–169–SC	Diamond Aircraft Industries GmbH/DA 42, DA 42 NG, DA 42 M–NG, and DA62.
23–185–SC	Piper/PA28–236.
23–188–SC	Piper/PA28–161.
23–259–SC	Cessna Aircraft Company/J183T.

Comments Invited

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

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

Background

On November 16, 2018, Diamond Aircraft Industries of Canada (DAI-Canada) applied for FAA validation for a new type certificate for its Model DA–62 airplane. The Model DA–62 is a normal category, composite, 6 place (excluding pilots seats), twin-engine airplane with retractable gear, cantilevered low-wing and T-tail monoplane, and a maximum takeoff weight of 4,407 pounds. The airplane is powered by two Austro Engine GmbH E4P aircraft diesel engines (E4P), which are type certificated in the United States (TC No. E00081EN).

The DAI-Canada Model DA–62 is the same design as the Diamond Aircraft Industries GmbH Model DA62, a normal category airplane type certificated under the airworthiness standards listed in Type Certificate Data Sheet (TCDS) No. A57CE. The FAA issued special conditions to the Diamond Aircraft Industries GmbH Model DA–42 (Special Condition No. 23–169–SC) under TCDS No. A57CE [3] and later applied them to the Model DA–62, a derivative model that was added to the TCDS later. DAI-Canada plans to produce the Model DA–62 under a new type certificate (TC A00012NY); therefore, the FAA is issuing the same special conditions for the DAI-Canada Model DA–62.

Expecting the reintroduction of diesel engine technology into the small airplane fleet, the FAA issued Policy Statement PS–ACE100–2002–004, *Final Policy Statement; Diesel Engine Installation,* on May 15, 2004,[4] which identified areas of technological concern introduction of new technology diesel engines into small airplanes.

The general areas of concern involved the power characteristics of the diesel engines, the use of turbine fuel in an airplane class that has typically been powered by gasoline-fueled engines, and the vibration characteristics and failure modes of diesel engines. These concerns were identified after a review of the record of diesel engine use in airplanes and a review of the part 23 regulations, which identified specific regulatory areas that needed to be evaluated for applicability to aircraft diesel engine installations. These concerns are not considered universally applicable to all types of aircraft diesel engines and diesel engine installations. However, after review of the DAI Canada installation, the E4P engine type and the E4P requirements, and after applying the guidance in PS–ACE100–2002–004, the FAA has determined the fuel system and engine related special conditions previously issued in Special Condition No. 23–169–SC on Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, DA 42 M–NG, and DA62

[2] *See http://rgl.faa.gov/* to review the listed special conditions.

[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/A4F565159645862583EE00756A7D?OpenDocument.*

[4] *See http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/CD377FA81E29D93A86256D440059EC2F?OpenDocument.*

airplanes are necessary for the DAI-Canada Model DA–62 airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, DAI-Canada must show that the Model DA–62 meets the applicable provisions of 14 CFR part 23, as amended by amendments 23–1 through 23–62 thereto.

If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the Model DA–62 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

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

In addition to the applicable airworthiness regulations and special conditions, the Model DA–62 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Novel or Unusual Design Features

The Model DA–62 will incorporate the following novel or unusual design feature: Installation of aircraft diesel engines that use turbine (jet) fuel.

Discussion

The major concerns with diesel engine installations identified by the FAA include installing the diesel engine and noting its vibration levels under both normal operating conditions and when one cylinder is inoperative. The concerns also include accommodating turbine fuels in airplane systems that have generally evolved based on gasoline requirements, anticipated use of a FADEC to control the engine, and appropriate limitations and indications for a diesel engine powered airplane. The general concerns associated with the aircraft diesel engine installation are as follows:

- Installation and Vibration Requirements
- Fuel and Fuel System Related Requirements
- Full Authority Digital Engine Control (FADEC) and Electrical System Requirements
- Limitations and Indications

Installation and Vibration Requirements: These special conditions include requirements similar to the requirements of § 23.901(d)(1) for turbine engines. In addition to the requirements of § 23.901 applied to reciprocating engines, the applicant will be required to construct and arrange each diesel engine installation to result in vibration characteristics that do not exceed those established during the type certification of the engine. These vibration levels must not exceed vibration characteristics that a previously certificated airframe structure has been approved for, unless such vibration characteristics are shown to have no effect on safety or continued airworthiness. The engine limit torque design requirements as specified in § 23.361 are also modified.

An additional requirement to consider vibration levels and/or effects of an inoperative cylinder was imposed. Also, a requirement to evaluate the engine design for the possibility of, or effect of, liberating high-energy engine fragments, in the event of a catastrophic engine failure was added.

Fuel and Fuel System Related Requirements: Due to the use of turbine fuel, this airplane must comply with the requirements in § 23.951(c).

Section 23.961 will be complied with using the turbine fuel requirements. These requirements will be substantiated by flight-testing as described in Advisory Circular AC 23–8C, Flight Test Guide for Certification of Part 23 Airplanes.

This special condition specifically requires testing to show compliance with § 23.961 and adds the possibility of testing non-aviation diesel fuels.

To ensure fuel system compatibility and reduce the possibility of misfueling, and discounting the first clause of § 23.973(f) referring to turbine engines, the applicant will comply with § 23.973(f).

Due to the use of turbine fuel, the applicant will comply with § 23.977(a)(2), and § 23.977(a)(1) will not apply. ''Turbine engines'' will be interpreted to mean ''aircraft diesel engines'' for this requirement. An additional requirement to consider the possibility of fuel freezing was imposed.

Due to the use of turbine fuel, the applicant will comply with § 23.1305(c)(8).

Due to the use of turbine fuel, the applicant must comply with § 23.1557(c)(1)(ii). Section 23.1557(c)(1)(ii) will not apply. ''Turbine engine'' is interpreted to mean ''aircraft diesel engine'' for this requirement.

FADEC and Electrical System Requirements: The electrical system must comply with the following:

- In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.
- The transition from the actual engine electrical network (FADEC) to the remaining electrical system with the consumer's, avionics, communication, etc., should be made by a single point only. If several transitions (*e.g.,* for redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.
- There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.
- In case of loss of alternator power, the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot.
- FADEC, alternator, and battery must be interconnected in an appropriate way so, in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

Limitations and Indications

Section 23.1305(a) and (b)(2) will apply, except that propeller revolutions per minute (RPM) will be displayed. Section 23.1305(b)(4), (5), and (7) are deleted.

Additional critical engine parameters for this installation that will be displayed include—

(1) Power setting, in percentage (in place of manifold pressure); and

(2) Fuel temperature.

Due to the use of turbine fuel, the requirements for § 23.1521(d), as applicable to fuel designation for turbine engines, will apply.

Applicability

As discussed above, these special conditions are applicable to the DAI-Canada Model DA–62. Should DAI-Canada apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the FAA would

apply these special conditions to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Model DA–62 airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Diamond Aircraft Industries of Canada Model DA–62 airplanes.

1. Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3)):

a. For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

(a) The effects of sudden engine stoppage may alternatively be mitigated to an acceptable level by utilization of isolators, dampers clutches, and similar provisions, so unacceptable load levels are not imposed on the previously certificated structure.

b. The limit engine torque to be considered under § 23.361(a) must be obtained by multiplying the mean torque by a factor of four for diesel cycle engines.

(1) If a factor of less than four is used, it must be shown that the limit torque imposed on the engine mount is consistent with the provisions of § 23.361(c). In other words, it must be shown that the use of the factors listed in § 23.361(c)(3) will result in limit torques on the mount that are equivalent to or less than those imposed by a conventional gasoline reciprocating engine.

2. Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines):

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

a. Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for—

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers clutches, and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

3. Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements):

Considering the fuel types used by diesel engines, the applicant must comply with the following:

a. Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80 °F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

b. Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

4. Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements):

In place of compliance with § 23.961, the applicant must comply with the following:

a. Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110 °F, −0°, +5°, or the maximum outside air temperature for which approval is requested, whichever is the most critical.

b. The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

c. To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8C, Flight Test Guide for Certification of Part 23 Airplanes.

5. Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements):

In place of compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

6. Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements):

In place of compliance with § 23.977(a)(1) and (2), the applicant will comply with the following:

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

7. Powerplant—Powerplant Controls and Accessories—Engine ignition systems (Compliance with § 23.1165 requirements):

Considering that the FADEC provides the same function as an ignition system for this diesel engine, in place of compliance with § 23.1165, the applicant will comply with the following:

a. The electrical system must comply with the following requirements:

(1) In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.

(2) The transition from the actual engine electrical network (FADEC network) to the remaining electrical system should be made at a single point only. If several transitions (for example, redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.

(3) There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.

(4) In case of loss of alternator power, the installation must guarantee the battery will provide the power for an appropriate time after appropriate warning to the pilot. This period must be at least 30 minutes required, 60 minutes desired.

(5) FADEC, alternator, and battery must be interconnected in an appropriate way so, in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

8. Equipment—General—Powerplant Instruments (Compliance with § 23.1305 requirements):

a. In place of compliance with § 23.1305, the applicant will comply with the following:

(1) The following are required powerplant instruments:

(a) A fuel quantity indicator for each fuel tank, installed in accordance with § 23.1337(b).

(b) An oil pressure indicator.

(c) An oil temperature indicator.

(d) A tachometer indicating propeller speed.

(e) A coolant temperature indicator.

(f) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

1. No indicator is required if the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–5007D and provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance schedule for the engine installation.

(g) Power setting, in percentage.

(h) Fuel temperature.

(i) Fuel flow (engine fuel consumption).

9. Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521(d) requirements):

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

10. Markings and Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements):

Instead of compliance with § 23.1557(c)(1), the applicant must comply with the following:

a. Fuel filler openings must be marked at or near the filler cover with—

(1) For diesel engine-powered airplanes—

(a) The words ''Jet Fuel''; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar:

''Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only.''

The colors of this warning placard should be black and white.

11. Powerplant—Fuel system—Fuel-freezing:

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

a. The takeoff temperature limitation must be determined by testing or analysis to define the minimum cold-soaked temperature of the fuel that the airplane can operate on.

b. The minimum operating temperature limitation must be determined by testing to define the minimum operating temperature acceptable after takeoff (with minimum takeoff temperature established in (a) of this paragraph).

12. Powerplant Installation—Vibration levels:

a. Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels *imposed on the airframe* must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated: 14 CFR part 23, §§ 23.251; 23.613; 23.627; 23.629 (or CAR 3.159, as applicable to various models); 23.572; 23.573; 23.574 and 23.901.

b. Vibration levels imposed on the airframe can be mitigated to an acceptable level by use of isolators, dampers clutches, and similar provisions, so unacceptable vibration levels are not imposed on the previously certificated structure.

13. Powerplant Installation—One cylinder inoperative:

It must be shown by test or analysis, or by a combination of methods, that the airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder becomes inoperative. Data must be provided to the airframe installer/modifier so either appropriate design considerations or operating procedures, or both, can be developed to prevent airframe and propeller damage.

14. Powerplant Installation—High Energy Engine Fragments:

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required:

a. It must be shown that the engine construction type (massive or integral block with non-removable cylinders) is inherently resistant to liberating high energy fragments in the event of a catastrophic engine failure; or,

b. It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off the engine in the event of a catastrophic engine failure; or

c. It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

d. Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri, on October 3, 2019.

William Schinstock,

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

[FR Doc. 2019–22118 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0497; Product Identifier 2019–NM–052–AD; Amendment 39–19751; AD 2019–19–15]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by a determination that new

or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 14, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 14, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0497.

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–2019–0497; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0056, dated March 19, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0497.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on July 1, 2019 (84 FR 31244). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

The FAA is issuing this AD to address the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018. This service information describes new maintenance requirements and airworthiness limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,497 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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 × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–19–15 Airbus SAS: Amendment 39–19751; Docket No. FAA–2019–0497; Product Identifier 2019–NM–052–AD.

(a) Effective Date

This AD is effective November 14, 2019.

(b) Affected ADs

This AD affects AD 2018–17–19, Amendment 39–19373 (83 FR 44460, August 31, 2018) (''AD 2018–17–19'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 30, 2018.

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

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

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018. The initial compliance time for doing the tasks is at the time specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions, Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative life limits may be used unless approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for AD 2018–17–19

Accomplishing the actions required by this AD terminates all requirements of AD 2018–17–19.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0056, dated March 19, 2019; for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0497.

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

(l) Material Incorporated by Reference

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

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

(i) Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

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

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

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22153 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0495; Product Identifier 2017–NM–089–AD; Amendment 39–19716; AD 2019–16–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes. This AD was prompted by reports of unreliable performance of the water and fuel scavenge system; failure of the fuel scavenge function can cause trapped fuel, resulting in unavailable fuel reserves. This AD requires incorporating operating limitations; or modifying the water and fuel scavenge systems in the fuel tanks, modifying the fuel jettison system, making electrical changes in the main equipment center, modifying the wiring in certain panels, and installing new software. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 14, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 14, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0495.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0495; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and –300 series airplanes. The NPRM published in the **Federal Register** on June 1, 2018 (83 FR 25405). The NPRM was prompted by reports of unreliable performance of the water and fuel scavenge system; failure of the fuel scavenge function can cause trapped fuel, resulting in unavailable fuel reserves. During flight, any water in the fuel can sink to the bottom of the fuel tank. This water can enter the fuel scavenge inlets and can then freeze as it travels from the body center fuel tank into the colder fuel scavenge tubes in the left and right cheek center fuel tanks (outboard of the side of body ribs). The flow of scavenge fuel from the center fuel tank to the main fuel tanks can then decrease or stop. When this occurs, as much as 700 pounds of fuel can remain unavailable during flight. If the fuel quantity decreases to the quantity of the unavailable fuel, then fuel exhaustion will occur, which could lead to subsequent power loss of all engines. The NPRM proposed to require incorporating operating limitations; or modifying the water and fuel scavenge systems in the fuel tanks, modifying the fuel jettison system, making electrical changes in the main equipment center, modifying the wiring in certain panels, and installing new software.

Comments

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

Support for the NPRM

The Air Line Pilots Association, International (ALPA) stated that it supported the intent of the NPRM.

Request To Reduce the Compliance Time

ALPA requested that we reduce the compliance time in paragraph (g) of the proposed AD from ''36 months after the effective date of this AD'' to ''12 months after the effective date of this AD,'' for the action to revise the operating limits in the ''Fuel System—Loading'' section of the ''Certificate Limitations'' section of the FAA-approved Boeing Model 777 Airplane Flight Manual.

We do not agree with the request to shorten the compliance time. After considering all the available information, we have determined that the compliance time, as proposed, which is the same as the compliance time for the similar recently issued AD 2018–14–08, Amendment 39–19328 (83 FR 32198, dated July 12, 2018) (''AD 2018–14–08''), represents an appropriate interval of time in which the required actions can be performed within the affected fleet, while still maintaining an adequate level of safety. In developing an appropriate compliance time, we considered the safety implications and document update schedules for timely accomplishment of the required actions.

Also, to reduce the compliance time of the proposed AD would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments subsequently received, and eventually issuing a final rule. That procedure could add unwarranted time to the rulemaking process. We have determined that further delay of this AD is not appropriate. However, most ADs, including this one, permit operators to accomplish the requirements of an AD at a time earlier than the specified compliance time. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. We have not changed this AD in this regard.

Request To Clarify a Statement Referring to Fuel Available During Flight

American Airlines (AAL) requested that we clarify the statement in the ''Discussion'' section of the proposed AD that says, ''as much as 700 pounds of fuel can remain unavailable during flight.'' AAL stated that it is unable to find any Boeing documentation that references 700 pounds of center tank fuel regarding the center tank pump or fuel scavenge system operation.

We agree to clarify. AD 2016–11–03, Amendment 39–18530 (81 FR 34867, dated June 1, 2016) (''AD 2016–11–03'') applies to certain Boeing Model 777 airplanes and has similar requirements to modify the scavenge system. Prior to issuance of AD 2016–11–03, Boeing informed the FAA that as much as 2,600 pounds of fuel could remain trapped in the center fuel tank after the center tank override/jettison pumps are shut off.

Subsequent to the issuance of AD 2016–11–03, Boeing requested an alternative method of compliance (AMOC) from the FAA and stated that if the center tank override/jettison pumps are turned on, most of that 2,600 pounds of fuel can be accessed by those

pumps. Boeing stated that, if a flight is down to the last of its reserve fuel, fuel exhaustion is a far greater risk than fuel tank ignition and all fuel pumps should be operated to access as much fuel as possible.

We concurred with this assessment and asked Boeing to determine the greatest amount of fuel that would not be accessible by the center tank override/jettison pumps if they are run until their inlets uncover over the range of possible airplane attitudes in a low fuel situation. Boeing responded that up to 700 pounds above the original unusable fuel level could remain trapped in the center fuel tank. This was the basis for the 700 pound value specified in the AMOC for AD 2016–11–03, in AD 2018–14–08, and in this AD. We have not changed this AD in this regard.

Request To Clarify What Prompted the Proposed AD

AAL requested that we clarify what prompted the proposed AD. AAL stated that the proposed AD, AD 2016–11–03 and AD 2018–14–08, included reports of unreliable performance of the float operated fuel scavenge system. AAL asked if the reports state that a ''FUEL SCAVENGE SYS'' engine-indicating and crew-alerting system (EICAS) message occurred or are these simply reports of center tank fuel remaining after flight. AAL also asked that if the ''FUEL SCAVENGE SYS'' EICAS message did occur, did the fuel scavenge system not perform to the intended design criteria, or if the reports are simply reports of the center tank fuel remaining after flight, do the reports state the amount of fuel in both the center and main tanks. AAL commented that it is important to differentiate between normal conditions and fuel scavenge system failure conditions.

We agree to clarify. Boeing has analyzed the reports referenced in AD 2016–11–03, AD 2018–14–08, and this AD, and provided that information to the FAA. Those reports indicated failures of the fuel scavenge system on Boeing Model 777 airplanes. Some of those reports included statements that the ''FUEL SCAVENGE SYS'' EICAS message had displayed. Some reports were from airplanes that had earlier airplane information management system (AIMS) versions installed that did not have that message included in the software. The flight times and fuel tank quantities remaining after flight were included in the information provided by Boeing. In all cases, the fuel remaining in the tank was evaluated by Boeing. In each case, Boeing determined that the fuel scavenge system had failed to function. We have not changed this AD in this regard.

Request To Clarify Certain Language Regarding Fuel Reserves in the Proposed AD

AAL stated that the proposed AD said, ''If the fuel quantity decreases to the quantity of the unavailable fuel, then fuel exhaustion will occur, which could lead to subsequent power loss of all engines.'' AAL commented that while this is a true statement without context, it ignores existing Code of Federal Regulations (CFR) requirements for additional fuel reserves and existing FAA-approved 777 Airplane Flight Manual (AFM) procedures.

We infer that AAL is requesting that we clarify the statement provided. We recognize that, for each type of operation, there are specific detailed requirements in the applicable operating rules that dictate the amount of reserve fuel that must be loaded prior to flight. Those requirements for reserve fuel are intended to account for various anticipated scenarios requiring additional fuel that can occur due to environmental conditions or due to anticipated single failures.

For any given mission, one of the critical fuel scenarios in the operating rules will dictate the minimum reserve fuel that must be carried in addition to mission fuel. Because there is the potential for up to 700 pounds of that fuel to be trapped, it is necessary to include this amount to the fuel load calculation in addition to the minimum fuel reserves calculated in accordance with the operating rules requirements. The FAA considers operation of airplanes with available fuel reserve levels below what is required for safe operation by operating rules to be an unsafe condition. We have not changed this AD in this regard.

Request To Clarify the ''FUEL SCAVENGE SYS'' Message

AAL stated that from the electrical load management system (ELMS) logic that sets the ''FUEL SCAVENGE SYS'' EICAS message, 500 pounds or less of unusable fuel in the center tank is within tolerance for normal airplane performance and does not trigger a flight crew notification or record it as a maintenance message according to system design. AAL stated that the FAA's claim of an unsafe condition is mutually opposed to the existing fault isolation procedures that state no maintenance action is necessary.

AAL also commented that if there is 700 pounds of unusable fuel in the center tank, then only the amount above the acceptable 500-pound limit, or 200 pounds, should be at issue with respect to the proposed AD's ''safety'' condition. AAL stated that fuel is consumed during cruise at 17,500 pounds/hour for a Model 777–200ER airplane at max cruise range and each 100 pound increment of fuel is consumed about every 21 seconds.

We infer that the commenter requests a revision to the additional amount of reserve fuel required by this AD. We do not agree with the request. We note that the intent of the ''FUEL SCAVENGE SYS'' EICAS message is to annunciate a failure condition rather than normal operation. Boeing selected the logic for the message with the intent of annunciating failures that are likely to trap well over 500 pounds of fuel, while not creating nuisance messages from intermittent indications of center tank fuel quantity levels slightly above zero during normal operation. The fuel quantity indicating system (FQIS) is calibrated to indicate zero fuel at the unusable fuel level when the scavenge system functions as intended. In the absence of known system deficiencies, such as minimum equipment list (MEL) items, or other limitations, operators are allowed to take credit for all of the fuel in the center tank as usable fuel down to the zero indicated level.

As discussed previously, we have determined that up to 700 pounds of center tank fuel is potentially unusable. This AD is intended to ensure that operators are not operating with less available mission and reserve fuel than is required by the applicable operating rules by ensuring that an additional 700 pounds of fuel is loaded to account for this amount of fuel potentially being unusable. We have not changed this AD in this regard.

Request To Withdraw the NPRM Based on the Effectiveness of the CFR Reserve Fuel Requirements

AAL stated that it analyzed Model 777–200 flights over the last 12 months to illustrate the effectiveness of the CFR reserve fuel requirements. AAL commented that out of 20,255 flights, no airplane landed with less than 10,500 pounds of fuel or approximately half of the CFR required fuel reserve. AAL stated that every flight had enough ''insurance'' fuel to fly (cruise) for at least 30 additional minutes. AAL also stated it has now flown more than 400,000 flights on affected airplanes since early 1999, without flight operational ramifications from the fuel scavenge system. AAL stated this proves that the existing CFR reserve fuel and AFM procedures are more than sufficient to address any potential fuel scavenge system shortfall, including

complete fuel scavenge system failure resulting in up to 2,400 pounds of remaining center tank fuel.

We infer that AAL is requesting that we withdraw the NPRM based on the effectiveness of the CFR reserve fuel requirements. We do not agree with the request. The FAA would expect fleet experience to be as described by the commenter. The critical reserve fuel requirements in the operating rules account for failure scenarios that are anticipated to be rare, but for which the FAA has determined that fuel reserves must be carried. For example, the fuel reserve requirement that often is most critical in dictating the minimum reserve fuel is the requirement in 14 CFR 121.646 to carry sufficient fuel for a maximum length extended-operations (ETOPS) diversion with an engine failure that causes rapid depressurization of the airplane. That is a rare failure which was not likely encountered on the flights analyzed by the commenter during the service period cited. This AD addresses loss of capability to scavenge fuel in the center fuel tank during a critical fuel scenario, such as an ETOPS diversion, which could lead to fuel exhaustion and subsequent power loss of all engines. We have not changed this AD in this regard.

Request To Address the Accuracy of FQIS

AAL stated that it consulted Ontic (the FQIS original equipment manufacturer) about the accuracy of the FQIS. AAL commented that under flight conditions, FQIS accuracy is plus/minus 1 percent at full scale (main tanks) and 0 to 0.5 percent below 10 percent (center tank). AAL also commented that the CFR reserve fuel requirements effectiveness analysis discussed previously used full main tanks and minimum center tank fuel to determine the maximum effect on flight operations for 700 pounds of unusable fuel. AAL stated that with full main tanks (63,800 pounds each), FQIS is only accurate plus or minus 1,276 pounds.

We infer that AAL requested that we address the accuracy of FQIS. The figures provided by the FQIS vendor are specification requirements for accuracy and do not reflect actual performance of the system. While the FQIS does have some amount of error, much of that error is accounted for in the calibration of the FQIS installed in individual tanks when the zero indicated value is adjusted to either match or be slightly above the actual unusable fuel level.

In addition, the fuel reserve requirements provide a level of safety margin that the FAA has determined is necessary to ensure safe operation in consideration of anticipated environmental and failure conditions. A very small number of flights with available fuel reserves slightly below the required level may occur due to non-latent system failures, and the FAA has determined this does not present an unacceptable risk. However, the FAA considers operation of airplanes with available fuel reserve levels below what is required for safe operation by operating rules to be an unsafe condition. We have not changed this AD in this regard.

Request To Revise Paragraph (g) of the Proposed AD To Allow Alternative Action

AAL requested that we provide an alternative action to the revision required by paragraph (g) of the proposed AD, which proposed changes to the operating limitations by requiring an additional 700 pounds of reserve fuel when the center tank fuel is required. AAL proposed an alternative requirement to add a statement to the Non-Normal section of the AFM that, in the event of a ''FUEL SCAVENGE SYS'' EICAS message, the flight crew should make an assessment of the remaining fuel reserves, and as an option, they can choose to turn on the center tank pump(s) until the message clears (center fuel tank quantity falls below 500 pounds) or until the pump low pressure light illuminates continuously, whichever occurs first. AAL stated that the Model 777 airplane has a ''FUEL QTY LOW'' EICAS caution message that will display when there is less than 4,500 pounds of fuel in the left or right main fuel tank. AAL commented that the AFM Non-Normal procedures call for, among other actions, turning all fuel pump switches ON. AAL also commented that turning on the center tank fuel pumps can draw the center tank fuel quantity ''down to a fuel quantity as low as 300 lbs.''.

We infer that the commenter considers that, as long as the center fuel tank override/jettison pumps are operated beyond the point where the ''FUEL SCAVENGE SYS'' EICAS message is extinguished (due to less than 500 pounds fuel remaining in the center fuel tank) or until the center tank fuel pump low pressure lights are illuminated continuously, the amount of fuel for which usable fuel credit was taken, but which actually remains trapped, is so small it has no safety impact.

AAL commented that ''carrying an additional 700 lbs. of dead weight each flight provides no safety benefit, provides no value to the operation, is redundant to existing AFM procedures during potential low fuel situations and results in a substantial annual fuel penalty for the fleet.''.

AAL also requests that, if the alternative requirement is added to the proposed AD, it also be allowed as a method of compliance for AD 2016–11–03 and AD 2018–14–08 via an AD revision.

We do not agree with the commenter's request. Regarding the ''FUEL QTY LOW'' EICAS caution message, the procedure described by the commenter does not ensure that the up to 700 pounds of fuel that remains trapped due to the scavenge system failure to function will still be available as usable fuel. As discussed previously, Boeing has informed the FAA that up to 700 pounds of fuel above the original unusable fuel level can remain trapped.

The FAA does not agree that the additional 700 pounds of fuel required by this AD provides no safety benefit. As previously explained, the fuel reserve operating requirements are necessary to ensure safe operation in consideration of environmental conditions such as head winds and icing conditions, and reasonably anticipated failure conditions that can significantly increase the amount of fuel needed to safely complete a flight. For example, the fuel reserve requirement in 14 CFR 121.646 to carry fuel to accommodate a maximum length ETOPS diversion, following an engine failure that causes a rapid depressurization, is often the critical requirement that dictates the minimum reserve fuel that must be carried. While such failures are rare, the FAA determined all ETOPS flights are required to carry that extra fuel even though the vast majority of those flights will not need it.

The FAA notes that, while the reported events did not occur during ETOPS flights, at least two engine failures causing rapid depressurization have occurred in the last two years on other transport airplanes. Also, engine failures that released high energy debris beyond the engine nacelle, which could cause a rapid depressurization, have occurred on the Boeing Model 777 airplane, including at least three events in the last five years. The FAA has determined an unsafe condition exists when an airplane design deficiency results in failure of the fuel system to provide access to the full amount of fuel, for which credit is taken by the operator as usable fuel to meet the operating rules.

The FAA also does not agree with the AAL proposal to instruct flight crews to

turn on the center tank pumps if a ''FUEL SCAVENGE SYS'' EICAS message is displayed after those pumps are turned off in response to the ''FUEL LOW CENTER'' EICAS message. The fuel pumps are turned off when the ''FUEL LOW CENTER'' EICAS message is displayed to avoid dry running of the fuel pumps, which presents a potential fuel tank ignition risk. This message was included in the ELMS software installation specified in paragraph (i)(1) of AD 2011–09–05, Amendment 39–16667 (76 FR 22305, April 21, 2011) (''AD 2011–09–05''). The FAA agrees with Boeing, as discussed previously, that turning the center tank fuel pumps back on in a low fuel situation is appropriate because such cases would be rare and in those cases the risk of fuel exhaustion exceeds the risk of a fuel tank ignition event. However, we do not consider the fuel tank ignition risk that would be posed by potentially running the center pumps to the point where they run dry every time the scavenge system fails, as proposed by the commenter, to be acceptable.

Therefore, we have not changed this AD in this regard.

Request To Exempt Operators From Certain Requirements in the Proposed AD

AAL requested that we provide a statement in the proposed AD to exempt operators from accomplishing the requirements in paragraphs (g) and (h) of the proposed AD if an operator's normal flight plan requires a minimum of 700 pounds of fuel above and beyond existing CFR requirements.

We disagree with the commenter's request. This AD requires an operator to carry 700 pounds of fuel in addition to the amount of fuel required by the applicable operating rules due to that amount of fuel being considered unusable. While some operators may be currently voluntarily loading an extra 700 pounds of fuel, this AD requires changes to the operator manuals to ensure the appropriate amount of fuel is loaded for each flight. Therefore, we have not changed this AD in this regard.

Request To Address the CFR Basis for Applying Fuel Reserves

AAL requested that the proposed AD should state the CFR basis for applying the additional 700-pound reserve fuel requirement for compliance verification purposes.

We agree to clarify. The requirements of this AD address the identified unsafe condition via an amendment to 14 CFR part 39, which applies in addition to the applicable operating rules. We do not intend for this AD to replace or revise the operating rule requirements for fuel reserves. Those requirements are defined in the various applicable operating rules, and they vary with the type of operation being performed. The intent of this AD is that, once the operator has determined the minimum mission and reserve fuel that are required by the applicable operating rules, an additional 700 pounds of fuel must be added to the minimum required fuel load to account for the potential of up to 700 pounds of unusable fuel in the center tank due to failure of the scavenge system. We have not changed this AD in this regard.

Request for Credit for Remote Certification Airplane

Boeing requested that we give credit to a ''remote certification airplane'' that had accomplished Boeing Service Bulletin 777–28–0082 RC01, dated December 7, 2015. Boeing stated that as part of the Boeing Service Bulletin 777–28–0082 remote certification program, the change was completed on airplane WB035 using Boeing Service Bulletin 777–28–0082 RC01, dated December 7, 2015, which occurred before Boeing Special Attention Service Bulletin 777–28–0082, dated May 26, 2016, was issued, and is equivalent to Boeing Special Attention Service Bulletin 777–28–0082. Boeing commented that this remote certification airplane is referenced in Boeing Special Attention Service Bulletin 777–28–0082, dated May 26, 2016; and Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017.

We disagree with the commenter's request. Airplane WB035 completed the remote certification by completing Boeing Service Bulletin 777–28–0082 RC01, dated December 7, 2015, and several other necessary Boeing service information documents. At this time, based on the information submitted by the commenter, it is not clear to the FAA that the configuration of WB035 is equivalent to that called for by Boeing Special Attention Service Bulletin 777–28–0082. To show that the final configuration of airplane WB035 is equivalent to the Boeing Special Attention Service Bulletin 777–28–0082 configuration, the operator or Boeing may submit additional data to the FAA and request approval of an AMOC under the provisions of paragraph (j) of this AD. We have not changed this AD in this regard.

Request To Use Information Notices in the Proposed AD

Boeing, Delta Airlines (DAL), and United Airlines (UAL) requested that we revise the proposed AD to allow the use of certain information notices to complete the actions specified in paragraph (h) of the proposed AD. Boeing, DAL, and UAL stated that this would avoid operators having to request an AMOC for the deviations allowed by these information notices.

Boeing stated that Boeing Information Notice 777–28–0082 IN 03, dated May 25, 2017; Boeing Information Notice 777–28–0082 IN 04, dated December 19, 2017; and Boeing Information Notice 777–28–0082 IN 05, dated January 30, 2018, provide clarifications, improvements, and deviations, concurred by Boeing authorized representatives where applicable.

UAL noted that the information notices affect steps and figures marked as ''RC'' (required for compliance) in the related service bulletin.

DAL stated the changes in the information notices are required for some airplanes and configurations in order to comply with Boeing Special Attention Service Bulletin 777–28–0082 (*i.e.,* an operator would not be able to comply with Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, as currently written). DAL commented that issuing a final rule that operators cannot comply with as written should be avoided and places additional burden on operators.

We agree with the commenters that the information notices provide clarifications, improvements, and deviations, which avoid the need to request an AMOC. We note that Boeing has released Boeing Special Attention Service Bulletin 777–28–0082, Revision 2, dated May 31, 2019, which incorporates the clarifications, improvements, and deviations in the information notices. We have revised paragraph (h) of this AD to refer to Boeing Special Attention Service Bulletin 777–28–0082, Revision 2, dated May 31, 2019. We have also revised paragraph (i) of this AD to provide credit for Boeing Special Attention Service Bulletin 777–28–0082, dated May 26, 2016, and Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, along with the related information notices.

Request for AMOC Credit for AD 2011–09–15

Boeing requested that the proposed AD be revised to make it an AMOC for paragraph (g) of AD 2011–09–15, Amendment 39–16677 (76 FR 24345, May 2, 2011) (''AD 2011–09–15''). Boeing stated that paragraph (g) of AD 2011–09–15 requires installation of new ELMS software, an addition of left and right jettison pump auto shutoff relays,

installation of ground fault interrupter relays and making changes in the ELMS P110/P210 and P301/P302 equipment panels.

Boeing commented that Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, also requires installation of new ELMS software and modification of the ELMS P110/P210 and P301/P302 equipment panels. Boeing also commented that accomplishment of the engine fuel feed system modification specified in paragraph (h) of the proposed AD for installing ELMS software and making changes in the equipment panels is an acceptable AMOC for paragraph (g) of AD 2011–09–15.

We agree to clarify. Boeing Special Attention Service Bulletin 777–28–0082 already states that the FAA approves the actions specified in the service bulletin as an AMOC to certain requirements of AD 2011–09–15. Therefore, we do not need to revise this AD to specify this information.

Request To Add Certain Language to This AD

DAL requested that we add certain language to this AD that allows installing the ELMS software version specified in paragraph (h) of this AD without requiring AMOCs be requested for AD 2011–09–15 and AD 2014–11–01, Amendment 39–17851 (79 FR 31851, June 3, 2014) (''AD 2014–11–01''). DAL stated that they reviewed AD 2011–09–15 and AD 2014–11–01 because of the ELMS software changes that were required in those ADs. DAL stated that paragraph (g) of AD 2011–09–15 requires the accomplishment of Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010, which includes a requirement to install new ELMS software. DAL commented that paragraph (h)(5) of AD 2014–11–01 requires the accomplishment of Boeing Service Bulletin 777–24–0087, Revision 2, dated August 16, 2007; or Boeing Service Bulletin 777–28A0039, Revision 2, dated September 20, 2010, which also includes a requirement to install new ELMS software.

In addition, DAL stated that installing the ELMS software, as described in paragraph (h) of the proposed AD, will violate the ELMS software installation requirements of AD 2011–09–05 and AD 2014–11–01. DAL requested that a paragraph be added to this AD that allows the ELMS software installed in accordance with Boeing Special Attention Service Bulletin 777–28–0082, as required by paragraph (h) of this AD, to be accomplished without the need for operators to request an AMOC to the ELMS software installation requirements of AD 2011–09–05 and AD 2014–11–01. DAL proposed that this added paragraph contains language similar to paragraph (j)(5) in this AD, or language similar to that in paragraph (h)(5) of AD 2014–11–01 (see AD 2014–11–01 comment ''Request to Allow Use of Later Revisions of ELMS Service Information'').

We agree with the commenter's request because we have determined that the ELMS1 OPS software installation specified in paragraph (h) of this AD is acceptable for compliance with the ELMS OPS software installations required in AD 2011–09–15 and AD 2014–11–01. We have added paragraph (j)(6) of this AD that states the ELMS1 OPS software installation specified in paragraph (h) of this AD is acceptable for compliance with the ELMS OPS software requirement specified in paragraph (h)(5) of AD 2014–11–01, provided all provisions of AD 2014–11–01 that are not specifically described in paragraph (j)(6) of this AD are complied with accordingly. As discussed in the previous comment, an AMOC to AD 2011–09–15 is not needed in this AD because Boeing Special Attention Service Bulletin 777–28–0082 already received an AMOC approved for the ELMS software installation requirements in AD 2011–09–15.

Request To Clarify the Requirements of Paragraphs (g) and (h) of the Proposed AD

DAL requested that we clarify the requirements in paragraphs (g) and (h) of the proposed AD. DAL asked the following questions:

- Can operators only perform paragraph (g) of the proposed AD and be in compliance with the proposed AD?
- Can operators only perform paragraph (h) within 36 months after the effective date of the proposed AD and be in compliance with the proposed AD?
- Must operators perform paragraph (g) of the AD regardless of their intent to accomplish paragraph (h) and be in compliance with the proposed AD?
- If paragraph (g) of the proposed AD is accomplished within 36 months after the effective date of the proposed AD, then if the operator performs paragraph (h) of the proposed AD, can figure 1 to paragraph (g) of this AD be removed from the referenced flight manuals and remain in compliance with the proposed AD?

We agree to clarify. Operators must either accomplish the actions required by paragraph (g) of this AD or the actions required by paragraph (h) of this AD, within 36 months after the effective date of this AD. An operator does not need to accomplish the actions required by paragraph (g) of this AD as long as the operator accomplishes the actions specified in paragraph (h) of this AD within the required compliance time (36 months after the effective date of this AD). If an operator accomplishes the actions required by paragraph (g) of this AD, and subsequently accomplishes the actions required by paragraph (h) of this AD on an airplane, then the requirements of paragraph (g) of this AD are terminated and figure 1 to paragraph (g) of this AD can be removed from the airplane's AFM and the weight and balance control and loading manual. We have not changed this AD in this regard.

Request To Revise the Costs of Compliance in the Proposed AD

AAL requested that we revise the Costs of Compliance paragraph in the proposed AD. AAL stated that the Costs of Compliance paragraph neglects to list the cost of carrying the additional 700 pounds of reserve fuel. AAL commented that the labor cost estimate only reflects what is in the Boeing service information, but it does not account for actual labor expenditures. AAL also commented that the proposed AD generally addresses older airplanes, which eliminates any warranty coverage.

We partially agree with the commenter's request. We agree with adjusting the cost to reflect more accurate labor expenditures. We have revised the Costs of Compliance paragraph in this AD to reflect the labor cost for the fuel system modification of 850 work-hours based on the information submitted by the commenter. However, we do not agree to include the additional fuel costs in this AD. We recognize that, in doing the actions required by an AD, operators might incur operational costs in addition to the direct costs. The cost analysis in AD rulemaking actions typically does not include incidental or operational costs, such as additional fuel costs, time to gather materials and tools, etc. Those costs, which might vary significantly among operators, have not been included in this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–28–0082, Revision 2, dated May 31, 2019. This service information describes procedures for modifying the water and fuel scavenge systems in the fuel tanks on each side of the airplane, modifying the fuel jettison system, making electrical changes in the main equipment center, modifying the wiring in the ELMS P110 and P210 equipment panels, and installing new ELMS1 software. The FQIS wire bundle W8011 adjustment is intended to prevent the wire bundle from rubbing with a new fuel scavenge inlet tube. The electrical changes in the main equipment center include installing additional relays on the ELMS P301 and P302 equipment panels, and making wiring changes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 111 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporation operating limitations	1 work-hour × $85 per hour = $85	$0	$85	$9,435

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Fuel system modification	850 work-hours × $85 per hour = $72,250	$85,572	$157,822
P110 and P210 equipment panel changes	2 work-hours × $85 per hour = $170	0	170

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–16–13 The Boeing Company: Amendment 39–19716; Docket No. FAA–2018–0495; Product Identifier 2017–NM–089–AD.

(a) Effective Date

This AD is effective November 14, 2019.

(b) Affected ADs

This AD affects AD 2002–16–15, Amendment 39–12854 (67 FR 54333, August 22, 2002) (''AD 2002–16–15'') and AD 2014–11–01, Amendment 39–17851 (79 FR 31851, June 3, 2014) (''AD 2014–11–01'').

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–28–0082, Revision 2, dated May 31, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of unreliable performance of the water and fuel scavenge system; failure of the fuel scavenge function can cause trapped fuel, resulting in unavailable fuel reserves. We are issuing this AD to address loss of capability to scavenge fuel in the center fuel tank, which could lead to fuel exhaustion and subsequent power loss of all engines.

(f) Compliance

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

(g) Revision to Operating Limitations

Within 36 months after the effective date of this AD: Revise the operating limitations in the documents specified in paragraphs (g)(1) and (2) of this AD to include the text in figure 1 to paragraph (g) of this AD.

(1) ''Fuel System—Loading'' section of the ''Certificate Limitations'' section of the FAA-approved Boeing Model 777 Airplane Flight Manual.

(2) ''Loading Limitations'' section of the ''Fuel Loading Procedures'' section of the ''Fuel Management'' section of the FAA-approved Boeing Model 777 Weight and Balance Control and Loading Manual.

Figure 1 to paragraph (g) – *Operating limitation*

When center tank fuel is required for the mission, an additional 700 lbs. (320 kg) of reserve fuel must be added to the center tank fuel load.

(h) Optional Terminating Action to Paragraph (g) of This AD

Modifying the fuel tank fuel and water scavenge systems, modifying the fuel jettison system, making electrical changes in the main equipment center, modifying the wiring in the electrical load management system (ELMS) P110 and P210 panels, and installing new ELMS1 software, by doing all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0082, Revision 2, dated May 31, 2019, is an optional terminating action to the requirements of paragraph (g) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in any of paragraphs (i)(1) through (4) of this AD.

(1) Boeing Special Attention Service Bulletin 777–28–0082, dated May 26, 2016.

(2) Boeing Special Attention Service Bulletin 777–28–0082, dated May 26, 2016, in conjunction with Boeing Information Notice 777–28–0082 IN 01, dated May 27, 2016; and Boeing Information Notice 777–28–0082 IN 02, dated October 11, 2016.

(3) Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017.

(4) Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, in conjunction with Boeing Information Notice 777–28–0082 IN 03, dated May 25, 2017; Boeing Information Notice 777–28–0082 IN 04, dated December 19, 2017; and Boeing Information Notice 777–28–0082 IN 05, dated January 30, 2018.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

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

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

(5) For airplanes in Groups 1 through 4, and 7 through 14, as defined in Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017: Accomplishment of the engine fuel feed system modification specified in paragraph (h) of this AD is acceptable for compliance with the routing requirements of fuel quantity indicating system wire bundle W8011 in the left side of the body center fuel tank specified in paragraph (a)(2) of AD 2002–16–15, provided all provisions of AD 2002–16–15 that are not specifically described in this paragraph are complied with accordingly.

(6) Accomplishment of the ELMS1 OPS software installation specified in paragraph (h) of this AD is acceptable for compliance with the ELMS OPS software requirement specified in paragraph (h)(5) of AD 2014–11–01, provided all provisions of AD 2014–11–01 that are not specifically described in this paragraph are complied with accordingly.

(k) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov.*

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 777–28–0082, Revision 2, dated May 31, 2019.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on September 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22150 Filed 10–9–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0194; Product Identifier 2019–NM–009–AD; Amendment 39–19750; AD 2019–19–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by reports of cracks within the ring gears of a slat geared rotary actuator (SGRA) resulting from a change in the raw material manufacturing process. This AD requires replacement of affected parts with serviceable parts, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 14, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 14, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0194.

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–2019–0194; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0020, dated January 31, 2019 (''EASA AD 2019–0020'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on April 9, 2019 (84 FR 14038). The NPRM was prompted by reports of cracks within the ring gears of an SGRA resulting from a change in the raw material manufacturing process. The NPRM proposed to require replacement of affected parts with serviceable parts.

The FAA is issuing this AD to address cracking of SGRA ring gears. This condition, if not detected and corrected, could, in combination with an independent failure on the second SGRA of the same slat surface, lead to detachment of the slat surface, possibly resulting in reduced control of the airplane and injury to persons on the ground. See the MCAI for additional background information.

Comments

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

Support for the NPRM

The Air Line Pilots Association, International; Stephanie Lok; and an anonymous commenter indicated their support for the NPRM.

Request To Clarify Requirements for Group 1 Airplanes

Delta Air Lines (Delta) requested that a statement be added to paragraph (g) of this AD to clarify that the installation of affected parts was prohibited for Group 1 airplanes before 15,000 flight hours. Delta asserted that the AD could be interpreted as allowing the installation of affected parts on those airplanes during that time period.

The FAA does not agree that an additional statement to paragraph (g) of this AD is necessary. The FAA has confirmed with EASA that since the safety assessment was performed on the life of the airplane and not the life of the affected part, a restriction to limit the affected parts prior to 15,000 flight hours is not necessary. Therefore, the commenter's interpretation that installation of affected parts could be allowed prior to 15,000 flight hours is correct. This AD has not been changed in this regard.

Request To Modify Serial Number Table

Delta requested that the serial numbers of final assembly line units be removed from Table 1 of certain Liebherr service information instead of noting that they are to be excluded.

The FAA does not agree with the commenter's request. Although the proposal may provide a more straightforward presentation of the serial numbers, obtaining new service information with revised serial number tables from the manufacturer would delay publication of this AD. This delay would be inappropriate since the FAA has determined that an unsafe condition exists and that the required actions must be accomplished to ensure continued safety. The FAA also has determined that the serial number table in the Liebherr service information provides the information necessary to comply with this AD. Therefore, this AD has not been changed in this regard.

Request To Clarify Location of Identification Mark

Delta requested that certain Airbus service information be updated to clarify the location of a certain marking on the identification plate. Delta noted that the Liebherr service information refers to the specified marking, but does not show the marking's location, while the Airbus service information does not refer to the marking at all.

The FAA disagrees with obtaining revised service information because it would delay publication of this AD, which would be inappropriate for the reasons stated previously. However, the FAA agrees to clarify the location of the specified marking on the identification plate. The FAA has confirmed with EASA that the marking will be on both ''A'' faces of the identification plate, as depicted in Figure 1 of the Liebherr service information. This AD has not been changed in this regard.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0020 describes procedures for replacing the affected SGRAs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 12 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
25 work-hours × $85 per hour = $2,125	(*) $	* $2,125	* $25,500

* The FAA has received no definitive data that would enable the agency to provide cost estimates for the parts specified in this AD.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–19–14 Airbus SAS: Amendment 39–19750; Docket No. FAA–2019–0194; Product Identifier 2019–NM–009–AD.

(a) Effective Date

This AD is effective November 14, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks within the ring gears of a slat geared rotary actuator (SGRA), resulting from a change in the raw material manufacturing process. The FAA is issuing this AD to address cracking of SGRA ring gears. This condition, if not detected and corrected, could, in combination with an independent failure on the second SGRA of the same slat surface, lead to detachment of the slat surface, possibly resulting in reduced control of the airplane and injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (EASA) AD 2019–0020, dated January 31, 2019 (''EASA AD 2019–0020'').

(h) Exceptions to EASA AD 2019–0020

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0020 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0020 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0020 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(k) Material Incorporated by Reference

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

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

(i) European Aviation Safety Agency (EASA) AD 2019–0020, dated January 31, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0020, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0020 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0194.

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

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22131 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0441; Product Identifier 2019–NM–036–AD; Amendment 39–19753; AD 2019–19–17]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2000–03–20 R1, which applied to all Airbus SAS Model A300 B4–601, B4–603, and B4–620, Model A300 B4–600R series, and Model A300 F4–605R airplanes. AD 2000–03–20 R1 required repetitive inspections to detect cracks on the forward fittings in the radius of a certain frame, adjacent to the tension bolts in the center section of the wings, and various follow-on actions. This AD retains the requirements of AD 2000–03–20 R1, adds new airplanes to the applicability, and introduces new compliance times for the required inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40, adjacent to the tension bolts at the center/outer wing junction. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 14, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 14, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0441.

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–2019–0441; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South

216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2000–03–20 R1, Amendment 39–12298 (66 FR 34530, June 29, 2001) (''AD 2000–03–20 R1''). AD 2000–03–20 R1 applied to all Airbus SAS Model A300 B4–601, B4–603, and B4–620, Model A300 B4–600R series, and Model A300 F4–605R airplanes. The NPRM published in the **Federal Register** on June 17, 2019 (84 FR 27990). The NPRM was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40, adjacent to the tension bolts at the center/outer wing junction. The NPRM proposed to require initial and repetitive ultrasonic (UT) and high frequency eddy current (HFEC) inspections and applicable corrective actions. The FAA is issuing this AD to address fatigue cracking on the forward fittings in the radius of frame 40, adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0044, dated March 7, 2019 (''EASA AD 2019–0044'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A300 B4–600 series, Model A300 B4–600R series, Model A300 F4–605R, and Model A300 C4–605R Variant F airplanes. See the MCAI for additional background information.

Comment

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. Patrick Imperatrice indicated support for the NPRM.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0044 describes procedures for initial and repetitive UT and HFEC inspections and applicable corrective actions. Corrective actions include reworking the fuselage lateral panel at frame 40, blending out around cracks, and repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 65 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2000–03–20 R1	2 work-hours × $85 per hour = $170	$0	$170	$11,050
New actions	161 work-hours × $85 per hour = $13,685	0	13,685	889,525

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $5,525, or $85 per product.

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

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–03–20 R1, Amendment 39–12298 (66 FR 34530, June 29, 2001), and adding the following new AD:

2019–19–17 Airbus SAS: Amendment 39–19753; Docket No. FAA–2019–0441; Product Identifier 2019–NM–036–AD.

(a) Effective Date

This AD is effective November 14, 2019.

(b) Affected ADs

This AD replaces AD 2000–03–20 R1, Amendment 39–12298 (66 FR 34530, June 29, 2001) (''AD 2000–03–20 R1'').

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0044, dated March 7, 2019 (''EASA AD 2019–0044'').

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

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

(3) Model A300 F4–605R airplanes.

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

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40, adjacent to the tension bolts at the center/outer wing junction. The FAA is issuing this AD to address fatigue cracking on the forward fittings in the radius of frame 40, adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0044.

(h) Exceptions to EASA AD 2019–0044

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0044 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0044 does not apply to this AD.

(3) Paragraph (5) of EASA AD 2019–0044 specifies to report all inspection results to Airbus. For this AD, report all inspection results to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com/*) at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

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

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

(4) For Model A300 B4–622 and A300 C4–605R Variant F airplanes: The initial compliance time for the inspections required by EASA AD 2019–0044 is at the applicable time specified in EASA AD 2019–0044, or within 12 months after the effective date of this AD, whichever occurs later.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0044 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

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

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 14, 2019.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0044, dated March 7, 2019.

(ii) [Reserved]

(4) For information about EASA AD 2019–0044, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email

ADs@easa.europa.eu; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(5) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0441.

(6) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 24, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22152 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN publishes this final rule to reflect inflation adjustments to its civil monetary penalties (''CMPs'') as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). This rule adjusts certain CMPs within the jurisdiction of FinCEN to the maximum amount required by the Act.

DATES: Effective October 10, 2019.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767–2825 or email *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and the opportunity for public comment otherwise required by 5 U.S.C. 553. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.[1]

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget (''OMB'') guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in OMB Memorandum M–19–04 of December 14, 2018, the adjustment multiplier for 2019 is 1.02522. In order to complete the 2019 annual adjustment, each current CMP is multiplied by the 2019 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, beginning in 2017, to make annual adjustments for inflation to CMPs without needing to provide notice and the opportunity for public comment required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation, effective 2017, is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. FinCEN is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment and a delayed effective date are not required for this rule.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

4. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; Title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. Amend § 1010.821 by revising Table 1 of § 1010.821 to read as follows:

§ 1010.821 Penalty adjustment and table.

* * * * *

(b) * * *

[1] However, the increased CMPs apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, *i.e.,* after November 2, 2015.

TABLE 1 OF § 1010.821—PENALTY ADJUSTMENT TABLE

U.S. Code citation	Civil monetary penalty description	Penalties as last amended by statute	Maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed on or after October 10, 2019
12 U.S.C. 1829b(j)	Relating to Recordkeeping Violations For Funds Transfers	$10,000	$21,039
12 U.S.C. 1955	Willful or Grossly Negligent Recordkeeping Violations	10,000	21,039
31 U.S.C. 5318(k)(3)(C)	Failure to Terminate Correspondent Relationship with Foreign Bank	10,000	14,231
31 U.S.C. 5321(a)(1)	General Civil Penalty	25,000	57,317
	Provision for Willful Violations of Bank Secrecy Act Requirements	−100,000	−229,269
31 U.S.C. 5321(a)(5)(B)(i)	Foreign Financial Agency Transaction—Non-Willful Violation of Transaction.	10,000	13,247
31 U.S.C. 5321(a)(5)(C)(i)(I)	Foreign Financial Agency Transaction—Willful Violation of Transaction	100,000	132,469
31 U.S.C. 5321(a)(6)(A)	Negligent Violation by Financial Institution or Non-Financial Trade or Business.	500	1,146
31 U.S.C. 5321(a)(6)(B)	Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business.	50,000	89,170
31 U.S.C. 5321(a)(7)	Violation of Certain Due Diligence Requirements, Prohibition on Correspondent Accounts for Shell Banks, and Special Measures.	1,000,000	1,423,088
31 U.S.C. 5330(e)	Civil Penalty for Failure to Register as Money Transmitting Business	5,000	8,457

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2019–22094 Filed 10–9–19; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0794]

RIN 1625–AA00

Safety Zone, Saint Simons Sound, GA; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard is correcting a temporary final rule that appeared in the **Federal Register** on September 30, 2019. The document issued an emergency temporary safety zone in response to the grounding/capsizing of the M/V GOLDEN RAY (31°07′39.66 North, 081°24′10.58 West, between Saint Simons Lighthouse and the north end of Jekyll Island, in the vicinity of green buoy #19). The rule was made enforceable from September 19, 2019, until no longer deemed necessary by the Captain of the Port Savannah. However, in the instruction and section heading of regulatory text, the docket number appeared instead of the CFR section number.

DATES: This correction is effective on October 10, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Rachel Crowe, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; Waterways Management, Coast Guard; telephone 912–652–4353, extension 243, or email *Rachel.M.Crowe@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Rule Doc. 2019–20781, appearing on page 51413 in the **Federal Register** of Monday, September 30, 2019, the following corrections are made:

■ On page 51413, in the first column in Instruction No. 2, ''§ 2019–0974'' is corrected to read ''§ 165.T07–0794''.

■ On page 51413, in the first column, the section heading ''§ 2019–0794 Safety Zone; M/V GOLDEN RAY; Saint Simons Sound, GA.'' is corrected to read, ''§ 165.T07–0794 Safety Zone; M/V GOLDEN RAY; Saint Simons Sound, GA.''

Dated: October 3, 2019.

M.W. Mumbach,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2019–21902 Filed 10–9–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0799]

RIN 1625–AA00

Safety Zone; Manasquan Inlet, Manasquan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Manasquan Inlet between Manasquan, NJ, and Point Pleasant Beach, NJ. This action is necessary to protect event participants, spectators, and vessels transiting the area from potential hazards during the Manasquan Inlet Intercoastal Tug marine event. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, remaining within, transiting through, or anchoring in the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative of the Captain of the Port.

DATES: This rule is effective from noon to 2:30 p.m. on October 12, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0799 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 Petty Officer Thomas Welker, U.S. Coast Guard; Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, email *Thomas.J.Welker@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 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 to do so. There is insufficient time to allow for a reasonable comment period prior to the date of the event. The rule must be in force by October 12, 2019. The tug-of-war event will consist of teams on opposing sides of the Manasquan Inlet with a rope extended between the sides. The event will span the entire width of the inlet. Vessel operation in the area of the event could be hazardous to both event participants and vessels. We are taking immediate action to ensure the safety of event participants and vessels operating in the area.

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 marine event in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the rope crossing the entire span of the waterway will be a safety concern for anyone within a 400 feet of the tug-of-war rope. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on the waters of the Manasquan Inlet to be in effect from noon to 2:30 p.m. on October 12, 2019. The safety zone will cover all waters within 400 feet of the event located between approximate locations 40°06′09″ N, 74°02′09″ W and 40°06′14″ N, 74°02′08″ W. During the event, the inlet will be closed to all non-participant vessel traffic. There is a 30-minute break tentatively planned for midway through the event. If circumstances permit, during the break, the rope will be removed from navigable waters and vessels may be allowed to transit through the area at the discretion of the COTP or COTP's designated representative. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative of the Captain of the Port. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners and by on-scene actual notice.

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, location, and duration of the regulated area. While this regulated area will impact a designated area of the Manasquan River Inlet for two and half hours, the event sponsor has organized a tentative 30-minute time period during the event where vessels would be able to transit through the inlet. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone during the 30-minute break period during the event.

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 regulated area 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that entering, transiting through, anchoring in, or remaining within a limited area on the navigable water of the Manasquan Inlet, during a tug-of-war event lasting approximately two and a half hours. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0799 to read as follows:

§ 165.T05–0799 Safety Zone; Manasquan Inlet; Manasquan, NJ.

(a) *Location.* The following area is a safety zone: All waters of the Manasquan Inlet extending 400 feet from either side of a rope located between approximate locations 40°06′09″ N, 74°02′09″ W and 40°06′14″ N, 74°02′08″ W. All coordinates are based on World Geodetic System 1984.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. 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) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(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.* This zone will be enforced on October 12, 2019, from on or after noon through on or before 2:30 p.m. on October 12, 2019.

Dated: October 3, 2019.

Scott E. Anderson,

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

[FR Doc. 2019–22185 Filed 10–9–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0665; FRL–10000–84–Region 4]

Air Plan Approval; SC; 2010 1-Hour SO_2 NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving South Carolina's June 25, 2018, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA has determined that South Carolina's SIP contains adequate provisions to prohibit emissions within the State from contributing significantly to nonattainment or interfering with

maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

DATES: This rule will be effective November 12, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0665. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via phone number (404) 562–9031 or via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, EPA promulgated a revised primary SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. These SIPs, which EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. Section 110(a) of the CAA requires states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. The content of the changes in such SIP submissions may also vary depending upon what provisions the state's approved SIP already contains. 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 attainment and maintenance of the NAAQS.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On June 25, 2018, the South Carolina Department of Health and Environmental Control (SC DHEC) submitted a revision to the South Carolina SIP addressing only prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. EPA is approving SC DHEC's June 25, 2018, SIP submission because the State demonstrated that South Carolina will not contribute significantly to nonattainment, or interfere with maintenance, of the 2010 1-hour SO_2 NAAQS in any other state. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO_2 NAAQS for South Carolina are addressed in separate rulemakings.[1]

In a notice of proposed rulemaking (NPRM) published on April 23, 2019, EPA proposed to approve South Carolina's June 25, 2018, SIP revision on the basis that the State's implementation plan adequately addresses prong 1 and prong 2 requirements for the 2010 1-hour SO_2 NAAQS. *See* 84 FR 16799. The details of the SIP revision and the rationale for EPA's action is explained in the NPRM. Comments on the proposed rulemaking were due on or before May 23, 2019. EPA received three sets of adverse comments from anonymous commenters. These comments are included in the docket for this final action. EPA has summarized the comments and provided responses below.

II. Response to Comments

Comment 1: A commenter expresses concern about EPA's statement that the Agency does not have monitoring or modeling data suggesting that North Carolina is impacted by SO_2 emissions from the Milliken & Co. Magnolia Plant (Magnolia)[2] or WestRock CP LLC (WestRock).[3] The commenter questions why EPA did not model these facilities and states that EPA must have monitoring data to ''definitively conclude anything about these sources.''

Response 1: EPA disagrees with the commenter's assertion that monitoring and dispersion modeling are needed for these two sources before EPA can approve South Carolina's SIP submittal as meeting the interstate transport requirements in CAA section 110(a)(2)(D). There is nothing in this section of the CAA suggesting that monitoring or dispersion modeling is legally required to evaluate good neighbor SIPs, and EPA has previously found that a weight of evidence (WOE) approach is sufficient to determine whether or not a state satisfies the good neighbor provision.[4]

EPA continues to believe that the WOE analysis provided in the NPRM is adequate to determine the potential downwind impact from South Carolina to neighboring states. EPA's analysis includes the following factors: (1) SO_2 air dispersion modeling results for sources within 50 kilometers (km) of South Carolina's border both within the State and in neighboring states, (2) SO_2 emissions trends for sources in South Carolina, (3) SO_2 ambient air quality for monitors for sources within 50 km of South Carolina's border both within the State and in neighboring states; and (4) South Carolina's statutes and SIP-

[1] EPA acted on the other elements of South Carolina's May 8, 2014, infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS on May 24, 2016 (81 FR 32651) and September 24, 2018 (83 FR 48237).

[2] Magnolia is a textile and fabric finishing plant located in Blacksburg, South Carolina.

[3] Westrock is a pulp and paper mill located in Florence, South Carolina.

[4] *See, e.g.,* Air Quality State Implementation Plans; Approvals and Promulgations: Utah; Interstate Transport of Pollution for the 2006 $PM_{2.5}$ NAAQS, Proposed Rule 78 FR 29314 (May 20, 2013), Final Rule 78 FR 48615 (August 9, 2013); Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements, Proposed Rule 76 FR 146516 (March 17, 2011), Final Rule 76 FR 34872 (June 15, 2011); Approval and Promulgations of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour $PM_{2.5}$ NAAQS, Proposed Rule, 80 FR 27121 (May 12, 2015), Final Rule 80 FR 47862 (August 10, 2015).

approved regulations and federal regulations that address SO_2 emissions. As part of its WOE analysis, EPA performed a qualitative evaluation to assess whether SO_2 emissions from Magnolia and WestRock are impacting North Carolina, the only neighboring state within 50 km of these sources. Because EPA does not have monitoring or modeling data for these two sources, EPA evaluated their 2017 SO_2 emissions, distances from the South Carolina border, and distances from sources in North Carolina with SO_2 emissions greater than 100 tons per year (tpy) in 2017 and not subject to EPA's Data Requirements Rule (DRR) [5] as summarized in Table 5 of the NPRM and found that this information supports EPA's proposed determination that South Carolina has met the good neighbor provision for the 2010 1-hour SO_2 NAAQS.[6] The commenter did not provide a technical analysis that contradicts EPA's proposed determination that sources in South Carolina such as Magnolia or Westrock will not significantly contribute to nonattainment or interfere with maintenance in another state. Therefore, EPA continues to believe that the Agency's analysis of these and other South Carolina sources in the NPRM, weighed along with other WOE factors described in the NPRM, support EPA's conclusion that South Carolina has satisfied the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

Comment 2: Two commenters expressed concerns regarding the modeling analysis for Resolute FP US Inc.—Catawba Mill (Resolute). One commenter questions the use of 2012–2014 actual emissions in the modeling of Resolute.[7] The commenter states that ''EPA is hiding behind 5–7 year old data'' and that EPA should perform the modeling using maximum allowable potential emissions before concluding that the source, located 7 km from the North Carolina border, ''does not contribute to violations in the neighboring state.'' Another commenter questions the use of a modeling domain for Resolute that extends 4 km into North Carolina and mentions that EPA should perform ''additional modeling to confirm that an extended modeling domain would not show an even higher modeled concentration farther into the state of North Carolina.''

Response 2: As discussed above, the good neighbor provision does not require modeling to determine whether a state contributes significantly to nonattainment or interferes with maintenance of a specific NAAQS in another state. EPA used a WOE analysis to evaluate South Carolina's SIP revision under the good neighbor provision and evaluated all available data, including the modeling submitted by South Carolina during the DRR process for Resolute.

As stated in the NPRM, the modeling for Resolute predicts no violations of the 2010 1-hour SO_2 NAAQS within 50 km of the South Carolina border. The modeling results show that SO_2 concentrations drop off rapidly with a predicted maximum modeled concentration of approximately 69 ppb just north of the facility and concentrations in North Carolina below approximately 18 ppb.[8] EPA continues to believe that these results, weighed along with the other WOE factors discussed in the NPRM, support EPA's proposed conclusion that sources in South Carolina do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

In response to the comment regarding the use of modeling with ''5–7 year old data'' to evaluate South Carolina's June 25, 2018, SIP submission, EPA has evaluated more recent actual SO_2 emissions data for Resolute for the years 2015–2017.[9] Resolute's 2015–2017 SO_2 emissions (2,386 tpy, 2,391 tpy, and 2,211 tpy in 2015, 2016, and 2017, respectively) are lower than the modeled 2012–2014 SO_2 emissions (4,562 tpy, 4,491 tpy, and 4,780 tpy in 2012, 2013, and 2014, respectively). Because emissions have decreased from 2012–2014 to 2015–2017, the model results may overpredict current SO_2 concentrations and therefore continue to support the Agency's conclusion that South Carolina has satisfied the good neighbor provision with respect to the 2010 1-hour SO_2 NAAQS. EPA also notes that the commenters did not provide any technical analysis contradicting EPA's proposed determination that Resolute will not significantly contribute to nonattainment or interfere with maintenance in another state.

Comment 3: A commenter notes that EPA analyzed sources that emitted more than 100 tpy of SO_2 within 50 km of the South Carolina border. The commenter states that EPA should have considered and modeled sources that emitted less SO_2 and are closer to the border and that EPA evaluated sources emitting 1 tpy when acting on good neighbor SIP revisions for Delaware and the District of Columbia.

Response 3: EPA assessed annual emissions data for non-DRR sources emitting over 100 tons of SO_2 in 2017 in South Carolina and existing dispersion modeling for DRR sources to identify the universe of sources in the State likely to be responsible for SO_2 emissions potentially contributing to interstate transport. After determining that 89 percent of South Carolina's statewide SO_2 emissions are from point sources based on 2014 emissions, EPA next focused on individual facilities which emitted above 100 tpy using the most recent year for which point source emission data was available, *i.e.,* 2017. EPA assessed, using its best judgment, which sources could have the most serious impact on downwind states. EPA chose 100 tpy as the emissions threshold for consideration for interstate transport because South Carolina's universe of point sources was too large to evaluate every source at a lower threshold like that used in the Delaware and District of Columbia analyses. South Carolina's point sources of SO_2 emitting 100 tons or less in 2017 comprise only seven percent of the State's total SO_2 point source inventory in 2017.[10] EPA is not precluded from choosing different thresholds for evaluating interstate transport in different states because the factual circumstances vary from state to state. Furthermore, EPA notes that small sources, in particular those emitting less than 100 tpy of SO_2, usually cannot be

[5] The DRR required state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tpy or more of SO_2, or that have otherwise been listed under the DRR by EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally-enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources have been shut down. *See* 80 FR 51052 (August 21, 2015).

[6] With regard to the WestRock facility, EPA continues to believe that the 68-km distance between the WestRock facility in South Carolina and the Pilkington facility, the nearest source in North Carolina with SO_2 emissions greater than 100 tpy, makes it unlikely that SO_2 emissions from WestRock could interact with SO_2 emissions from Pilkington in such a way as to contribute significantly to nonattainment in North Carolina. *See* 84 FR 16805 (April 23, 2019).

[7] Resolute is a pulp and paper mill located in Catawba, South Carolina. Resolute opted to conduct air dispersion modeling under the DRR. EPA summarized these modeling results in the NPRM. *See* 84 FR at 16803–16804.

[8] Extending the modeling domain more than 4 km into North Carolina would not alter EPA's conclusions because the modeled concentrations in North Carolina are well below the NAAQS and, given the nature of SO_2, would likely continue to decrease as distance increases from the source.

[9] *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[10] The 2017 South Carolina SO_2 point source emissions data which SC DHEC reported to EPA is included in the docket for this action under Docket ID: EPA–R04–OAR–2018–0665.

characterized accurately because the level of detail about the source and the data needed for such an analysis is not as often readily available as for the larger sources.

Regarding the statement about modeling, EPA notes that it did not independently model any sources as part of its evaluation of South Carolina's good neighbor SIP submission, including sources emitting more than 100 tpy of SO_2 within 50 km from the South Carolina border. EPA did, however, evaluate all available information for sources that emitted more than 100 tpy of SO_2 within 50 km of the border, including any available air dispersion modeling, and continues to believe that its WOE analysis demonstrates that South Carolina has satisfied the good neighbor provision for the 2010 1-hour SO_2 NAAQS. The commenter did not provide a technical analysis indicating that sources emitting less than or equal to 100 tpy within 50 km of the border may have downwind impacts that violate the good neighbor provision.

Comment 4: A commenter states that three sources in South Carolina (*i.e.,* W.S. Lee Station, McMeekin Station, and WestRock) were ''able to escape nonattainment designation status'' by accepting federally-enforceable permit limits ''to exempt them from complying with the DRR.'' The commenter states that accepting these limits does not mean that these sources are not ''causing or contributing to nonattainment or maintenance'' in another state and questions why EPA did not perform modeling to determine if these sources are impacting neighboring states for the 2010 1-hour SO_2 NAAQS.

Response 4: Regarding the commenter's reference to the SO_2 designations signed on December 21, 2017 (83 FR 1098), to the extent commenter is taking issue with those designations, those designations and the federally-enforceable emission limits taken to comply with the DRR are outside the scope of this action to approve South Carolina's SIP revision to address interstate transport for the 2010 1-hour SO_2 NAAQS. Regarding the comment concerning modeling, EPA does not agree that modeling is necessary to demonstrate that these sources do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state. As discussed above, there is nothing in the interstate transport requirements of CAA section 110(a)(2)(D) suggesting that dispersion modeling is legally required to evaluate good neighbor SIPs, and EPA used its long-standing WOE approach to evaluate South Carolina's SIP revision under the good neighbor provision. EPA also notes that the commenter did not provide a technical analysis that contradicts EPA's proposed determination that W.S. Lee Station, McMeekin Station, and WestRock will not significantly contribute to nonattainment or interfere with maintenance in another state.

III. Final Action

EPA is approving South Carolina's June 25, 2018, SIP submission as demonstrating that South Carolina's SIP has adequate provisions prohibiting any source or other type of emissions activity in the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely 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 action for South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' However, EPA has determined that this rule does not have substantial direct effects on an Indian Tribe because this action is not approving any specific rule, but rather has determined that South Carolina's already approved SIP meets certain CAA requirements. EPA notes that this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 25, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP–South Carolina

■ 2. In § 52.2120, the table in paragraph (e) is amended by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS.	6/25/2018	10/10/2019, [insert **Federal Register** citation].	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

[FR Doc. 2019–21956 Filed 10–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2018–0511; FRL–10000–78–Region 2]

Approval of Air Quality Implementation Plans; New York; Infrastructure Requirements for the 2008 Ozone, 2010 Sulfur Dioxide, and 2012 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revisions, submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 2008 Ozone; 2010 Sulfur Dioxide; and 2012 particulate matter of 2.5 microns or less ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

DATES: This final rule is effective on November 12, 2019.

FOR FURTHER INFORMATION CONTACT: Edward J. Linky, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3764, or by email at *Linky.Edward@epa.gov.*

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I. What action is EPA taking?

The EPA is approving certain elements of the State of New York Infrastructure State Implementation Plan (SIP) as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the following National Ambient Air Quality Standards (NAAQS or standard): 2008 Ozone, 2010 sulfur dioxide (SO_2), and 2012 particulate matter of 2.5 microns or less ($PM_{2.5}$). As explained below, the EPA has determined that the State has the necessary infrastructure, resources, and general authority to implement the standards noted above.

II. What is the background information?

Section 110(a)(1) of the CAA requires states to submit for approval into the SIP a plan that provides for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. The EPA commonly refers to such state plans as ''infrastructure SIPs.''

- On March 12, 2008, the EPA promulgated a revised NAAQS for ozone. 73 FR 16436 (March 27, 2008).
- On June 2, 2010), the EPA promulgated a revised primary NAAQS for SO_2. 75 FR 35520 (June 22, 2010).
- On December 14, 2012, the EPA promulgated a revised primary NAAQS for $PM_{2.5}$ for the annual standard. 78 FR 3086 (Jan. 15, 2013).

The New York State Department of Environmental Conservation (NYSDEC) submitted the following revisions to its Infrastructure State Implementation Plan (ISIP):

- 2008 Ozone ISIP submitted on April 4, 2013
- 2010 SO_2 ISIP submitted on October 3, 2013
- 2012 $PM_{2.5}$ ISIP submitted on November 30, 2016

On August 26, 2016 (81 FR 58849), the EPA published its action on certain elements of NYSDEC's April 4, 2013 SIP submittal pertaining to the 2008 Ozone ISIP. The EPA's action addressed CAA section 110(a)(2)(D)(i)(I) which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any other state and CAA section 110(a)(2)(D)(i)(II) which requires SIPs to include

provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to protect visibility (prong 4). The EPA disapproved 110(a)(2)(D)(i)(I) (prongs 1 and 2) and approved 110(a)(2)(D)(i)(II) (prong 4) for the 2008 Ozone NAAQS. 81 FR 58849, 58855 (August 26, 2016).

The EPA approved portions of New York's infrastructure SIP submittals for the 2008 Ozone and 2010 SO_2 NAAQS [1] pertaining to CAA sections 110(a)(2)(C), (D)(i)(II) (prong 3), and (J), including PSD interstate transport provisions.[2] 81 FR 95047 (December 27, 2016).

III. What is a section 110(a)(1) and (2) SIP?

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS.

Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to the EPA plans to implement, maintain and enforce each of the NAAQS promulgated by the EPA. The EPA interprets this provision to require states to address basic SIP requirements including emission inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard.

IV. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements of CAA sections 110(a)(1) and (2), relevant to this action, are discussed in the following EPA guidance documents: EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards;'' September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards;'' September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (''2013 Guidance''); [3] and March 17, 2016, ''Information on Interstate Transport ''Good Neighbor'' provision for the 2012 Fine Particulate Matter (PM) National Ambient Air Quality Standards under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I).''

The EPA reviews each infrastructure SIP submission with the applicable statutory provisions of CAA 110(a)(2). The 14 elements required to be addressed by CAA section 110(a)(2) are:

- 110(a)(2)(A): Emission limits and other control measures;
- 110(a)(2)(B): Ambient air quality monitoring/data system;
- 110(a)(2)(C): Program for enforcement of control measures and for construction or modification of stationary sources;
- 110(a)(2)(D)(i)(I) and (II): Interstate pollution transport;
- 110(a)(2)(D)(ii): Interstate and international pollution abatement;
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, oversight of local governments and local authorities;
- 110(a)(2)(F): Stationary source monitoring and reporting;
- 110(a)(2)(G): Emergency powers;
- 110(a)(2)(H): Future SIP revisions;
- 110(a)(2)(I): Plan revisions for nonattainment areas (under part D);
- 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection;
- 110(a)(2)(K): Air quality modeling and data;
- 110(a)(2)(L): Permitting fees;
- 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172 of the CAA. See 77 FR 46354 (August 3, 2012) and 77 FR 60308 (October 3, 2012, footnote 1). These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the nonattainment permit program requirements of section 110(a)(2)(C) for 2012 $PM_{2.5}$ or the nonattainment planning requirements related to section 110(a)(2)(I) for the 2008 Ozone, 2010 SO_2, or 2012 $PM_{2.5}$.

This action partially addresses Element D (interstate pollution transport, interstate and international pollution abatement). As mentioned in section II, the EPA previously disapproved 110(a)(2)(D)(i)(I) (prongs 1 and 2) and approved 110(a)(2)(D)(i)(II) (prong 4) for the 2008 Ozone NAAQS. 81 FR 58849 (Aug. 26, 2016). The EPA approved 110(a)(2)(D)(i)(II) (prong 3) for the 2008 Ozone and 2010 SO_2 NAAQS. 81 FR 95047 (December 27, 2016). This action addresses the remaining element D provisions for 2008 Ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, except for 110(a)(2)(D)(i)(I) (prongs 1 and 2) provisions for the 2010 SO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS, which will be addressed in a subsequent action by the EPA. Therefore, with respect to element D, this action addresses:

- 110(a)(2)(D)(i)(II) (prong 3) for the 2012 $PM_{2.5}$ NAAQS;
- 110(a)(2)(D)(i)(II) (prong 4) for the 2010 SO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS; and
- 110(a)(2)(D)(ii) for 2008 Ozone NAAQS, 2010 SO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS.

V. What is EPA's approach to the review of infrastructure SIP submissions?

The discussion of the EPA's approach to the review of infrastructure SIP submissions is detailed in the ''Technical Support Document for the EPA's proposed Rulemaking for the New York State Implementation Plan Revision for Meeting the Infrastructure Requirements in the Clean Air Act'' dated 2019 (TSD). The TSD is available in the electronic docket (EPA–R02–OAR–2018–0511) at *www.regulations.gov.* For additional information, the reader is also referred to EPA's Proposed Rule. 84 FR 27559 (June 13, 2019).

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make Infrastructure SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of CAA section

[1] The approval also included the 2008 Lead NAAQS, which is not a subject of this action.

[2] CAA 110(a)(2)(C) (requires SIPs to include a program to provide for enforcement of emission limitations and other control measures described in CAA 110(a)(2)(A)); CAA 110(a)(2)(D)(i)(II)(which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state); CAA 110(a)(2)(J)(requirements related to consultation, public notification and PSD and visibility protection).

[3] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' can be found at: *http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html.*

110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[4] Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[5] The EPA has other explicit Clean Air Act authority to address issues concerning a state's implementation of its SIP.

VI. What did New York submit?

NYSDEC submitted the following SIP submittals which address the infrastructure requirements for the identified NAAQS:

- 2008 Ozone ISIP submitted on April 4, 2013
- 2010 SO_2 ISIP submitted on October 3, 2013
- 2012 $PM_{2.5}$ ISIP submitted on November 30, 2016

New York's section 110 submittals demonstrate how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2008 Ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. The plans reference the current New York Air Quality SIP, the New York Codes, Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by the EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the internet at *https://www.epa.gov/sips-ny*.

VII. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?

The EPA has determined that New York has the necessary infrastructure, resources, and general authority to address certain elements of the section 110(a)(1) and (2) infrastructure provisions for the 2008 Ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. In summary, the EPA is approving the following elements and sub-elements of New York's Infrastructure SIP submittal for 2008 Ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS (except as indicated): 110(a)(A) [emission limits and other control measures]; 110(a)(2)(B) [ambient air quality monitoring/data system]; 110(a)(2)(C) [program for enforcement of control measures] for the 2012 $PM_{2.5}$ NAAQS only; 110(a)(2)(D)(i)(II) [interstate transport], Prong 3 for 2012 $PM_{2.5}$ NAAQS, and Prong 4 for the 2010 SO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS; 110(a)(2)(D)(ii) [interstate and international pollution abatement]; 110(a)(2)(E)[adequate resources, state boards/conflict of interest, oversight of local governments and local authorities];110(a)(2)(F) [stationary source monitoring]; 110(a)(2)(G)[emergency power]; 110(a)(2)(H) [future SIP revisions]; 110(a)(2)(J) [consultation with government official, public notification, and PSD for the 2012 $PM_{2.5}$ NAAQS only]; 110(a)(2)(K) [air quality and modeling/data]; 110(a)(2)(L) [permitting fees]; and 110(a)(2)(M) [consultation/participation by affected local entities].

The EPA is not acting on New York's submittal for 2012 $PM_{2.5}$ as it relates to nonattainment provisions, including the nonattainment NSR program required by part D in section 110(a)(2)(C) and is not acting on New York's submittals for 2008 Ozone, 2010 SO_2 and 2012 $PM_{2.5}$ as they relate to the measures for nonattainment required by part D in section 110(a)(2)(I), because the State's Infrastructure SIP submittals do not include nonattainment requirements related to these 2 elements. The EPA is also not acting on the visibility protection portion of element J for the 2012 $PM_{2.5}$ submittal.

VIII. What comments did EPA receive in response to the proposed action?

On June 13, 2019 (84 FR 27559), EPA proposed to approve certain elements of New York's ISIP revisions, submitted to demonstrate that the State meets the requirements of the CAA for the 2008 Ozone; 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. EPA received an erroneously filed comment from one commenter and an adverse comment from an anonymous commenter, in response to the June 13, 2019 proposed action.

Comment: A comment was submitted on EPA's proposed rule to deny New York's 126 petition submitted by Louisville Gas and Electric and Kentucky Utilities Companies.

EPA Response: These comments were submitted to the Docket for this action but are not applicable to this action and are filed in error. The comments will be addressed separately in the EPA's Response to Comments on the Proposed Action on Section 126(b) Petition from New York (Docket ID No. EPA–HQ–OAR–2018–0170).

Comment: EPA must provide a complete record that New York has adequate resources and personnel to implement the SIP. EPA must audit NYSDEC to ensure proper funding and personnel to implement the SIP.

EPA response: EPA disagrees with this comment. An audit of NYSDEC is not required. CAA Section 110(a)(2)(E)(i) (Element E) requires that the State provide ''necessary assurances'' that it will have adequate funding and personnel to implement the relevant NAAQS. As stated in the proposal, in the context of acting on infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[6] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The requirements of Element E, that the State have adequate resources and personnel, are clearly demonstrated in New York's three ISIP submittals dated April 4, 2013 (for the 2008 ozone ISIP), October 3, 2013 (for the 2010 SO_2 ISIP), and November 30, 2016 (for the 2012 $PM_{2.5}$ ISIP), as detailed by the EPA in its technical support document (TSD) at pages 11–12, included in this docket. The submittals indicated that NYSDEC's Division of Air Resources (DAR) has over 200 full-time positions and receives both operating and capital funding. As New York's submittals indicates, operating funds are allocated to DAR annually and are used for daily administrative expenses. These expenses include salaries, fringe benefit, and indirect and non-personnel services such as travel, supply and equipment costs. Indirect costs are, in turn, allocated to other Departments or

[4] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on New York's infrastructure SIP to address the Nitrogen Dioxide NAAQS, 85 FR 25066, 25067 (May 2, 2014).

[5] See U.S. Court of Appeals for the Ninth Circuit decision in Montana Environmental Information Center v. Thomas, 902 F.3d 971 (Aug. 30, 2018).

[6] See U.S. Court of Appeals for the Ninth Circuit decision in Montana Environmental Information Center v. EPA, 902 F.3d 971 (August 30, 2018. Also see proposed rulemaking in this action 84 FR 27559, 27561 (June 13, 2019).

divisions that support DAR activities. DAR is allocated operating funds from five sources: General Fund, Utility Environmental Regulatory Account, Co-operative Agreements (*i.e.,* EPA section 103 and 105 grants) and the Clean Air Fund, which is comprised of the Title V and Mobile Source accounts.

Capital funds are allocated to the DAR at the discretion of the New York State legislature and are used for the financing or acquisition of capital facilities such as the construction of an air monitoring site. DAR is allocated Capital funds from three sources: General Fund, Mobile Source Account and Rehabilitation and Improvement.'' [7]

Therefore, the EPA has determined that the NYSDEC has provided necessary assurances that it has sufficient funding and personnel to meet the requirements of section 110(a)(2)(E)(i) for the 2008 ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Comment: New York does not have adequate resources to implement a Regional Haze Program and EPA must impose a FIP on New York for two sources which commenter does not identify.

EPA Response: EPA disagrees that New York lacks adequate resources to implement a Regional Haze Program. As noted above, Element E, specifically CAA Section 100(a)(2)(E)(i), does not require an audit of resources and personnel. New York's Regional Haze plan was approved into the SIP for 18 facilities. 77 FR 51915 (Aug. 28, 2012). Only two facilities, Danskammer Generating Station and Roseton Generating Station, were subject to the Federal Implementation Plan (FIP). Specifically, New York's SO_2, NO_X and PM Best Available Retrofit Technology (BART) determinations and emissions limits for Danskammer Generating Station, Unit 4, and New York's SO_2 BART determinations and emissions limit for Roseton Generating Station, Units 1 and 2, were subject to the FIP. EPA's FIP determination did not cite resources or personnel as a basis for the FIP, rather, the State had provided a regional haze SIP with supporting analysis, but EPA disagreed with the specific BART determinations with regard to specific pollutants at specific units at these facilities that the State had submitted. 77 FR 51915 (Aug. 28, 2012). Moreover, for each of the sources, the EPA subsequently approved a source-specific SIP revision and withdrew the FIP. 82 FR 57126 (Dec. 4, 2017) (approving the SIP for Danskammer Generating Station, Unit 4) and 83 FR 6970 (Feb. 16, 2018) (approving the SIP for Roseton Generating Station, Units 1 and 2).

Comment: Elements, F, H, K, L and M: EPA does not provide any rationale for approving these elements other than to refer the reader to previous actions. EPA must review each submission on its own merits.

EPA Response: EPA reviewed and evaluated each submittal addressed in this action. As explained in the proposal (84 FR 27559) and the accompanying TSD for this rulemaking, and consistent with EPA's ISIP guidance, certain elements of the Infrastructure SIP submittals are not pollutant specific. EPA proposed to find that, for certain elements, including Elements F, H, K, L and M, the information provided in these submittals is consistent with or identical to prior submittals that addressed these specific elements. As explained in the proposal, EPA's prior actions on ISIPs included a full evaluation of the information provided by the State for each element, found the New York SIP submittal was sufficient, and approved it. New York, in each of its submittals in this action, has affirmed that the existing SIP meets the requirements of CAA sections 110(a)(1) and (2). The EPA is not aware of, and the commenter has not identified, anything about the 2008 ozone, 2010 SO_2, or 2012 $PM_{2.5}$ NAAQS that would cause New York's SIP for these elements to be insufficient. In addition, New York's submissions for the 2008 ozone, 2010 SO_2, or 2012 $PM_{2.5}$ NAAQS identify the basis for approving Elements F, H, K, L and M, and that is detailed in the TSD for this action at pages 12–14 for Element F, page 15–16 for Element H, page 20–21 for Element K, page 21 for Element L and pages 21–22 for Element M. Accordingly, approval of the pending submittal for these elements is appropriate.

Comment: For Element H, the EPA must disapprove this element until the EPA establishes a SHL for the $PM_{2.5}$ NAAQS. In establishing the $PM_{2.5}$ NAAQS under the 1997 standard the EPA stated that no SHL was able to be established so a placeholder value was being imposed at 500.

EPA Response: Element H concerns future SIP revisions and does not relate to establishment of a significant harm level (SHL). The issue of establishment of an SHL relates to Element G (Emergency Powers). In promulgating the 2012 $PM_{2.5}$ NAAQS, EPA retained the pre-existing level of 500 micrograms per cubic meter (ug/m^3), 24-hour average, for the Air Quality Index (AQI) value of 500 and did not establish a significant harm (SHL) for $PM_{2.5}$. In the absence of a SHL, EPA maintains that the central components of a contingency plan would be to reduce emissions for the $PM_{2.5}$ sources at issue and to provide public communication as needed. See 2013 Guidance at pages 47–49. NYSDEC's November 2016 ISIP submittal addressing the Element G requirements for the 2012 $PM_{2.5}$ NAAQS meets the requirements of the EPA's 2013 guidance and, as explained in detail in the EPA's TSD for this ISIP submittal, is acceptable to the EPA.

Comment: The comment asserts that the EPA must review Element L with respect to permitting fees and reveal any defects at this time. The EPA cannot point to a previous approval of a similar or nearly similar submittal. EPA must audit the state's title V fee collection system to affirmatively prove that adequate fees are being collected in order to implement the title V program. The EPA cannot rely on a state claim without affirmatively confirming it.

EPA response: CAA 110(a)(2)(L) sets forth specific requirements that are in effect ''until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V [title V].'' The Administrator previously approved New York's title V operating program. EPA granted interim approval to the Title V operating permit program submitted by the State of New York effective December 9, 1996. 61 FR 57589 (November 7, 1996). The final interim approval at 61 FR 57590, determines that ''the State has the authority to collect sufficient fees to implement its title V program'' and, at 61 FR 57592, allows the State to ''issue operating permits pursuant to Title V of the Act to all major stationary sources.'' See also 61 FR 63928 (Dec. 2, 1996) (correction); 40 CFR part 70, Appendix A. EPA subsequently granted full approval to New York's program, effective November 30, 2001. 66 FR 63180 (December 5, 2011). In so doing, the Administrator found that the fee program was sufficient to cover all CAA permitting, implementation, and enforcement for new and modified major sources as well as existing major sources, which is consistent with the requirements of CAA 110(a)(2)(L). Statutory and regulatory citations related to the fee aspects of New York's title V operating program are found in the TSD at p. 21. Accordingly, and consistent with EPA's ISIP guidance, reliance on the existing, EPA-approved title V fee program is sufficient to approve this element and an additional examination of that approved program is not necessary.

[7] See submission of NY SIP for interstate transport of $PM_{2.5}$.

IX. What is EPA approving?

The EPA is approving New York's submittals as meeting the infrastructure requirements for the 2008 Ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (C) [enforcement measures and PSD program for major sources for 2012 $PM_{2.5}$ only], (D)(i)(II) prong 3 [for 2012 $PM_{2.5}$ only], (D)(i)(II) prong 4 [for 2010 SO_2 and 2012 $PM_{2.5}$ only], D(ii), (E), (F), (G), (H), (J) [for consultation, public notification and prevention of significant deterioration 2012 $PM_{2.5}$ only], (K), (L) and (M).

The EPA is not acting on New York's submittal for 2012 $PM_{2.5}$ as it relates to nonattainment provisions, the NSR program required by part D, in section 110(a)(2)(C) and is not acting on New York's submittals for 2008 Ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS as they relate to the measures for attainment required by section 110(a)(2)(I), as part of this proposed approval because the State's infrastructure SIP submittals do not include nonattainment requirements and the EPA will act on them when, if necessary, they are submitted.

The EPA is also not acting on 110(a)(2)(D)(i)(I) provisions (prongs 1 and 2) for the 2010 SO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS, which will be addressed in a subsequent action by the EPA.

X. 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 CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided 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 Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rulemaking pertaining to New York's section 110(a)(2) infrastructure requirements for the 2008 Ozone NAAQS, 2012 $PM_{2.5}$ NAAQS, and 2010 SO_2 NAAQS 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 it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.* Subpart HH New York.

Dated: September 23, 2019.

Peter D. Lopez,

Regional Administrator, Region 2.

Part 52 chapter I, title 40 of the Code of Federal Regulations 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 HH—New York

■ 2. In § 52.1670, the table in paragraph (e) is amended by adding entries for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS'', ''Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS'', and ''Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS'' at the end of the table to read as follows.

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NON-REGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	4/4/2013	10/10/2019, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (D)(ii), (E), (F), (G), (H), (K), (L) and (M).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS.	Statewide	10/3/2013	10/10/2019, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (D)(i)(II) prong 4, (D)(ii), (E), (F), (G), (H), (K), (L) and (M).

EPA-APPROVED NEW YORK NON-REGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/30/2016	10/10/2019, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) [enforcement measures and PSD program for major sources], (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J) [for consultation, public notification and prevention of significant deterioration] (K), (L) and (M).

[FR Doc. 2019–21955 Filed 10–9–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0184; FRL–10000–90–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology State Implementation Plan for Volatile Organic Compounds Under the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the District of Columbia's (the District) state implementation plan (SIP) submitted on August 29, 2018. The District's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). The District will address RACT for nitrogen oxides (NO_X) in a separate SIP submission. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on November 12, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0184. 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: Gregory A. Becoat, 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) 814–2036. Mr. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2018, the District of Columbia Department of Energy and Environment (DOEE) submitted a SIP revision to address all the RACT requirements for VOCs set forth by the CAA under the 2008 8-hour ozone NAAQS (the 2018 RACT Submission). The District's RACT submittal for the 2008 ozone NAAQS includes: (1) Certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) a listing of the Control Techniques Guidelines (CTGs) already adopted into the District's SIP, and (3) a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA. The District's SIP submittal also includes an update to the 2002 Mobile Equipment Repair and Refinishing (MERR) rule to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) rule adopted by the District in 2016. EPA addressed the 2009 MVMERR rule in a separate rulemaking action as it is not related to the 2008 VOC RACT SIP revision and does not impact EPA's approval. The DOEE also submitted as an amendment to the SIP-approved 2002 MERR rule the updated 2009 MVMERR rule. As previously mentioned, the 2009 MVMERR rule was addressed in a separate rulemaking action.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_X in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_X emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] Section 172 of the CAA sets forth general requirements for SIPs in nonattainment areas, including a requirement that SIPs must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. CAA section 172(c)(1). Part D, subpart 2 of the CAA sets forth additional provisions for ozone nonattainment areas. CAA sections 181–185B. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate

[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *see also* 44 FR 53761, 53762 (September 17, 1979).

(or worse) ozone nonattainment areas to implement RACT controls on all major stationary sources of VOC and NO_X, and on source categories covered by a CTG document issued by EPA, for sources located in the nonattainment area. EPA's CTGs include recommendations on RACT controls for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs), primarily for NO_X source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as a recommendation for what is RACT. Section 183(b) and (c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District.[2] The District is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) or more of VOCs shall be considered a major source and subject to the requirements which would be applicable to major stationary sources as if the area was classified as a moderate nonattainment area. Section 182(f) extends the SIP requirements for major sources of VOCs to major sources of NO_X, as defined in sections 302 and 182(c), (d), and (e).

Under the 2008 8-hour ozone standard, EPA designated the District as a marginal nonattainment area. As part of the OTR, the District must, at a minimum, implement more stringent moderate area RACT requirements for: (1) All categories of VOC or NO_X sources covered by a CTG; (2) all other major stationary sources of VOC or NO_X located in the area. Section 182(b)(2). For the District's 2008 VOC RACT analysis, despite classification as a marginal nonattainment area, the OTR major source thresholds of 50 tpy for VOCs and 100 tpy for NO_X apply. Sections 184(b)(2), 182(f)(1).

[2] Only a portion of the Commonwealth of Virginia is included in the OTR.

B. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). 80 FR 12264, codified at 40 CFR part 51, subpart AA. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In the preamble of the proposed rule, EPA stated that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category. 78 FR 34178, 34192 (June 6, 2013). Stated differently, states can meet the RACT requirements associated with the 2008 ozone NAAQS either through (1) a certification that previously adopted RACT controls in their SIP approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS; (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels; and/or (3) a negative declaration if there are no source categories subject to certain CTGs within the nonattainment area. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations is more likely to occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a currently available RACT control level.

II. Summary of SIP Revision and EPA Analysis

On August 29, 2018, the DOEE submitted a SIP revision to address all the VOC RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS. Specifically, the District's 2018 RACT Submission included: (1) A certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) a listing of the CTGs already adopted into the District's SIP, and (3) a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA.

More detailed information on the District's 2018 VOC RACT submission; as well as a detailed summary of EPA's review of the submission, can be found in the notice of proposed rulemaking (NPR) for this action published on July 11, 2019 (84 FR 33032), which is also available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2019–0184.

After evaluating the SIP revision submittal, EPA concluded that the District's SIP revision satisfied the 2008 8-hour ozone NAAQS RACT requirements for VOC through (1) certification that previously adopted RACT controls in the District's SIP for major, non-CTG VOC sources that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to represent RACT; (2) a listing identifying those CTGs which the District has already adopted into its SIP, and (3) a listing of the negative declarations submitted by the District for those source categories covered by CTGs that do not exist in the District. On July 11, 2019 (84 FR 33032), EPA published an NPR for the District's SIP revision. EPA received one comment, which is addressed in Section III below.

III. Response to Comments

EPA received comments from one anonymous commenter during the comment period for the proposed rulemaking action.

Comment #1: The commenter stated: ''Did EPA actually review the regulations listed in table 1 for the control techniques guidance requirements or is EPA just saying that because these regulations were previously certified EPA doesn't have to review these regulations anymore? EPA should review every regulations the district lists to make sure the district still enforces these rules and that the rules continue to meet the reasonably available control technology requirements listed in the CTG to this day as well as make sure the district's regulations are identical to the regulations approved into the state's plan. The district periodically reevaluates it's regulations and makes changes as required by their laws so

EPA needs to be very careful with what the district says it's regulations are meeting.''

Response #1: EPA does not agree with the commenter's concerns. As noted in the NPR published on July 11, 2019 (84 FR 33032), and the associated Technical Support Document included in the docket, EPA has reviewed the District's 2018 RACT submission, including all associated regulations and tables, and concluded that the District has met the VOC RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184(b)(2) of the CAA. Therefore, this revision will help the District attain and maintain the NAAQS for ozone. The District certified that the regulations, under Title 20 (Environment), District Municipal Regulations (DCMR) Subtitle A (Air Quality), Chapter 7—Volatile Organic Compounds, which contains the VOC RACT controls previously approved by EPA into the SIP under the 1-hour and 1997 8-hour ozone NAAQS, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources and CTG covered sources of VOCs.

First, EPA did review the District's regulations cited in Table 1, to ensure that every CTG and ACT identified as having been adopted by the District is still codified in the District's regulations.

Second, Table 1 of the District's SIP submission lists the date when EPA approved each SIP submission requesting approval for an adopted CTG or ACT. EPA evaluated the District's adopted regulations to ensure they conformed to the CTGs or ACTs at the time that EPA approved a SIP revision adopting a CTG or ACT. Moreover, if the District has changed any of its RACT regulations following EPA's approval of those CTGs or ACTs as part of the SIP, the version of the District's regulations which were approved into the SIP by EPA are still enforceable by EPA and the public.

Finally, EPA did not review in this action the District's enforcement of its currently-adopted regulations. EPA has authority to enforce any requirement of an EPA-approved SIP, See CAA section 113, and therefore has concurrent enforcement authority over those regulations which are in the District's SIP. Furthermore, EPA is not aware of any failure of the District to ensure that the RACT regulations are being implemented.

Comment #2: The commenter also stated: ''Under Table 2 the district says there are no fixed roof tanks that store petroleum products but a simple look at Google Maps shows the Ronald Reagan Nation Airport has several fixed roof tanks for storage of petroleum products. Did EPA actually review this table and make sure there were no sources subject to these control techniques guidance documents or did EPA just rely on the district's thinly stretched staff to make sure they don't have sources subject to every guidance document? EPA must do it's own independent research and come to the same conclusion as the district.''

Response # 2: Regarding commenter's concern about the fixed roof tanks at Ronald Reagan National Airport, EPA notes that the tanks and airport are located in Arlington, Virginia and therefore are not within the District's jurisdiction. Also, EPA did review Tables 1 and 2 to determine if the District made negative declarations for any CTG or ACT sources that were likely to be within the District. Many of the CTGs in Table 1 and ACTs in Table 2 are aimed at controlling emissions from large manufacturing facilities, such as shipbuilding, refinery operations, manufacture of metal furniture, manufacture of rubber tires, etc. These kind of manufacturing facilities would be known to EPA and the District Department of Energy and Environment, notwithstanding any perceived shortage of staff. EPA CAA enforcement personnel inspect facilities in the District for compliance with all CAA requirements and are familiar with the types of air emission sources located in the District. In response to this comment, EPA Region 3 air enforcement personnel reviewed Tables 1 and 2 in the SIP submission and did not identify any sources covered by a negative declaration that actually exist in the District. In sum, EPA did not identify any sources subject to CTGs or ACTs in the District for which the District submitted a negative declaration, and the commenter did not identify any such sources.

IV. Final Action

EPA is approving the District of Columbia's August 29, 2018 SIP revision that satisfies the VOC RACT requirements under the 2008 8-hour ozone NAAQS.

V. 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 it is not a significant action under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 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, which approves the District's 2008 8-hour ozone RACT SIP revision, 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.

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

Dated: September 23, 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 J—District of Columbia

■ 2. Amend § 52.470, in the table in paragraph (e) by adding an entry for ''VOC RACT and Negative Declarations—VOC Source Categories under the 2008 8-Hour ozone NAAQS'' at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
VOC RACT and Negative Declarations—VOC Source Categories under the 2008 8-Hour ozone NAAQS.	District of Columbia	08/29/2018	10/10/2019, ... [Insert ***Federal Register*** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–21861 Filed 10–9–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0561; FRL–9999–70]

Indaziflam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of indaziflam in or on the tropical and subtropical fruit (edible peel) group 23 and tropical and subtropical fruit (inedible peel) group 24. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 10, 2019. Objections and requests for hearings must be received on or before December 9, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0561, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through

the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0561 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before December 9, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0561, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 21, 2018 (83 FR 65660) (FRL–9985–67), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8686) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of indaziflam, N-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1H-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the raw agricultural commodities Fruit, tropical and subtropical, edible peel, group 23 at 0.01 ppm and Fruit, tropical and subtropical, inedible peel, group 24 at 0.01 ppm. The petition also requested to amend 40 CFR 180.653 by removing the established tolerance for residues of indaziflam in or on the raw agricultural commodity Fruit, tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Although not requested, EPA is removing the tolerance for ''banana'' since it is covered by the new group 24 tolerance. Also, the tolerance expression is being modified as well. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for indaziflam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with indaziflam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Metabolism studies with rats indicate that indaziflam is rapidly and completely (>90%) absorbed by the oral route, although absorption may become saturated at higher doses. Following absorption, indaziflam is distributed to multiple tissues, with the highest levels found in the liver, skin, and thyroid. Metabolism of indaziflam was extensive and occurred primarily via oxidation to form carboxylic acid and hydroxylated metabolites. Based on *in vivo* dermal absorption data from rats and comparative *in vitro* absorption data from rat and human skin, dermal absorption for humans is estimated to be 7.3%.

The nervous system is the major target for toxicity in rats and dogs. Evidence of neurotoxicity (*e.g.,* decreased motor activity, clinical signs, and/or neuropathology) was observed in both species throughout the database, which included the dog subchronic and chronic toxicity studies; the rat acute, subchronic, and developmental neurotoxicity (DNT) studies; the rat two-generation reproduction study; the rat chronic toxicity study; and the rat combined carcinogenicity/chronic toxicity study. In repeated-dose studies, the dog was the more sensitive species, showing the lowest no observed adverse effects levels (NOAELs) and lowest observed adverse effects levels (LOAELs) among all available studies, based on neuropathology (degenerative nerve fibers in the brain, spinal cord, and sciatic nerve). At higher doses, three dogs in the subchronic study were prematurely terminated due to excessive clinical signs including ataxia, tremors, decreased pupil response, seizures, and other findings.

In the rat, a marginal decrease in motor/locomotor activity was observed in females in the acute neurotoxicity study. Decreases in motor/locomotor

activity were also seen in the subchronic neurotoxicity study in females and in the DNT study in male offspring at post-natal day (PND) 21. Clinical signs of neurotoxicity were observed in the acute, subchronic, and developmental neurotoxicity studies and consisted primarily of tremors, changes in activity and reactivity, repetitive chewing, dilated pupils, and oral, perianal, and nasal staining. Similar clinical signs of neurotoxicity were observed in the 2-generation reproduction study, the rat chronic toxicity study, and the combined rat carcinogenicity/chronic toxicity study. Neuropathology findings were also observed in the rat manifested as focal/multifocal vacuolation of the median eminence of the brain and the pituitary *pars nervosa* and degenerative nerve fibers in the Gasserian ganglion, sciatic nerve, and tibial nerve. Evidence of neurotoxicity was not seen in the mouse following subchronic or chronic exposure.

Other organs affected by indaziflam in mice and rats included the kidney, liver, thyroid, stomach, seminal vesicles, and ovaries. Effects on the kidney were observed following chronic exposure in rats and mice while effects on the liver were observed following chronic exposure in the rat. Effects on the thyroid were only observed in multiple dose rat studies and usually in the male only. Increased thyroid stimulating hormone (TSH) measured at 3 and 14 weeks in the 90-day and 1-year studies showed an increase in males at week 3. Histopathological alterations (thyroid follicular cell hypertrophy at 90 days and 1 year, as well as colloid alterations at chronic exposure times) were observed, but no increases in thyroid weight were noted. Thyroid histopathology was observed at a lower dose in the two-year study, compared to the 90-day and 1-year studies. Chronic exposures also led to atrophied or small seminal vesicles in male rats and glandular erosion/necrosis in the stomach and blood-filled ovarian cysts/follicles in female mice. In rats, effects observed on the liver, thyroid, kidney, and seminal vesicles occurred at doses that were similar to or higher than those that produced neurotoxicity. However, these effects in the rat occurred at higher doses than those at which neurotoxicity was observed in the dog. Decreased body weight was also observed in most subchronic and chronic studies following oral exposure to indaziflam. There was no evidence of immunotoxicity in the available studies, which included a guideline immunotoxicity study in the rat. No systemic effects were observed in the rat following a 28-day dermal exposure period.

Since the previous assessment, the maternal findings in the rat developmental toxicity study have been revised because the decreases in maternal weight gain and food consumption did not result in reduced mean maternal body weight at any dose tested and no other maternal findings were reported. Decreased mean fetal weight was observed at the highest dose tested, indicating increased quantitative susceptibility. However, no evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rabbits, a developmental neurotoxicity study in rats, or in a 2-generation reproduction study in rats. No developmental effects were observed in rabbits up to maternally toxic dose levels. Decreased pup weight and delays in sexual maturation (preputial separation in males and vaginal patency in females) were observed in the rat two-generation reproductive toxicity study, along with clinical signs of toxicity, at a dose causing parental toxicity that included coarse tremors, renal toxicity, and decreased weight gain. In the developmental neurotoxicity study, transiently decreased motor activity (PND 21 only) in male offspring was observed and was considered a potential neurotoxic effect. It was observed at a dose that also caused clinical signs of neurotoxicity along with decreased body weight in maternal animals.

Indaziflam showed no evidence of carcinogenicity in the two-year dietary rat and mouse bioassays. All genotoxicity studies that were conducted on indaziflam were negative.

Specific information on the studies received and the nature of the adverse effects caused by indaziflam as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Indaziflam—Aggregate Human Health Risk Assessment of the Proposed New Use on Lowbush Blueberry, and Crop Group Expansions to Tropical and Subtropical Fruit, Edible Peel, Group 23 and Tropical and Subtropical Fruit, Inedible Peel, Group 24'' on pages 29–39 in docket ID number EPA–HQ–OPP–2018–0561.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide.*

A summary of the toxicological endpoints for indaziflam used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR INDAZIFLAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children and females 13 to 49 years old).	NOAEL = 7.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.075 mg/kg/day aPAD = 0.075 mg/kg/day.	*Subchronic Gavage Toxicity Study in Dogs.* LOAEL = 15 mg/kg/day, based on axonal degenerative microscopic findings in the brain, spinal cord, and sciatic nerve.
Chronic dietary (All populations)	NOAEL= 2 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.02 mg/kg/day cPAD = 0.02 mg/kg/day.	*Chronic Dietary Toxicity Study in Dogs.* LOAEL = 6/7 mg/kg/day M/F, based on nerve fiber degenerative lesions in the brain, spinal cord, and sciatic nerve.
Incidental oral short-term (1 to 30 days).	NOAEL= 7.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	*Subchronic Gavage Toxicity Study in Dogs.* LOAEL = 15 mg/kg/day, based on axonal degenerative microscopic findings in the brain, spinal cord, and sciatic nerve.
Dermal short-term (1 to 30 days).	Oral study NOAEL = 7.5 mg/kg/day (dermal absorption rate = 7.3%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	*Subchronic Gavage Toxicity Study in Dogs.* LOAEL = 15 mg/kg/day, based on axonal degenerative microscopic findings in the brain, spinal cord, and sciatic nerve.
Inhalation short-term (1 to 30 days).	Oral study NOAEL= 7.5 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	*Subchronic Gavage Toxicity Study in Dogs.* LOAEL = 15 mg/kg/day, based on axonal degenerative microscopic findings in the brain, spinal cord, and sciatic nerve.
Cancer (Oral, dermal, inhalation).	No Evidence of Carcinogenicity. Classified as "Not Likely to be Carcinogenic to Humans."		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to indaziflam, EPA considered exposure under the petitioned-for tolerances as well as all existing indaziflam tolerances in 40 CFR 180.653. EPA assessed dietary exposures from indaziflam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for indaziflam. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute assessment was based on tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In estimating chronic dietary exposure, EPA used 2003–2008 food consumption information from the USDA's NHANES/WWEIA. As to residue levels in food, the chronic assessment was based on tolerance-level residues and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that indaziflam does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue estimates or PCT information in the dietary assessment for indaziflam. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for indaziflam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of indaziflam. Further information regarding EPA drinking water models used in pesticide exposure assessments can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Residues of concern in drinking water are indaziflam, triazine indanone, indaziflam-carboxylic acid, indaziflam-olefin, indaziflam-hydroxyethyl, and fluoroethyl diaminotriazine (FDAT). With the exception of FDAT, all of the metabolites are assumed to have comparable toxicity to the parent due to structural similarity (*i.e.,* both rings intact). However, FDAT, a single-ring metabolite, is not expected to be more toxic than the parent indaziflam based on FDAT's non-neurotoxic mode of action. The Agency calculated total indaziflam estimated drinking water

concentrations (EDWCs) for residues of concern that are structurally similar to indaziflam (*i.e.,* indaziflam, triazine-indanone, indaziflam-carboxylic acid, indaziflam-hydroxyethyl, and indaziflam-olefin), and separate EDWCs for total FDAT, including its fluoroethyl-triazinanedione (ROI1) degradate. The Agency combined the total indaziflam and total FDAT EDWCs for use in the dietary assessments.

Based on the Pesticide in Water Calculator (PWC), the EDWCs of combined residues of indaziflam for acute exposures are estimated to be 84 parts per billion (ppb) for surface water and 3.7 ppb for ground water, and for chronic exposures are estimated to be 26 ppb for surface water and 3.7 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 84 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration value of 26 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Indaziflam is currently registered for the following uses that could result in residential exposures: Turf, gardens, and trees. EPA assessed residential exposure using the following assumptions: Short-term dermal and inhalation handler exposure is expected for adults as a result of applying products containing indaziflam to lawns/turf and gardens/trees using a variety of application equipment. Short-term post-application dermal exposure is expected for adults, children 11 to less than 16 years old, and children 6 to less than 11 years old as a result of playing, mowing, and/or golfing on treated turf. Short-term dermal and incidental oral exposure (hand to mouth, object to mouth, incidental soil ingestion) is expected for children 1 to less than 2 years old as a result from playing on treated turf/lawns. Lastly, short-term post-application dermal exposure is expected for adults and children 6 to less than 11 years old as result of application to gardens and trees.

The Agency selected only the most conservative, or worst case, residential adult and child scenarios to be included in the aggregate estimates, based on the lowest overall MOE (*i.e.,* highest risk estimates). The worst-case residential exposure scenario for both adults and children resulted from short-term dermal and incidental oral (for children only) post-application exposure to treated turf. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found indaziflam to share a common mechanism of toxicity with any other substances, and indaziflam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that indaziflam does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Since the previous assessment, the maternal findings in the rat developmental toxicity study have been revised because the decreases in maternal weight gain and food consumption did not result in reduced mean maternal body weight at any dose tested and no other maternal findings were reported. Decreased mean fetal weight was observed at the highest dose tested, indicating increased quantitative susceptibility. However, no evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rabbits, a developmental neurotoxicity study in rats, or in a 2-generation reproduction study in rats. No developmental effects were observed in rabbits up to maternally toxic dose levels. Decreased pup weight and delays in sexual maturation (preputial separation in males and vaginal patency in females) were observed in the rat two-generation reproductive toxicity study, along with clinical signs of toxicity, at a dose causing parental toxicity that included coarse tremors, renal toxicity and decreased weight gain. In the developmental neurotoxicity study, transiently decreased motor activity (PND 21 only) in male offspring was observed and was considered a potential neurotoxic effect. It was observed at a dose that also caused clinical signs of neurotoxicity along with decreased body weight in maternal animals.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for indaziflam is complete.

ii. Evidence of neurotoxicity was observed in dogs and rats throughout the database, which included the dog subchronic toxicity study; the rat subchronic toxicity; the rat acute, subchronic, and developmental neurotoxicity screening batteries; the rat two-generation reproduction study; the rat chronic toxicity study; and the rat combined carcinogenicity/chronic toxicity study. Evidence of neurotoxicity was manifested as neuropathology in dogs and as decreased motor activity and clinical signs (*e.g.,* tremors) in rats. Evidence of neurotoxicity was the most consistent effect (seen in dogs and rats), the most sensitive toxicological finding (based on neuropathology in dogs) and is being used as the basis for the risk assessment.

iii. No developmental effects were observed in rabbits up to maternally toxic dose levels. Offspring effects in the DNT study in rats and multi-generation toxicity studies only occurred in the presence of maternal toxicity and were not considered more severe than the parental effects. However, decreased

fetal weight was observed in the rat developmental toxicity study in the absence of adverse maternal effects. Therefore, the Agency concluded that there is evidence of increased quantitative susceptibility to rat fetuses exposed *in utero* to indaziflam. In all studies, clear NOAELs/LOAELs were identified for maternal/parental and fetal/offspring effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to indaziflam in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by indaziflam.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to indaziflam will occupy 19% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to indaziflam from food and water will utilize 7.8% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of indaziflam is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indaziflam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to indaziflam. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,400 for adults and 580 for children 1 to less than 2 years old. Because EPA's level of concern for indaziflam is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, indaziflam is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for indaziflam.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, indaziflam is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to indaziflam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass spectrometry detection (LC/MS/MS) method (DH–003–P07–02) for fruit and nut tree matrices for indaziflam and FDAT) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for indaziflam.

C. Revisions to Petitioned-For Tolerances

Although not requested, EPA is also removing the existing tolerance for ''banana'' because it is superseded by the new crop group 24 tolerance. Also, EPA is amending the tolerance expression for indaziflam to correct the residues that should be measured in determining compliance with the established tolerance levels. The Agency has determined that residues of the FDAT metabolite should be aggregated with residues of indaziflam when evaluating compliance with established tolerance levels. This revision does not require any changes in tolerance levels because those tolerance levels were established based on aggregated residues of FDAT and indaziflam. In accordance with its policy to improve the consistency and clarity of its tolerance expressions, EPA is revising the tolerance expression in this rulemaking.

V. Conclusion

Therefore, tolerances are established for residues of indaziflam in or on Fruit, tropical and subtropical, edible peel, group 23 at 0.01 ppm and Fruit, tropical and subtropical, inedible peel, group 24 at 0.01 ppm.

Additionally, the existing tolerances for both the tropical and subtropical, small fruit, edible peel, subgroup 23A and banana are removed as unnecessary due to the establishment of the above tolerances.

Lastly, the tolerance expression in paragraph (a) is modified to read as follows: ''*General.* Tolerances are established for residues of the herbicide indaziflam, *N*-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the table below is to be determined by measuring only indaziflam and FDAT, 6-[(1*R*)-1-fluoroethyl]-1,3,5-triazine-2,4-diamine, calculated as the stoichiometric equivalent of indaziflam, in or on the commodity.''

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. 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). Because this action has been exempted from review under Executive Order 12866, 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) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. 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 in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.653(a) is amended as follows:

■ a. Revise the introductory text; and

■ b. In the table:

■ i. Add a heading for the table;

■ ii. Remove the entry for ''Banana'';

■ iii. Add alphabetically the entries ''Fruit, tropical and subtropical, edible peel, group 23'' and ''Fruit, tropical and subtropical, inedible peel, group 24'';

■ iv. Remove the entry for ''Fruit, tropical and subtropical, small fruit, edible peel, subgroup 23A''; and

■ v. Remove footnote 2 to the table.

The revision and additions read as follows:

§ 180.653 Indaziflam; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide indaziflam, *N*-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only indaziflam and FDAT, 6-[(1*R*)-1-fluoroethyl]-1,3,5-triazine-2,4-diamine, calculated as the stoichiometric equivalent of indaziflam, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Fruit, tropical and subtropical, edible peel, group 23	0.01
Fruit, tropical and subtropical, inedible peel, group 24	0.01
* * * * *	

* * * * *

[FR Doc. 2019–21715 Filed 10–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2019–0425; FRL–10001–05–Region 4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: The Environmental Protection Agency (EPA) is granting North Carolina final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a

proposed rule on August 23, 2019, and provided for public comment. One comment was received in support of the EPA's proposed authorization. The comment is addressed in this final authorization. No further opportunity for comment will be provided.

DATES: This final authorization is effective October 10, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–RCRA–2019–0425. All documents in the docket are listed on the *http://www.regulations.gov* website. 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 electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robin Billings, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8515; fax number: (404) 562–9964; email address: *billings.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What changes to North Carolina's hazardous waste program is EPA authorizing with this action?

On June 4, 2019, North Carolina formally requested authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21.[1] EPA now makes a final decision that North Carolina's hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this final authorization, please see the proposed rule published in the August 23, 2019 **Federal Register** at 84 FR 44266.

B. What comments were received on North Carolina's proposed authorization and how is EPA responding to these comments?

EPA received one comment from a private citizen (''Commenter'') on its August 23, 2019 proposed authorization of North Carolina's hazardous waste program revisions. The comment is provided in the docket for this final action. *See* Docket ID No. EPA–R04–RCRA–2019–0425 at *www.regulations.gov.* A summary of the comment and EPA's response is provided below.

Comment: The Commenter supports North Carolina's program revisions and contends that the proposed State requirements should be authorized by the EPA so long as they are ''up to code'' with Federal requirements. The Commenter states that all of the State's proposed amendments should be authorized as long as they are ''equally stringent or more stringent than the Federal standards.''

Response: As discussed in EPA's August 23, 2019 proposed rule (84 FR 44266), the amendments for which the State is seeking authorization are already effective and enforceable as a matter of State law. The effect of EPA's authorization decision is to make these changes part of the federally authorized State hazardous waste program and therefore federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program within the State of North Carolina. EPA has reviewed all of North Carolina's changes and determined that they are equivalent to, consistent with, and no less stringent than the Federal program. As discussed in Section G of the proposed rule, EPA has also concluded that some provisions of North Carolina's amended regulation are more stringent than the Federal program. These more stringent requirements will also become part of the federally enforceable RCRA program in North Carolina. With this final authorization, EPA continues to support and is proceeding with Federal authorization of North Carolina's program revisions.

C. What is codification and is EPA codifying North Carolina's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of North Carolina's revisions at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart II, for the authorization of North Carolina's program changes at a later date.

D. Statutory and Executive Order Reviews

This final authorization revises North Carolina's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rule published in the August 23, 2019 **Federal Register** at 84 FR 44266. 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 document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective October 10, 2019.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 30, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–22207 Filed 10–9–19; 8:45 am]

BILLING CODE 6560–50–P

[1] North Carolina's complete program revision application is comprised of its January 4, 2019 submittal, as amended by its June 4, 2019 submittal.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2017–0366; FRL–9999–12]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of August 20, 2019 for 145 chemical substances that were the subject of premanufacture notices (PMNs). For the chemical substances that were the subjects of PMNs P–17–33, P–17–87, P–17–88 and P–17–101, EPA inadvertently listed incorrect Chemical Abstract Service (CAS) Registry Numbers. This document is being issued to correct these errors.

DATES: This technical correction is effective on October 22, 2019.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0366, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division, 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. What does this technical correction do?

EPA issued a final rule in the **Federal Register** of August 20, 2019 (84 FR 43266) (FRL–9994–72) for significant new uses for 145 chemical substances that were the subject of PMN notices. EPA included the wrong Chemical Abstracts Service (CAS) Registry Numbers for four of the chemical substances listed in the significant new use rules (SNURs) codified in 40 CFR 721.11053 (PMN P–17–33 and P–17–87), 40 CFR 721.11054 (PMN P–17–88) and 721.11055 (PMN P–17–101). This action corrects these errors as follows:

- In Table 1 to 40 CFR 721.11053—Halogenated Sodium Benzoate Salts, the CAS number for PMN P–17–33 is corrected from 6654–64–4 to 490–97–1 and the CAS number for PMN P–17–87 is corrected from 938142–13–2 to 1938142–13–2.
- In Table 1 to 40 CFR 721.11054—Halogenated Benzoic Acids, the CAS number for PMN P–17–88 will be corrected from 11007–16–5 to 1007–16–5.
- In Table 1 to 40 CFR 721.11055—Halogenated Benzoic Acid Ethyl Esters, the CAS number for PMN P–17–101 is corrected from 351354–50–2 to 139911–28–7.

II. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment. Correcting the wrong CAS Registry numbers listed in the August 20, 2019 SNUR is necessary for the proper identification of the chemical substances. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

III. Do any of the statutory and Executive Order reviews apply to this action?

No. For a detailed discussion concerning the statutory and Executive Order review, refer to Unit XII. of the August 20, 2019 final rule.

IV. Congressional Review Act (CRA)

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 in 40 CFR Part 721

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

Dated: September 26, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is corrected as follows:

PART 721—[AMENDED]

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

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

■ 2. In § 721.11053, revise paragraph (a)(1) to read as follows:

§ 721.11053 Certain halogenated sodium benzoate salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances listed in Table 1 of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1 TO § 721.11053—HALOGENATED SODIUM BENZOATE SALTS

PMN No.	CAS No.	Chemical name
P–17–33	490–97–1	Benzoic acid, 2-fluoro-, sodium salt (1:1).
P–17–34	499–90–1	Benzoic acid, 4-fluoro-, sodium salt (1:1).
P–17–36	67852–79–3	Benzoic acid, 2,3,4,5-tetrafluoro-, sodium salt (1:1).
P–17–38	2966–44–1	Benzoic acid, 2-(trifluoromethyl)-, sodium salt (1:1).
P–17–39	25832–58–0	Benzoic acid, 4-(trifluoromethyl)-, sodium salt (1:1).
P–17–41	522651–42–9	Benzoic acid, 2,5-difluoro-, sodium salt (1:1).
P–17–42	499–57–0	Benzoic acid, 3-fluoro-, sodium salt (1:1).

TABLE 1 TO § 721.11053—HALOGENATED SODIUM BENZOATE SALTS—Continued

PMN No.	CAS No.	Chemical name
P–17–43	6185–28–0	Benzoic acid, 2,6-difluoro-, sodium salt (1:1).
P–17–45	530141–39–0	Benzoic acid, 3,5-difluoro-, sodium salt (1:1).
P–17–47	1765–08–8	Benzoic acid, 2,4-difluoro-, sodium salt (1:1).
P–17–50	522651–44–1	Benzoic acid, 3,4-difluoro-, sodium salt (1:1).
P–17–52	1180493–12–2	Benzoic acid, 3,4,5-trifluoro-, sodium salt (1:1).
P–17–55	402955–41–3	Benzoic acid, 2,3,4-trifluoro-, sodium salt (1:1).
P–17–57	522651–48–5	Benzoic acid, 2,4,5-trifluoro-, sodium salt (1:1).
P–17–59	1604819–08–0	Benzoic acid, 2,3-difluoro-, sodium salt (1:1).
P–17–61	69226–41–1	Benzoic acid, 3-(trifluoromethyl)-, sodium salt (1:1).
P–17–62	17264–74–3	Benzoic acid, 2-chloro-, sodium salt (1:1).
P–17–63	3686–66–6	Benzoic acid, 4-chloro-, sodium salt (1:1).
P–17–64	17264–88–9	Benzoic acid, 3-chloro-, sodium salt (1:1).
P–17–66	118537–84–1	Benzoic acid, 2,3-dichloro-, sodium salt (1:1).
P–17–67	63891–98–5	Benzoic acid, 2,5-dichloro-, sodium salt (1:1).
P–17–69	154862–40–5	Benzoic acid, 3,5-dichloro-, sodium salt (1:1).
P–17–71	10007–84–8	Benzoic acid, 2,6-dichloro-, sodium salt (1:1).
P–17–72	17274–10–1	Benzoic acid, 3,4-dichloro-, sodium salt (1:1).
P–17–73	38402–11–8	Benzoic acid, 2,4-dichloro-, sodium salt (1:1).
P–17–75	855471–43–1	Benzoic acid, 2-chloro-4-fluoro-, sodium salt.
P–17–76	1421761–18–3	Benzoic acid, 3-chloro-4-fluoro-, sodium salt.
P–17–79	1382106–78–6	Benzoic acid, 5-chloro-2-fluoro-, sodium salt.
P–17–80	1421029–88–0	Benzoic acid, 4-chloro-3-fluoro-, sodium salt.
P–17–83	1382106–64–0	Benzoic acid, 4-chloro-2-fluoro-, sodium salt.
P–17–85	1938142–12–1	Benzoic acid, 5-bromo-2-chloro-, sodium salt.
P–17–87	1938142–13–2	Benzoic acid, 3-bromo-4-fluoro-, sodium salt.
P–17–90	1938142–14–3	Benzoic acid, 2-bromo-5-fluoro-, sodium salt.
P–17–91	1938142–15–4	Benzoic acid, 4-bromo-2-fluoro-, sodium salt.
P–17–93	1535169–81–3	Benzoic acid, 4-bromo-3-fluoro-, sodium salt.

* * * * *

■ 3. In § 721.11054, revise paragraph (a)(1) to read as follows:

§ 721.11054 Certain halogenated benzoic acids.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances listed in Table 1 of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1 TO § 721.11054—HALOGENATED BENZOIC ACIDS

PMN No.	CAS No.	Chemical name
P–17–35	1201–31–6	Benzoic acid, 2,3,4,5-tetrafluoro-.
P–17–37	433–97–6	Benzoic acid, 2-(trifluoromethyl)-.
P–17–40	2991–28–8	Benzoic acid, 2,5-difluoro-.
P–17–44	385–00–2	Benzoic acid, 2,6-difluoro-.
P–17–46	455–40–3	Benzoic acid, 3,5-difluoro-.
P–17–48	1583–58–0	Benzoic acid, 2,4-difluoro-.
P–17–51	455–86–7	Benzoic acid, 3,4-difluoro-.
P–17–53	121602–93–5	Benzoic acid, 3,4,5-trifluoro-.
P–17–54	61079–72–9	Benzoic acid, 2,3,4-trifluoro-.
P–17–56	446–17–3	Benzoic acid, 2,4,5-trifluoro-.
P–17–58	4519–39–5	Benzoic acid, 2,3-difluoro-.
P–17–60	454–92–2	Benzoic acid, 3-(trifluoromethyl)-.
P–17–65	50–45–3	Benzoic acid, 2,3-dichloro-.
P–17–68	51–36–5	Benzoic acid, 3,5-dichloro-.
P–17–70	50–30–6	Benzoic acid, 2,6-dichloro-.
P–17–74	2252–51–9	Benzoic acid, 2-chloro-4-fluoro-.
P–17–77	394–30–9	Benzoic acid, 5-chloro-2-fluoro-.
P–17–78	403–16–7	Benzoic acid, 3-chloro-4-fluoro-.
P–17–81	403–17–8	Benzoic acid, 4-chloro-3-fluoro-.
P–17–82	446–30–0	Benzoic acid, 4-chloro-2-fluoro-.
P–17–84	21739–92–4	Benzoic acid, 5-bromo-2-chloro-.
P–17–88	1007–16–5	Benzoic acid, 3-bromo-4-fluoro-.
P–17–89	394–28–5	Benzoic acid, 2-bromo-5-fluoro-.
P–17–92	153556–42–4	Benzoic acid, 4-bromo-3-fluoro-.
P–17–97	112704–79–7	Benzoic acid, 4-bromo-2-fluoro-.

* * * * *

■ 4. In § 721.11055, revise paragraph (a)(1) to read as follows:

§ 721.11055 Certain halogenated benzoic acids ethyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances listed in Table 1 of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1 TO § 721.11055—HALOGENATED BENZOIC ACID ETHYL ESTERS

PMN No.	CAS No.	Chemical name
P–17–94	122894–73–9	Benzoic acid, 2,3,4,5-tetrafluoro-, ethyl ester.
P–17–95	583–02–8	Benzoic acid, 4-(trifluoromethyl)-, ethyl ester.
P–17–96	577–62–8	Benzoic acid, 2-(trifluoromethyl)-, ethyl ester.
P–17–98	19064–14–3	Benzoic acid, 2,6-difluoro-, ethyl ester.
P–17–99	708–25–8	Benzoic acid, 2,5-difluoro-, ethyl ester.
P–17–100	351354–50–2	Benzoic acid, 2,3,4-trifluoro-, ethyl ester.
P–17–101	139911–28–7	Benzoic acid, 2-bromo-5-fluoro-, ethyl ester.
P–17–102	350–19–6	Benzoic acid, 3,5-difluoro-, ethyl ester.
P–17–103	76008–73–6	Benzoic acid, 5-bromo-2-chloro-, ethyl ester.
P–17–104	1128–76–3	Benzoic acid, 3-chloro-, ethyl ester.
P–17–105	7335–25–3	Benzoic acid, 2-chloro-, ethyl ester.
P–17–114	137521–81–4	Benzoic acid, 3-chloro-4-fluoro-, ethyl ester.
P–17–122	474709–71–2	Benzoic acid, 4-bromo-2-fluoro-, ethyl ester.
P–17–123	144267–97–0	Benzoic acid, 2-bromo-4,5-difluoro-, ethyl ester.
P–17–124	1130165–74–0	Benzoic acid, 4-bromo-3-fluoro-, ethyl ester.
P–17–125	23233–33–2	Benzoic acid, 3-bromo-4-fluoro-, ethyl ester.
P–17–126	4793–20–8	Benzoic acid, 4-chloro-2-fluoro-, ethyl ester.
P–17–127	35112–27–7	Benzoic acid, 2,5-dichloro-, ethyl ester.
P–17–128	203573–08–4	Benzoic acid, 4-chloro-3-fluoro-, ethyl ester.
P–17–129	167758–87–4	Benzoic acid, 2-chloro-4-fluoro-, ethyl ester.
P–17–130	773139–56–3	Benzoic acid, 5-chloro-2-fluoro-, ethyl ester.
P–17–131	108928–00–3	Benzoic acid, 2,4-difluoro-, ethyl ester.
P–17–132	144267–96–9	Benzoic acid, 3,4-difluoro-, ethyl ester.
P–17–133	495405–09–9	Benzoic acid, 3,4,5-trifluoro-, ethyl ester.
P–17–134	351354–41–1	Benzoic acid, 2,4,5-trifluoro-, ethyl ester.
P–17–135	76783–59–0	Benzoic acid, 3-(trifluoromethyl)-, ethyl ester.
P–17–136	773134–65–9	Benzoic acid, 2,3-difluoro-, ethyl ester.
P–17–137	81055–73–4	Benzoic acid, 2,6-dichloro-, ethyl ester.
P–17–138	91085–56–2	Benzoic acid, 3,5-dichloro-, ethyl ester.
P–17–139	56882–52–1	Benzoic acid, 2,4-dichloro-, ethyl ester.
P–17–140	28394–58–3	Benzoic acid, 3,4-dichloro-, ethyl ester.

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[FR Doc. 2019–21716 Filed 10–9–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2019–0003; Internal Agency Docket No. FEMA–8601]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in

the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.,* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Mississippi:				
Columbia, City of, Marion County	280111	February 6, 1975, Emerg; September 28, 1979, Reg; October 18, 2019, Susp.	October 18, 2019	October 18, 2019
Lamar County, Unincorporated Areas	280304	April 16, 1979, Emerg; April 2, 1990, Reg; October 18, 2019, Susp.	.....do	Do.
Marion County, Unincorporated Areas	280230	March 18, 1975, Emerg; September 28, 1979, Reg; October 18, 2019, Susp.	.....do	Do.
Tylertown, Town of, Walthall County	280175	February 27, 1975, Emerg; September 30, 1988, Reg; October 18, 2019, Susp.	.....do	Do.
Walthall County, Unincorporated Areas	280307	May 20, 1980, Emerg; August 1, 1986, Reg; October 18, 2019, Susp.	.....do	Do.
South Carolina:				
Hardeeville, City of, Beaufort and Jasper Counties.	450113	May 27, 1975, Emerg; September 1, 1987, Reg; October 18, 2019, Susp.	.....do	Do.
Jasper County, Unincorporated Areas	450112	June 10, 1975, Emerg; September 29, 1986, Reg; October 18, 2019, Susp.	.....do	Do.
Region VI				
Texas:				
Austin County, Unincorporated Areas	480704	November 21, 1975, Emerg; January 17, 1990, Reg; October 18, 2019, Susp.	.....do	Do.
San Felipe, Town of, Austin County	480705	April 7, 1976, Emerg; January 3, 1986, Reg; October 18, 2019, Susp.	.....do	Do.
Sealy, City of, Austin County	480017	July 31, 1975, Emerg; January 17, 1990, Reg; October 18, 2019, Susp.	.....do	Do.
Region X				
Oregon:				
Depoe Bay, City of, Lincoln County	410283	January 11, 1979, Emerg; October 15, 1980, Reg; October 18, 2019, Susp.	.....do	Do.
Lincoln County, Unincorporated Areas	410129	February 16, 1973, Emerg; September 3, 1980, Reg; October 18, 2019, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Marion County, Unincorporated Areas	410154	December 10, 1971, Emerg; August 15, 1979, Reg; October 18, 2019, Susp.	.....do	Do.
Newport, City of, Lincoln County	410131	October 18, 1974, Emerg; April 15, 1980, Reg; October 18, 2019, Susp.	.....do	Do.
Salem, City of, Marion and Polk Counties.	410167	December 3, 1971, Emerg; June 15, 1979, Reg; October 18, 2019, Susp.	.....do	Do.
Siletz, City of, Lincoln County.	410132	May 30, 1975, Emerg; March 1, 1979, Reg; October 18, 2019, Susp.	October 18, 2019	October 18, 2019.
Toledo, City of, Lincoln County.	410133	April 19, 1973, Emerg; March 1, 1979, Reg; October 18, 2019, Susp.	.....do	Do.
Turner, City of, Marion County.	410171	August 1, 1975, Emerg; April 2, 1979, Reg; October 18, 2019, Susp.	.....do	Do.
Waldport, City of, Lincoln County.	410134	November 1, 1974, Emerg; March 15, 1979, Reg; October 18, 2019, Susp.	.....do	Do.
Yachats, City of, Lincoln County.	410135	July 18, 1975, Emerg; March 1, 1979, Reg; October 18, 2019, Susp.	.....do	Do.

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 3, 2019.

Katherine B. Fox,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–22123 Filed 10–9–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357–5999–02]

RIN 0648–XT024

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group in the Atlantic Region; Retention Limit Adjustment

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 45 LCS other than sandbar sharks per vessel per trip to 55 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 55 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2019 fishing season or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on October 9, 2019, through December 31, 2019, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck, Ian Miller, or Karyl Brewster-Geisz 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Atlantic shark fisheries have separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except those for blue shark, porbeagle shark, pelagic sharks (other than porbeagle or blue sharks), and the shark research fishery for LCS and sandbar sharks. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of setting and monitoring quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limits in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria (see § 635.24(a)(8)(i) through (vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders in the Atlantic region will allow use of available aggregated LCS and hammerhead shark management group quotas and will provide fishermen throughout the region equitable fishing opportunities for the rest of the year. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 45 to 55 LCS other than sandbar shark per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which includes:

- The amount of remaining shark quota in the relevant area, region, or sub-region to date, based on dealer reports.

Based on dealer reports through September 13, 2019, 34.5 metric tons (mt) dressed weight (dw) (76,011 lb dw), or 20 percent, of the 168.9 mt dw shark quota for aggregated LCS and 9.3 mt dw (20,479 lb dw), or 34 percent, of the 27.1 mt dw shark quota for the hammerhead management groups have been harvested in the Atlantic region. This means that approximately 80 percent of the aggregated LCS quota remains available and approximately 66 percent of the hammerhead shark quota remains available. NMFS took action on April 2,

2019, to reduce the retention limit from 25 to 3 after considering the relevant inseason adjustment criteria, particularly the need for all regions to have an equitable opportunity to utilize the quota (84 FR 12524). NMFS increased the retention limit to 36 LCS other than sandbar sharks per vessel per trip on June 25, 2019 (84 FR 29808), and increased the retention limit to 45 LCS other than sandbar sharks per vessel per trip on August 18, 2019 (84 FR 42827), to promote use of the available quota.

• The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of Atlantic aggregated LCS and hammerhead shark quota available is high, while harvest in the Atlantic region on a daily basis is low. Using current catch rates, projections indicate that landings would not reach the quota before the end of the 2019 fishing season (December 31, 2019). A higher retention limit authorized under this action will promote increased fishing opportunities and utilization of available quota in the Atlantic region.

• Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season.

Once the landings reach 80 percent of either the aggregated LCS or hammerhead shark quotas, NMFS would, as required by the regulations at § 635.28(b)(3), close the aggregated LCS and hammerhead shark management groups since they are ''linked quotas.'' However, current catch rates would likely result in the fisheries remaining open for the remainder of the year. The higher retention limit should increase the likelihood of full utilization of the quota in the Atlantic region, while also allowing the fisheries to operate for the remainder of the year.

• Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Increasing the retention limit on the aggregated LCS and hammerhead management groups in the Atlantic region from 45 to 55 LCS other than sandbar sharks per vessel per trip would continue to allow for fishing opportunities throughout the rest of the year consistent with objectives established in the 2006 Consolidated HMS FMP, including rebuilding requirements for overfished stocks.

• Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region are composed of a mix of species, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate that sharks move farther north in the summer and then return south in the fall. Taking these migration patterns into account, NMFS increased the retention limit on June 25, 2019, from 3 to 36 LCS other than sandbar sharks per vessel per trip (84 FR 29808), then from 36 to 45 LCS other than sandbar sharks per vessel per trip on August 18, 2019 (84 FR 42827), to provide additional fishing opportunities for fishermen in the Mid-Atlantic and New England areas. However, based on dealer reports through September 13, 2019, harvest in the Atlantic region on a daily basis has been low. Therefore, NMFS is increasing the retention limit from 45 to 55 LCS other than sandbar sharks per vessel per trip in order to provide additional opportunity for fishermen to fully utilize the quota in the entire Atlantic region.

• Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS' goal for the 2019 commercial shark fishery is to ensure fishing opportunities throughout the fishing season and the Atlantic region (83 FR 60777; November 27, 2018, 84 FR 12524; April 2, 2019, 84 FR 29808; June 25, 2019, and 84 FR 42827; August 18, 2019). While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, NMFS estimates that the fishery would remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a portion of the quota.

On November 27, 2018 (83 FR 60777), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 mt dw (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively, and a commercial retention limit of 25 LCS other than sandbar sharks per trip for directed shark limited access permit holders in those fisheries. NMFS published a proposed rule on September 11, 2018 (83 FR 45866), and invited and considered public comment. In the final rule, NMFS explained that if it appeared that the quota is being harvested too quickly, thus precluding fishing opportunities throughout the entire region (*e.g.,* if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and then later consider increasing the retention limit, perhaps to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2019, consistent with the applicable regulatory requirements. In April 2019, dealer reports indicated that landings had reached 21 percent of the quota, and NMFS therefore reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar sharks per vessel per trip on April 2, 2019 (84 FR 12524; April 2, 2019), after considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8). NMFS increased the retention limit to 36 LCS other than sandbar sharks per vessel per trip on June 25, 2019 (84 FR 29808), and increased the retention limit to 45 LCS other than sandbar sharks per vessel per trip on August 18, 2019 (84 FR 42827). Based on dealer reports through September 13, 2019, approximately 80 percent and 66 percent of the aggregated LCS and hammerhead shark quotas remain unharvested, respectively. Commercial shark landings in the Atlantic region at this point in the season are uncharacteristically low. A higher retention limit should increase the likelihood of full utilization of the quota in the Atlantic region, while also allowing the fisheries to operate for the remainder of the year.

Accordingly, as of October 9, 2019, NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 45 LCS other than sandbar sharks per vessel per trip to 55 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the

recreational retention limits for sharks and ''no sale'' provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 55 LCS other than sandbar sharks per vessel per trip for the rest of the 2019 fishing season, or until NMFS announces another adjustment to the retention limit or a fishery closure via a notification in the **Federal Register**, if warranted.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and equitable fishing opportunities. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2015) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and provide equitable fishing opportunities to fishermen throughout a region. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas while sharks are present in their region. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Atlantic region will begin on October 9, 2019. Prior notice would result in delays in increasing the retention limit and would adversely affect those shark fishermen that would otherwise have an opportunity to harvest more than the current retention limit of 45 LCS other than sandbar sharks per vessel per trip and could result in low catch rates and underutilized quotas. Analysis of available data shows that adjustment of the LCS commercial retention limit upward to 55 would result in minimal risks of exceeding the aggregated LCS and hammerhead shark quotas in the Atlantic region based on our consideration of previous years' data, in which the fisheries have opened in July. With quota available and with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise available through this action. Therefore, NMFS finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Adjustment of the LCS commercial retention limit in the Atlantic region is effective October 9, 2019, to minimize any unnecessary disruption in fishing patterns and to allow fishermen to benefit from the adjustment. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas.

Therefore, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(a)(2) and is exempt from review under Executive Order 12866.

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

Dated: October 3, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–21896 Filed 10–9–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 197
Thursday, October 10, 2019

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0764; Airspace Docket No. 19–AGL–25]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Winona, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Winona Municipal Airport-Max Conrad Field, Winona, MN. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Winona VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport. The geographic coordinates of the Winona Municipal Airport-Max Conrad Field, would also be 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: Comments must be received on or before November 25, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0764; Airspace Docket No. 19–AGL–25, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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.*

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 would amend the Class E airspace extending upward from 700 feet above the surface at Winona Municipal Airport-Max Conrad Field, Winona, MN, to support IFR operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0764; Airspace Docket No. 19–AGL–25.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending 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 Winona Municipal Airport-Max Conrad Field, and within 4-miles each side of the 119° bearing from the airport extending from the 6.6-mile radius to 11.6 miles southeast of the airport, and within 1-mile each side of the 299° bearing from the airport extending from the 6.6 mile radius to 9.3 miles northwest of the airport removing the exclusion verbiage as it is no longer required, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Winona VOR, which provided navigation information for the instrument procedures at this airports.

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 designation listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR 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 MN E5 Winona, MN [Amended]

Winona Municipal Airport-Max Conrad Field, MN
(Lat. 44°04′47″ N, long. 91°42′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Winona Municipal Airport-Max Conrad Field, and within 4 miles each side of the 119° bearing from the airport extending from the 6.6-mile radius to 11.6 miles southeast of the airport, and within 1mile each side of the 299° bearing from the airport extending from the 6.6-mile radius to 9.3 miles northwest of the airport.

Issued in Fort Worth, Texas, on October 2, 2019.

Steve Szukala,

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

[FR Doc. 2019–21959 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0679; Airspace Docket No. 18–ANM–18]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Walla Walla, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E4 surface area and Class E5 airspace extending upward from 700 feet above the surface of the earth at Walla Walla Regional Airport, Walla Walla, WA. This action proposes to remove a large area of Class E5 airspace extending upward from 700 feet above the surface to the east of the airport. The action also proposes to amend the Class E5 airspace extending upward from 700 feet above the surface to the northeast and southwest of the airport. Further, this action also proposes administrative corrections to the airport's legal description. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before November 25, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify

FAA Docket No. FAA–2019–0679; Airspace Docket No. 18–ANM–18, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 would amend the Class E airspace at Walla Walla Regional Airport, Walla Walla, Washington to support instrument flight rules (IFR) operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0679; Airspace Docket No. 18–ANM–18''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E4 airspace at Walla Walla Regional Airport extending upward from the surface within 2.4 miles each side of the 036° bearing extending from the 4.3-mile radius to 11.6 miles northeast of the Walla Walla Regional Airport. The action also proposes to remove Class E4 airspace to the southwest of the airport as it is not needed to contain aircraft on any procedure currently published for the airport. This airspace is designed to contain IFR aircraft descending below 1,000 feet above the surface of the earth.

This action also proposes to amend Class E5 airspace extending upward from 700 feet above the surface of the earth. The action will remove a large portion of the Class E5 airspace east of the airport and resize the airspace to the northeast and southwest of the airport as follows, within 4 miles each side of the 216° bearing extending from the 4.3-mile radius to 12.5 miles southwest of the airport, and within 4 miles east and 8 miles west of the 037° bearing extending from 6 miles to 22.2 miles northeast of the Walla Walla Regional Airport. This airspace is designed to contain IFR aircraft descending below 1,500 feet above the surface of the earth.

Lastly, this action proposes administrative updates to the Class D and Class E2 legal descriptions to replace ''Airport/Facilities Directory'' with ''Chart Supplement'' and update the airport's geographic coordinates to match the FAA's aeronautical database.

Class D, E2, E4, and E5 airspace descriptions are published in paragraphs 5000, 6002, 6004 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 D and Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR 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 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area

* * * * *

ANM WA E4 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05′33″ N, long. 118°17′03″ W)

That airspace extending upward from the surface within 2.4 miles each side of the 036° bearing extending from the 4.3-mile radius to 11.6 miles northeast of the Walla Walla Regional Airport.

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

* * * * *

ANM WA E5 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05′33″ N, long. 118°17′03″ W)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the 216° bearing extending from the 4.3-mile radius to 12.5 miles southwest of the airport, and within 4 miles east and 8 miles west of the 037° bearing extending from 6 miles to 22.2 miles northeast of the Walla Walla Regional Airport.

Issued in Seattle, Washington, on October 3, 2019.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–22109 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0767; Airspace Docket No. 19–AGL–26]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Neillsville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Neillsville Municipal Airport, Neillsville, WI. The FAA is proposing this action due to the decommissioning of the Neillsville non-directional radio beacon (NDB).

DATES: Comments must be received on or before November 25, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0767; Airspace Docket No. 19–AGL–26, at the beginning of your comments. You may also submit and review comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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.*

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 would modify Class E airspace at Neillsville Municipal Airport in support of standard instrument approach procedures for IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0767; Airspace Docket No. 19–AGL–26.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the

internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air-traffic/publications/airspace-amendments/*.

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Neillsville Municipal Airport, Neillsville, WI, and removing the Neillsville NDB, this action is necessary due to the decommissioning of the Neillsville NDB, and for the safety and management of instrument flight rules (IFR) operations at the airport.

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 designation listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR 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 WI E5 Neillsville, WI [Amended]

Neillsville Municipal Airport, WI
(Lat. 44°33′29″ N, long. 90°30′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Neillsville Municipal Airport.

Issued in Fort Worth, Texas, on October 2, 2019.

Steve Szukala,

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

[FR Doc. 2019–21960 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

RIN 1545–BP10

Contribution Limits Applicable to ABLE Accounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations related to the Internal Revenue Code (Code), which allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. The affected Code section was amended by the Tax Cuts and Jobs Act, signed into law on December 22, 2017. The Tax Cuts and Jobs Act allows certain designated beneficiaries to contribute a limited amount of compensation income to their own ABLE accounts.

DATES: Comments must be received by January 8, 2020.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–128246–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal at *www.regulations.gov* comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–128246–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–128246–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Julia Parnell, (202) 317–4086; concerning submissions of comments and requests for a public hearing, Regina Johnson at email address *fdms.database@irscounsel.treas.gov* and (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document contains proposed regulations related to section 529A of the Internal Revenue Code (Code), which allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. Section 529A was amended by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, (2017) (2017 Act), signed into law on December 22, 2017. The 2017 Act allows certain designated beneficiaries to contribute a limited amount of compensation income to their own ABLE accounts.

Background

1. The ABLE Act

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ''ABLE Act'') was enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014, Public Law 113–295, 128 Stat. 4010, (2014). The ABLE Act added section 529A to the Code. Section 529A allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. Section 529A was amended by the 2017 Act.

Prior to its amendment by the 2017 Act, section 529A(b)(2) stated that a program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted unless it is in cash, or if the contribution (other than a rollover contribution described in section 529A(c)(1)(C)) would result in aggregate contributions from all contributors in excess of the amount of the section 2503(b) gift tax exclusion for the calendar year in which the designated beneficiary's taxable year begins. Under section 529A(b)(2), rules similar to the rules of section 408(d)(4) apply to permit the return of excess contributions (with any attributable net income) on or before the due date (including extensions) of the designated beneficiary's income tax return. In addition, under section 529A(b)(6), a qualified ABLE program must provide adequate safeguards to ensure that total contributions do not exceed the State's limit for aggregate contributions under its qualified tuition program as described in section 529(b)(6). A qualified tuition program under section 529 is a program established by a State (or its agency or instrumentality) that permits a person to prepay or contribute to a tax-favored savings account for a designated beneficiary's qualified higher education expenses (QHEEs) or a program established by an eligible educational institution that permits a person to prepay a designated beneficiary's QHEEs.

2. Prior Rulemaking and Statutory Change

On June 22, 2015, the Treasury Department and the IRS published a Notice of Proposed Rulemaking (REG–102837–15) in the **Federal Register** (80 FR 35602) (the 2015 Proposed Regulations). More than 200 written comments were received in response to the 2015 Proposed Regulations and a public hearing was held on October 14, 2015.[1] In addition to these comments, several commenters asked the Treasury Department and the IRS to issue interim guidance to address three particular issues so that these programs could be established before the issuance of final regulations. In order to prevent a delay in the creation of ABLE programs, the Treasury Department and the IRS issued Notice 2015–81, 2015–49 I.R.B. 784 (Dec. 7, 2015), which describes how the Treasury Department and the IRS intend to revise three particular provisions of the proposed regulations under section 529A when those regulations are finalized.

Since the issuance of the 2015 Proposed Regulations and the Notice, two statutes have been enacted that amended one or more provisions of section 529A. On December 18, 2015, section 303 of the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act), was enacted as part of the Consolidated Appropriations Act, Public Law 114–113, 129 Stat. 2242, (2016). The PATH Act amended section 529A(b)(1), effective for taxable years beginning after December 31, 2014, by removing the requirement that a State's qualified ABLE program allow the establishment of an ABLE account only for a designated beneficiary who is a resident of that State or of a contracting State. Due to this amendment, the Treasury Department and the IRS intend to remove references to the residency requirement in the proposed regulations under section 529A when those regulations are finalized. The other statutory change was made in the 2017 Act as described in these proposed regulations.

3. The 2017 Act

The 2017 Act amended section 529A(b)(2)(B) to allow an employed designated beneficiary described in new section 529A(b)(7) to contribute, prior to January 1, 2026, an additional amount in excess of the limit in section 529A(b)(2)(B)(i) (the annual gift tax exclusion amount in section 2503(b), formerly set forth in section 529A(b)(2)(B)). This additional permissible contribution is subject to its own limit as described in section 529A(b)(2)(B)(ii). Specifically, this additional contributed amount may not exceed the lesser of (i) the designated beneficiary's compensation as defined by section 219(f)(1) for the taxable year, or (ii) an amount equal to the poverty line for a one-person household for the calendar year preceding the calendar year in which the taxable year begins. The 2017 Act also amended the section 529A(b)(2) flush language to require the designated beneficiary, or a person acting on behalf of the designated beneficiary, to maintain adequate records to ensure, and to be responsible for ensuring, that the requirements of section 529A(b)(2)(B)(ii) are met.

New section 529A(b)(7)(A) identifies a designated beneficiary eligible to make this additional contribution as one who is an employee (including a self-employed individual) with respect to whom there has been no contribution made for the taxable year to: a defined contribution plan meeting the requirements of sections 401(a) or 403(a); an annuity contract described in section 403(b); or an eligible deferred contribution plan under section 457(b). Section 529A(b)(7)(B) defines the term ''poverty line'' as having the meaning provided in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902).

The 2017 Act also amended section 529 to allow, before January 1, 2026, a limited amount to be rolled over to an ABLE account from the designated beneficiary's own section 529 qualified tuition program (QTP) account or from the QTP account of certain family members. The 2017 Act added section 529(c)(3)(C)(i)(III), which provides that a distribution from a QTP made after December 22, 2017, and before January 1, 2026, is not subject to income tax if,

[1] Comments related to the 2015 Proposed Regulations will be considered prior to finalizing them, which the Treasury Department and the IRS expect to occur in conjunction with the finalization of these proposed regulations.

within 60 days of the distribution, it is transferred to an ABLE account of the designated beneficiary or a member of the family of the designated beneficiary. Under section 529(c)(3)(C)(i), the amount of any rollover to an ABLE account is limited to the amount that, when added to all other contributions made to the ABLE account for the taxable year, does not exceed the contribution limit for the ABLE account under section 529A(b)(2)(B)(i), that is, the annual gift tax exclusion amount under section 2503(b). This limited rollover is described in more detail in Notice 2018–58, 2018–33 I.R.B. 305 (Aug. 13, 2018).

4. Notice 2018–62

To address the 2017 Act modifications to section 529A, the Treasury Department and the IRS published Notice 2018–62, 2018–34 I.R.B. 316 (Aug. 20, 2018), which announces the intent of the Treasury Department and the IRS to issue proposed regulations to implement these changes, and describes the anticipated rules to implement the statutory changes. No comments were received in response to the Notice. These proposed regulations incorporate, without substantive change, the anticipated rules described in that Notice.

Explanation of Provisions

1. Additional Contributions

The 2017 Act amended section 529A(b)(2)(B) to permit an employed or self-employed designated beneficiary described in section 529A(b)(7) to contribute to his or her ABLE account the lesser of the designated beneficiary's compensation for the taxable year or an amount equal to the poverty line for a one-person household for the calendar year preceding the calendar year in which the designated beneficiary's taxable year begins. These proposed regulations confirm that the employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A(b)(2)(B)(ii) are met and for maintaining adequate records for that purpose. In addition, to minimize burdens for the designated beneficiary and the qualified ABLE program, these proposed regulations provide that ABLE programs may allow a designated beneficiary or the person acting on his or her behalf to certify, under penalties of perjury, that he or she is a designated beneficiary described in section 529A(b)(7) and that his or her contributions of compensation do not exceed the limit set forth in section 529A(b)(2)(B)(ii).

2. Poverty Line

Section 529A(b)(7)(B) provides that the term poverty line referred to in section 529A(b)(2)(B)(ii) has the same meaning given to that term by section 673 of the Community Services Block Grant Act (42 U.S.C. 9902). These proposed regulations clarify that the poverty line in section 529A(b)(7)(B) is to be determined by using the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). Those guidelines vary based on locality. Specifically, there are separate guidelines for (1) the contiguous 48 states and the District of Columbia, (2) Alaska, and (3) Hawaii. Because the Treasury Department and the IRS have concluded that the poverty guideline that most closely reflects the employed designated beneficiary's cost of living is the most relevant for determining the contribution limit, these proposed regulations provide that a designated beneficiary's contribution limit is to be determined using the poverty guideline applicable in the state of the designated beneficiary's residence.

3. Return of Excess Contributions

Because section 529A(b)(2) provides that rules similar to those set forth in section 408(d)(4) regarding the return of excess contributions to an individual retirement account or annuity apply to ABLE accounts, these proposed regulations provide that a qualified ABLE program must return any contributions of the designated beneficiary's compensation in excess of the limit in section 529A(b)(2)(B)(ii) to the designated beneficiary.

Consistent with section 529A(b)(2), these proposed regulations provide that it will be the sole responsibility of the designated beneficiary (or the person acting on the designated beneficiary's behalf) to identify and request the return of any excess contribution of such compensation income. Such returns of excess compensation contributions must be received by the employed designated beneficiary on or before the due date (including extensions) of the designated beneficiary's income tax return for the year in which the excess compensation contributions were made. A failure to return excess contributions within this time period will result in the imposition on the designated beneficiary of a 6 percent excise tax under section 4973(a)(6) on the amount of excess compensation contributions.

Additionally, in order to minimize administrative burdens for the designated beneficiary and the qualified ABLE program, for purposes of ensuring that the limit on contributions made under section 529A(b)(2)(B)(ii) is not exceeded, the qualified ABLE program may rely on self-certifications, made under penalties of perjury, of the designated beneficiary or the person acting on the designated beneficiary's behalf.

Proposed Effective/Applicability Date

These regulations are proposed to apply to taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on these proposed regulations.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations will not impact a substantial number of small entities. These regulations primarily affect states and individuals and therefore will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of these proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any

person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

Notices 2015–81, 2018–58 and 2018–62 are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

Drafting Information

The principal author of these regulations is Julia Parnell, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.529A–8 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.529A–8 also issued under 26 U.S.C. 529A(g).

* * * * *

■ **Par. 2.** Section 1.529A–0, as proposed to be added at 80 FR 35602, June 22, 2015, is further amended by adding an entry for § 1.529A–8 in numerical order to read as follows:

§ 1.529A–0 Table of contents.

* * * * *

§ 1.529A–8 Additional contributions to ABLE accounts made by an employed designated beneficiary.

(a) Additional contributions to ABLE accounts made by an employed designated beneficiary.

(1) In general.

(2) Amount of additional contribution.

(b) Additional definitions.

(1) Employed designated beneficiary.

(2) Applicable poverty line.

(3) Excess compensation contribution.

(c) Example.

(d) Responsibility for ensuring contribution limit is met.

(e) Return of excess compensation contributions.

(f) Applicability date.

■ **Par.3.** Section 1.529A–1, as proposed to be added at 80 FR 35602, June 22, 2015, is further amended by revising paragraph (b)(3) to read as follows:

§ 1.529A–1 Exempt status of qualified ABLE program and definitions.

* * * * *

(b) * * *

(3) *Contribution* means any payment directly allocated to an ABLE account for the benefit of the designated beneficiary, including amounts transferred from a qualified tuition program under section 529 after December 22, 2017 and before January 1, 2026.

* * * * *

■ **Par. 4.** Section 1.529A-8 is added to read as follows:

§ 1.529A–8 Additional contributions to ABLE accounts made by an employed designated beneficiary.

(a) *Additional contributions by an employed designated beneficiary*—(1) *In general.* An employed designated beneficiary defined in paragraph (b)(1) of this section may contribute amounts up to the limit specified in paragraph (a)(2) of this section in addition to the annual amount described in section 529A(b)(2)(B)(i).

(2) *Amount of additional permissible contribution.* Any additional contribution made by the designated beneficiary pursuant to this section is limited to the lesser of—

(i) The designated beneficiary's compensation as defined by section 219(f)(1) for the taxable year; or

(ii) An amount equal to the applicable poverty line, as defined in paragraph (b)(2) of this section, for a one-person household for the calendar year preceding the calendar year in which the designated beneficiary's taxable year begins.

(b) *Additional definitions.* In addition to the definitions in § 1.529A–1(b), the following definitions also apply for the purposes of this section—

(1) *Employed designated beneficiary* means a designated beneficiary who is an employee (including an employee within the meaning of section 401(c)), with respect to whom no contribution is made for the taxable year to—

(i) A defined contribution plan (within the meaning of section 414(i)) with respect to which the requirements of sections 401(a) or 403(a) are met;

(ii) An annuity contract described in section 403(b); and

(iii) An eligible deferred compensation plan described in section 457(b).

(2) *Applicable poverty line* means the amount provided in the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for the State of residence of the employed designated beneficiary. If the designated beneficiary lives in more than one state during the taxable year, the applicable poverty line is the poverty line for the state in which the designated beneficiary resided longer than in any other state during that year.

(3) *Excess compensation contribution* means the amount by which the amount contributed during the taxable year of an employed designated beneficiary to the designated beneficiary's ABLE account exceeds the limit in effect under section 529A(b)(2)(B)(ii) and paragraph (a)(2) of this section for the calendar year in which that taxable year of the employed designated beneficiary begins.

(c) *Example.* The following example illustrates the principles of paragraphs (a)(2) and (b)(2) of this section. In 2019, A, the designated beneficiary of an ABLE account, lives in Hawaii. A's compensation, as defined by section 219(f)(1), for 2019 is $20,000. The poverty line for a one-person household in Hawaii was $13,960 in 2018. Because A's compensation exceeded the applicable poverty line amount, A's additional permissible contribution in 2019 is limited to $13,960, the amount of the 2018 applicable poverty line.

(d) *Responsibility for ensuring contribution limit is met.* (1) The employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A(b)(2)(B)(ii) and paragraph (a)(2) of this section are met and for maintaining adequate records for that purpose.

(2) A qualified ABLE program may allow a designated beneficiary (or the person acting on his or her behalf) to certify, under penalties of perjury, and in the manner specified by the qualified ABLE program that—

(i) The designated beneficiary is an employed designated beneficiary; and

(ii) The designated beneficiary's contributions of compensation are not excess compensation contributions.

(e) *Return of excess compensation contributions.* If an excess compensation contribution is deposited into or allocated to the ABLE account of a designated beneficiary, the qualified ABLE program must return that excess contribution, including all net income

attributable to the excess contribution, as determined under the rules set forth in § 1.408–11 (treating references to an IRA as references to an ABLE account, and references to returned contributions under section 408(d)(4) as references to excess compensation contributions), to the employed designated beneficiary. The employed designated beneficiary, or the person acting on the employed designated beneficiary's behalf, is responsible for identifying any excess compensation contribution and for requesting the return of the excess compensation contribution. The excess compensation contribution, if requested, must be received by the employed designated beneficiary on or before the due date (including extensions) of the Federal income tax return of the employed designated beneficiary for the taxable year in which the excess compensation contribution is made.

(f) *Applicability date.* The rules of this section apply to taxable years beginning after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **Federal Register**].

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–21477 Filed 10–9–19; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA16

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Notice of extension of time to submit comments.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** of August 12, 2019, seeking comments from the public regarding its proposed amendments to Part 103 of its Rules and Regulations, specifically concerning the Board's blocking charge policy, the voluntary recognition bar, and Section 9(a) recognition in the construction industry. The date to submit comments to the Notice is extended for 60 days.

DATES: Comments to the Notice of Proposed Rulemaking must be received by the Board on or before December 10, 2019. Comments replying to the comments submitted during the initial comment period must be received by the Board on or before December 24, 2019.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.*

Delivery—Comments should be sent by mail or hand delivery to: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov*. If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

Dated: October 4, 2019.

Roxanne Rothschild,

Executive Secretary.

[FR Doc. 2019–22041 Filed 10–9–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2018–0021]

RIN 2127–AM02

Federal Motor Vehicle Safety Standard No. 111, Rear Visibility

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: NHTSA seeks public comment on permitting camera-based rear visibility systems, commonly referred to as ''Camera Monitor Systems'' or ''CMS,'' as an alternative to inside and outside rearview mirrors. Federal motor vehicle safety standard (FMVSS) No. 111, ''Rear Visibility,'' currently requires that vehicles be equipped with rearview mirrors to provide drivers with a view of objects that are to their side or to their side and rear. This notice responds to two rulemaking petitions from manufacturers seeking permission to install CMS, instead of outside rearview mirrors, on both light vehicles and heavy trucks. This ANPRM builds on the agency's prior efforts to obtain supporting technical information, data, and analysis on CMS so that the agency can determine whether these systems can provide the same level of safety as the rearview mirrors currently required under FMVSS No. 111.

DATES: Written information should be submitted by December 9, 2019.

ADDRESSES: You may submit comments identified by the docket number in the heading of this document or by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQs''.

• *Mail:* Docket Management Facility. M–30, U.S. Department of Transportation. 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal Holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit comments, must include the docket number identified in the heading of this notice.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Andrei Denes, Office of Crash Avoidance Standards (Phone: 202–366–9544; FAX: 202–366–7003) or Mr. Daniel Koblenz, Office of Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Part of NHTSA's responsibility in carrying out its safety mission is not only to develop and set new safety standards for new motor vehicles and motor vehicle equipment, but also to modify existing standards as appropriate to respond to changing circumstances such as the introduction of new technologies. Examples of previous technological transitions that triggered the need to adapt and/or replace requirements in the FMVSS include the replacing of analog dashboards by digital ones, the replacing of mechanical control systems by electronic ones, and the first production of electric vehicles in appreciable numbers.

NHTSA is publishing this ANPRM to gather information and receive feedback to enable the agency to decide whether (and if so, how) to propose amending FMVSS No. 111, ''Rear visibility,'' to permit camera-based rear visibility systems (commonly referred to as ''Camera Monitor Systems'' or ''CMS'' [1]) as an alternative compliance option in lieu of outside rearview mirrors or in lieu of all rearview mirrors, both inside and outside ones. Specifically, NHTSA hopes this ANPRM, through the public comment process, will provide the agency with additional safety-related research and data to support a potential future rulemaking on this subject.

Currently, FMVSS No. 111 requires that all passenger cars, multipurpose passenger vehicles, trucks, buses, school buses, motorcycles be equipped with one or more rearview mirrors for rear visibility. However, in recent years, there has been a growing interest among industry stakeholders in using CMS to supplement or replace rearview mirrors on both light and heavy vehicles. These systems use rear-facing cameras mounted outside of the vehicle to capture and transmit images to electronic visual displays mounted inside the vehicle, in view of the driver. Over the past few years, the International Organization for Standardization (ISO) has developed and published performance requirements and test procedures for these systems. These requirements and procedures have been incorporated into the most recent update to the United Nations Economic Commission for Europe's Regulation No. 46 (UNECE R46), which has been adopted in a number of countries in Europe and Asia. We note that, to date, only two vehicle models equipped with a CMS in place of rearview mirrors have been offered for sale commercially and only one of those two is in currently production anywhere in the world, although manufacturers have announced plans to offer additional CMS-equipped models.

In the United States, industry stakeholders have petitioned NHTSA to modify the requirements of FMVSS No. 111 to allow the installation of CMS as a compliance option. To date, NHTSA has received two such petitions: one pertaining to light vehicles from the Alliance of Automobile Manufacturers (the Alliance) and Tesla, Inc. and one from Daimler Trucks North America relating to heavy vehicles.[2]

This ANPRM seeks information that the agency believes would provide fuller understanding of the merits of these rulemaking petitions. One reason why NHTSA is seeking additional information is because research conducted by NHTSA and others conducted between 2006 and 2017 has consistently shown that prototype and preproduction CMS systems can exhibit safety-relevant performance issues such as blooming.[3] Moreover, the CMS-related research of which NHTSA is aware does not focus on human factors issues, such as how well drivers may be able to acclimate to the use of CMS and potentially different image locations. (We note that NHTSA raised these concerns and requested additional information in letters sent to the Alliance and Tesla in 2016, but has not

[1] In the balance of this notice, NHTSA uses the term ''Camera Monitor System'' or ''CMS,'' instead of the terms ''camera-based rear visibility systems'' and ''camera-based visibility system''. The petitioners urge that rulemaking to permit CMS be based on ISO 16505, and UNECE R46.

[2] In addition, NHTSA has received exemption petitions from some manufacturers requesting permission to install such systems in lieu of FMVSS No. 111-compliant mirrors, and the Federal Motor Carrier Safety Administration (FMCSA) has recently granted a similar exemption petition for commercial trucks.

[3] Blooming is a type of image distortion that occurs on a video display when the scene being shown on the display includes an intensely bright light source. On the display, the light from that light source bleeds or spills into adjacent areas of the image. The spillover effect is particularly noticeable in any dark areas of the image immediately adjacent to the bright area. This could potentially occur in a CMS-equipped vehicle when other vehicles' headlights shine at night into the CMS camera.

yet received a response.[4]) NHTSA hopes that the comments received in response to this ANPRM will provide the agency with information (along with data) that addresses these concerns.

II. Background

a. FMVSS No. 111

FMVSS No. 111, ''Rear visibility,'' sets out performance requirements for new motor vehicles for the purpose of ''reduc[ing] the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.'' [5] Among these is the requirement that all passenger cars, multipurpose passenger vehicles, trucks, buses, school buses, and motorcycles, be equipped with inside and, at least on the driver's side, outside rearview mirrors. The mirrors must be must be mounted according to certain specifications, and must provide the driver with a specified minimum field of view. The FMVSS No. 111 requirements relating to rearview mirrors have been largely unchanged for several decades.[6]

Although FMVSS No. 111 sets the minimum requirements for mirrors, an overwhelming majority of vehicle manufacturers voluntarily exceed the minimum rearview mirror requirements set forth in FMVSS No. 111 to satisfy customer demand and ensure an efficient, global-scale manufacturing and marketing process.

Manufacturers voluntarily exceed the standard's rearview mirror requirements in two major ways. First, most light vehicle manufacturers voluntarily equip new passenger cars with a passenger-side outside rearview mirror, in addition to the required inside rearview mirror, even though such a passenger-side mirror is required for light vehicles only if the inside rearview mirror does not meet field of view requirements. A driver-side outside rearview mirror is required on all vehicles. Second, most manufacturers equip vehicles with outside rearview mirrors that are substantially larger than required under the standard.

b. Camera Monitor Systems

In recent years, there has been growing interest among industry stakeholders both in the United States and abroad in being allowed to install CMS, in lieu of inside and/or outside rearview mirrors.[7] A vehicle equipped with a CMS uses exterior cameras mounted on the sides and/or rear of the vehicle to capture an image of the rear and/or side of the vehicle, which the system transmits to one or more electronic visual displays are located in the occupant compartment within view of the driver.

A CMS's cameras are typically mounted on the exterior of the vehicle near where traditional rearview mirrors would be installed, so that they provide a similar field of view. Conversely, the visual displays showing the rearview image to the driver may be mounted in a variety of locations in the interior of the vehicle, because there is no need for there to be a direct line of sight between the cameras and the visual displays. Although most prototype CMSs that NHTSA has seen have displays mounted on or near the vehicle's A-pillars, in the vicinity of where a traditional outside rearview mirror would be located, other configurations are possible.[8] For example, CMS could use a single electronic visual display located in the position of a traditional inside rearview mirror or in the center of the dashboard to display images from side-mounted cameras either separately or as a combined (*i.e.,* ''stitched'') image that integrates a center rearview image.[9]

c. International Regulatory Efforts

International standards and regulatory bodies have taken steps in recent years to develop performance standards and test procedures for CMS. Most notably, in 2015, the ISO published ISO 16505, ''Road vehicles—Ergonomic and performance aspects of Camera Monitor Systems—Requirements and test procedures,'' which includes detailed test procedures for evaluating the performance of cameras and displays used in CMSs. In addition, UNECE R46, the type-approval standard used by most European countries for ''devices for indirect vision,'' [10] was amended in 2016 to incorporate much of ISO 16505 and now permits CMSs.[11] CMSs are now permitted as an alternative to mirrors in the dozens of countries for which UNECE R46 is in force without objection.[12] We note that, to date, only two vehicle models equipped with a CMS in place of rearview mirrors have been offered for sale commercially, and only one of those two is in production anywhere in the world. [13] However, at least one manufacturer has announced plans to offer further CMS equipped models.[14]

d. Consideration of CMS in the United States

In the United States, industry stakeholders have requested that NHTSA amend FMVSS No. 111 to permit CMS as an alternative to rearview mirrors. In 2014, NHTSA received a petition from the Alliance and Tesla, Inc. requesting that the agency modify the requirements of FMVSS No. 111 to ''allow the use of camera-based rear and/or side vision systems [*i.e.,* CMS] as a compliance *option* for meeting the performance requirements specified for rear and/or side view mirrors for each location where conventional mirrors are currently required or permitted (*i.e.,* applicable portions of 49 CFR 571.111 S.5, S.6).'' [15] In 2015, NHTSA received a similar petition relating to heavy vehicles from Daimler Trucks North America (DTNA).[16] Both of these

[4] These letters may be found in the docket identified in the header of the document.

[5] 49 CFR 571.111.

[6] We note that, although the agency recently amended FMVSS No. 111 in 2014 to require that most vehicles provide a backup camera system, that requirement will not be discussed in this notice. Although CMS and backup camera systems would likely operate in a similar way, the systems serve different safety purposes and are used in different circumstances, as backup cameras are only intended to assist the driver while backing up. Accordingly, NHTSA believes that the safety concerns with CMS are not comparable to those with backup camera systems, but lessons from backup cameras can and will inform any potential rulemaking.

[7] It should be noted that, while FMVSS No. 111 requires that new vehicles be equipped with mirrors, it does not prohibit manufacturers from supplementing those mirrors with CMS or other features, and in fact, some manufacturers have been offering CMSs as optional equipment. For example, since 2013, Honda has been offering its LaneWatch™ system which uses a camera in the passenger-side outside rearview mirror to capture the area to the right of the vehicle and displays this side rearview image in the vehicle's center console display when the driver activates the right turn signal or the LaneWatch™ button is pressed.

[8] See, *e.g.,* photo of the ''interior of a Volkswagen XL–1 concept with a side-view camera has a screen on the passenger side to check outside the vehicle.'' *http://www.autonews.com/article/20140407/OEM06/304079935/teslas-push-to-replace-side-view-mirrors-sparks-safety-fears.* Accessed January 30, 2018.

[9] ''Gentex to Offer Unique Three-Camera Automotive Rear Vision System'' January 5, 2017 *https://ir.gentex.com/news-releases/news-release-details/gentex-offer-unique-three-camera-automotive-rear-vision-system* Accessed March 4, 2019.

[10] UNECE R46 sets out field of view requirements that are comparable to those for inside and outside mirrors in FMVSS No. 111. Prior to the 2016 revision, UNECE R46 required that vehicles meet those field of view requirements using mirrors.

[11] See Appendix for a brief description of the UNECE R46 CMS requirements.

[12] See ''Adoption of Amendments to Regulation No. 46'' (July 10, 2017), *https://treaties.un.org/doc/Publication/CN/2017/CN.358.2017-Eng.pdf.* Accessed May 6, 2019.

[13] 2019 Lexus ES CMS version commercialized only in Japan, and the 250-vehicle limited production 2014 VW XL–1 commercialized in E.U. under the type approval process before the publication of the latest version of UNECE R46, allowing CMS.

[14] Audi E-tron CMS option is expected to be available for purchase in E.U. in 2019.

[15] This petitions and related documents can be found at Docket No. NHTSA–2018–0021–0001.

[16] *Id.*

petitions cited improved fuel economy (not safety) as the primary benefit of allowing this change. Neither petition provided objective data or analysis to aid the agency in determining the net effect on safety of amending FMVSS No. 111 to permit a CMS compliance option for rear visibility.[17] [18]

Although NHTSA has not yet formally responded to these petitions,[19] in September 2017, Velvac (a mirror manufacturer for the truck, commercial and RV industries) sent a letter to NHTSA expressing concerns over possible safety impacts should NHTSA decide to grant a petition to amend FMVSS No. 111 to permit CMS as a compliance option.[20] Velvac argued that ISO 16505 should not be applied to U.S. vehicles without making changes to the requirements to account for U.S.-specific vehicle configurations and applications. Velvac also suggested that a hybrid regulatory approach that would require the installation of both a camera and a mirror would be preferable. Velvac's reasoning was that FMVSS No. 111 already provides manufacturers the flexibility to use a hybrid approach (CMS technology in combination with an aerodynamic FMVSS No. 111-compliant mirror system) to achieve the fuel economy, aerodynamic, and visibility improvements while still addressing the human factors issues and maintaining a fail-safe mechanism.

The issue of permitting CMS as a compliance option for rear visibility was again raised in comments submitted in response to the DOT's October 2, 2017 Notice of Regulatory Review (82 FR 45750).[21] Comments by the Alliance reiterated its support of its rulemaking petition to amend FMVSS No. 111 to improve fuel economy, and further asserted that CMS could expand the driver's field of view.[22] Comments by the Truck and Engine Manufacturers Association also supported amending FMVSS No. 111 on the basis that installing CMS, in lieu of mirrors, on large trucks would reduce aerodynamic drag and potentially expand the driver's field of view.[23]

III. Summary of Research

To evaluate the safety impacts of CMS, NHTSA has conducted its own research and testing, examined the research and testing done by others, and requested research data from industry stakeholders. This research is summarized below. In addition, NHTSA's own research reports on this subject can be found in the docket for this ANPRM.

From 2006 to 2011, NHTSA conducted a multi-year research project to develop of performance specifications for a CMS that would supplement (rather than replace) traditional mirrors on heavy vehicles.[24] [25] [26] The CMS studied in this research was designed to supplement traditional mirrors by providing ''enhanced views to the sides and rear of a heavy vehicle with an operating envelope that includes daytime and nighttime, as well as clear and inclement weather.'' [27] NHTSA believed that such a supplemental CMS would be beneficial to safety because it would improve the situational awareness of the heavy vehicle driver, thereby reducing sideswipe crashes when heavy vehicles merge or change lanes. To explore CMS performance specifications, researchers conducted analyses of driver needs and human factors, examinations of video technology, systems analyses, focus groups and on-road tests. Researchers also conducted a study that surveyed commercial drivers using supplemental CMS, in which they observed neutral and potentially positive findings with respect to safety-critical events and drivers' forward attention.[28] They also identified a number of potential safety concerns or challenges. For example, drivers indicated that the glare produced from the system's electronic visual displays was ''too bright and affected their ability to see details in the forward roadway'' and that ''glare from the visual displays could be uncomfortable at night.'' [29]

In 2015, the German Federal Highway Research Institute (BASt) published a report summarizing a study that directly compared outside rearview mirrors with a CMS for side rearview image display in passenger vehicle models and heavy trucks under various testing conditions.[30] The study concluded that a CMS that meets ''specific quality criteria'' can provide ''sufficient'' rear visibility for drivers.[31] The study also found that the change from outside rearview mirrors to a CMS requires a period of driver familiarization, but noted that the familiarization period is ''relatively short,'' and that it does not necessarily result in ''safety-critical situations.'' [32] The BASt study provided valuable insight into the operational capabilities of CMS technology at the time, and looked into some human factor issues, such as how long or frequently drivers glanced at the CMS when performing various driving maneuvers as compared to mirrors. However, the BASt study left a number of questions unanswered, including what minimum quality criteria for a CMS would provide the same level of safety as mirrors, and whether the time it takes for a driver to become acclimated to the system will affect vehicle safety. The study also

[17] DTNA's petition argued that CMS ''can provide an expanded field of view'' and ''eliminate blind spots,'' and asserted that the ''technology can achieve the same or better level of safety as outside rearview mirrors in providing the driver a view to the rear along both sides of the vehicle.'' However, it did not provide evidence to support these claims.

[18] While recent interest among stakeholders has focused primarily on replacing outside mirrors with CMS, at least one manufacturer—Cadillac—has commercially produced a passenger car equipped with a CMS which provides drivers with a view of objects to the rear. We explained in a 2016 interpretation that Cadillac's CMS, which is integrated into the vehicle's inside mirror, was permissible because FMVSS No. 111 does not require that a passenger car's inside mirror meet the inside mirror field-of-view requirements (S5.1.1), if the vehicle is equipped with compliant driver's and passenger's side outside mirrors. See letter to Brian Latouf (Feb. 22, 2016), available at *https://www.nhtsa.gov/interpretations/full-display-mirror-system-1-gm-feb-11*.

[19] On June 30, 2016, in response to the Alliance/Tesla petition, NHTSA sent a letter to both petitioners requesting additional information to enable the agency to evaluate the petition. The safety-relevant questions posed in the letter focused on human factors information gaps and performance concerns, and requested input regarding performance requirements and test procedure details that would be needed to ensure that camera-based systems provide an equivalent level of safety to that of standard rearview mirrors. NHTSA notes that, because the agency did not receive a complete response to that letter from either petitioner, many of the questions in this ANPRM are based on the questions in that letter.

[20] Docket No. NHTSA–2017–0007–0005.

[21] In that notice, the Department sought public comments on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification.

[22] Docket No. DOT–OST–2017–0069–2700.

[23] Docket No. DOT–OST–2017–0069–2786.

[24] ''Development of a Performance Specification for Camera/Video Imaging Systems on Heavy Vehicles—Final Report: Specifications.'' July 2008, DOT HS 810 958. National Highway Traffic Safety Administration.

[25] ''Development of a Performance Specification for Camera/Video Imaging Systems on Heavy Vehicles—Final Report: Supporting Research.'' July 2008, DOT HS 810 960. National Highway Traffic Safety Administration.

[26] ''Field Demonstration of Heavy Vehicle Camera/Video Imaging Systems: Final Report.'' June 2011, DOT HS 811 475. National Highway Traffic Safety Administration.

[27] *Id.*

[28] ''Field Demonstration of Heavy Vehicle Camera/Video Imaging Systems: Final Report.'' June 2011, DOT HS 811 475. National Highway Traffic Safety Administration.

[29] *Id.* The report concluded that the issue of display glare was ''resolvable,'' although subsequent research suggests the issue still persists in more advanced CMS displays.

[30] ''Camera-Monitor Systems as a Replacement for Exterior Mirrors in Cars and Trucks'' (2015). Federal Highway Research Institute (BASt).

[31] *Id.*

[32] *Id.* According to the study, a ''safety critical'' task is one that requires four glances at the CMS, and that the glances have a mean duration of more than 2 seconds.

notes, but does not explore, the safety impact of the inherent differences between the image provide by a CMS and the image provided by a mirror. Specifically, the BASt study notes that mirrors provide 3-dimensional spatial information to drivers,[33] and that mirrors allow drivers to change the field of view through head movements, neither of which is possible with a CMS.

In 2017, NHTSA conducted additional testing to further evaluate the performance of prototype light vehicle CMS to determine whether there were any potential safety concerns, with particular focus on the quality of the image displayed by the CMS.[34] NHTSA's study compared the observed performance of a prototype CMS installed on a MY 2016 Audi A4, with traditional mirrors installed on a 2017 Audi A4. Researchers compared the performance of the prototype CMS with traditional rearview mirrors in a variety of environments, including public roads, test track courses, and a laboratory. The systems were tested in different environments, including public roads, laboratories, and test track facilities. Tests were performed in both day and night conditions, and in conditions with various levels of precipitation.[35] Although researchers found that the CMS was generally usable in most environments, and provided a better image than mirrors in certain conditions (such as in dusk or dawn lighting conditions), researchers identified a number of potential safety concerns, including:

- The image appeared to be horizontally compressed, such that objects displayed on the CMS screen were narrower and thus more difficult to detect.
- The CMS display was mounted lower than traditional mirrors, which may be temporarily disorienting for drivers. (It should be noted, however, that despite initial disorientation, drivers were able to acclimate to the CMS.)
- The display appeared very bright in certain conditions, even when set to ''nighttime'' mode, which may negatively impact the driver's ability to see obstacles at night.
- The system appeared to have blooming and lens flare that exceeded the level permitted under the new ISO standard for CMS under certain conditions.
- In rainy conditions, droplets on the lens would obscure the image displayed to the driver.

The full report describing this study along with related documents may be viewed online in the docket for this ANPRM.

In addition to the government-sponsored research described above, NHTSA is aware of two other studies that examined relevant issues relating to rearview display locations. The first of these, is a naturalistic study by Ali and Bazilah published in 2014, in which researchers observed the on-road driving behavior of subjects using vehicles equipped only with CMS and no rearview mirrors.[36] [37] The study found that the use of the CMS in the study improved drivers' attention to the forward roadway, but increased off-road downward glances at the center rearview display and motion sickness, leading the authors to recommend against a low location for a rearview display. In 2016, Large et al. published a similar study based on observations of subjects using a driving simulator of a vehicles equipped with a CMS. Researchers analyzed drivers' eye glance behavior and subjective feedback for five layouts of three in-vehicle displays (one rear and two side view displays) versus traditional mirrors during overtaking maneuvers performed without urgency.[38] The study found that subjects tended to prefer a CMS display layout that matched traditional mirror locations.

Finally, NHTSA has been made aware through media reports that some portion of the driving population not be physiologically capable of using CMS. In February of 2018, Steve Downing, the Chief Executive Officer of Gentex, Inc. (a CMS manufacturer), stated that the company had observed that ''roughly 5 to 10 percent of motorists suffer motion sickness or have depth-of-vision problems'' when viewing the video image.[39] NHTSA researchers have personally experienced this phenomenon when driving CMS-equipped test vehicles, but this information is, at present, anecdotal. NHTSA is not aware of any research having been done in this area, but the possibility that some percentage of drivers cannot use a CMS is something that NHTSA believes deserves further research.

IV. Subjects on Which NHTSA Seeks Public Comment

Although NHTSA believes that CMS is a promising technology, the agency has some lingering safety concerns that it believes should be addressed prior to deciding whether to propose amending FMVSS No. 111 to permit CMS as a compliance option for rear visiblity. Accordingly, the agency has compiled a list of issues on which the agency requests additional information to adequately evaluate the safety of permitting CMS as an alternative compliance option to rearview mirrors. NHTSA invites comments on all aspects of permitting camera-based technologies to be installed as an alternative to mirrors to meet the FMVSS No. 111 rear visibility requirements. However, the agency requests that commenters provide as much research, evidence, and/or objective data as possible to support their comments to inform the agency in determining the appropriate next steps.

Existing Industry Standards

(1) Please provide research data concerning the safety impacts of replacing rearview mirrors with CMS. Please explain your view of the significance of those data. In addition, please explain your views on how CMS-equipped vehicles would impact light and heavy vehicle driver behavior and situational awareness while driving.

(2) Are the physical properties of mirrors necessary to meet the stated purpose of FMVSS No. 111 to provide a ''clear and reasonably unobstructed view?'' As an example, because each eye of a driver viewing objects reflected in a mirror has a slightly different angle of view of those objects, just as the eyes of a driver viewing those objects directly would have, mirrors provide depth perception similar to that provided by direct vision. As another example, mirrors offer drivers the possibility to modify their field of view rapidly by

[33] Although the images that mirrors produce are 2-dimensional, mirrors permit drivers to perceive depth through stereoscopy.

[34] ''Examination of Prototype Camera-Based Visibility System for Light Vehicle Outside Mirror Replacement'' (2018), DOT HS 812 582.

[35] Since NHTSA had access to the leased system-equipped vehicle for only a short period of time, a limited amount of testing was performed. Tests performed were ones for which needed equipment and test facilities were readily available.

[36] Mohamed Ali, J.S. and Bazilah, F. (2014). ''Mirrorless Car: A Feasibility Study.'' Applied Mechanics & Materials, 663: 649–654.

[37] The sideview CMS screens (which replaced the outside rearview mirrors) were positioned in the dashboard immediately to the left and right sides of the instrument panel, while the center rearview CMS screen (which replaced the inside rearview mirror) was positioned in place of the instrument panel.

[38] Large, D.R., Crundall, E., Burnett, G., Harvey, C. and Konstantopoulos, P. (2016). ''Driving without Wings: The Effect of Different Digital Mirror Locations on the Visual Behaviour, Performance and Opinions of Drivers.'' Applied Ergonomics 55: 138–148.

[39] ''Gentex's two-way mirror strategy Balancing core product with advanced digital displays'' February 19, 2018. Automotive News. *http://www.autonews.com/article/20180219/OEM06/180219767/gentex-mirrors-technology.* Accessed October 18, 2018.

looking at the mirror from different angles. To what extent could possible CMS features which cannot be provided using mirrors (*e.g.,* zoom, night vision) offset the loss of these mirror-specific properties?

(3) We seek comment on the performance of current world-market vehicles equipped with CMS when evaluated according to the ISO 16505/UNECE R46 standards. In particular, we seek comment on the performance requirements in these standards, and the on-road performance of CMS that meet these standards. Please identify any performance requirements for CMS that you believe are not stringent enough, are too stringent, or are unnecessary, and explain the basis for your beliefs. Please identify any requirements that you believe should be added and explain the basis for your beliefs. Which CMS have performed relatively well, and which have performed relatively poorly, on the road? What explains the difference in performance?

System Field of View and Related Test Procedures

(4) We seek comment on whether and, if so, why minimum field of view requirements for CMS should differ from the current minimum field of view requirements for mirrors under FMVSS No. 111. Petitioners have stated that providing drivers with expanded views, larger than those required by FMVSS No. 111, would be advantageous. What data exist to support this assertion? What, if any, potential advantages and disadvantages, such as increased eye glance durations, may be observed for wide-view images? Please provide research or data that addresses how wider views will affect image quality.

(5) We seek comment on whether NHTSA should permit CMSs that use multiple cameras to provide multiple fields of view to the driver in the same image display area. In particular, we seek comment on the safety benefits/disbenefits of permitting multiple fields of view. As an example, CMS that operate using multiple fields of view might have missing sections on the processed image, or image latency issues stemming from increased processing time. What are the concerns, if any, regarding a multi-camera visibility system and how can they be mitigated?

(6) NHTSA considered whether there might be any opportunities to combine either the cameras or the displays for the CMS with the camera or display for backup camera system that is required by FMVSS No. 111. The agency tentatively concludes that there would not be any such opportunities. Although CMS and backup camera systems would likely operate in a similar way, the systems serve different safety purposes and are used in different circumstances. Specifically, the purpose of a CMS would be to assist the driver in avoiding all crashes during normal driving, while the purpose of a backup camera is to assist the driver in avoiding backover crashes while in reverse. Perhaps more important, given the likely differences between the field of view and display image quality parameters that would apply to CMS versus backup camera systems, NHTSA believes it is unlikely that it would be technically possible to combine the two systems in such a way that they share either a camera or display monitor.[40] NHTSA requests comments on this tentative conclusion.

Image Quality and Related Test Procedures

(7) We seek comment on the minimum quality of the image presented on a CMS electronic visual display to provide the same level of safety as traditional FMVSS No. 111-compliant mirrors, as well as how image quality could be objectively measured. In particular, we seek comment on what would be the appropriate minimum camera and visual display parameters and performance metrics for a CMS (*i.e.,* camera/display resolution, screen brightness, contrast, color, tone, and their adjustments). Should the parameters and metrics for a CMS differ from those for a backup camera system and, if so, how and to what extent? To what extent do existing CMS regulations (*e.g.,* ISO 16505/UNECE R46) provide objective and repeatable performance requirements and test procedures to evaluate image quality? To the extent that those regulations do not provide such requirements and procedures, what changes or additions would need to be made? What new procedures, if any, would be needed to evaluate image quality appropriately and what has been done to develop such procedures?

(8) We seek comment on what disruptive display aberrations (blooming, etc.) should be addressed if the agency were to develop a CMS performance standard. To what extent do existing CMS regulations (*e.g.,* ISO 16505/UNECE R46) provide objective, and repeatable performance test procedures to evaluate display aberrations? What new procedures, if any, would be needed to evaluate display aberrations appropriately and what has been done to develop such procedures?

Rearview Image Display Type Related Human Factors

(9) We seek comment on what research has been done to identify and address human factors issues like eye strain or visual fatigue from long periods of intermittent electronic visual display viewing. While we are particularly interested in research comparing driver eye strain and/or visual fatigue for users of a CMS versus users of traditional rearview mirrors, other analogous research could be useful.

(10) We seek comment on research concerning differences in the ability of drivers to visually discern and focus on objects in an electronic visual display as compared to objects reflected by traditional rearview mirrors.

(11) We seek comment on how a driver should be alerted that a CMS is not operating correctly, such as during a malfunction or a software update.

Side Rearview Image Display Locations, Driver Acclimation, and Related Test Procedures

(12) We seek comment on whether and how placing the CMS displays in non-traditional locations (*e.g.,* in the center console) would affect vehicle safety, as compared to placing the displays close to where the outside rearview mirrors would be mounted near the A-pillars. In particular, we seek research concerning the impact of different image locations on the level of safety and performance among any driver demographic, and whether different image locations may lead to driver confusion.

(13) We seek comment on whether research has been performed concerning the impacts of glare from sunlight and other vehicles' headlights on the CMS display, and whether test procedures have been developed to measure glare. If performance requirements and test procedures have not yet been developed to address these problems, when and how can they be developed? What are potential strategies to mitigate glare to ensure that useful images would be provided to drivers over the greatest range of conditions possible.

Camera Durability, Reliability, and Related Test Procedures

(14) We seek comment on the anticipated lifespan of the electronic visual display and camera components

[40] NHTSA believes that sharing a camera would not be possible because the CMS camera would need to be aimed much higher than the backup camera, and that sharing a single display area would not be possible because both the CMS and backup camera images would need to be displayed simultaneously to provide the driver with all required fields of view when the vehicle is in reverse.

that would be installed in a typical CMS. Will the performance (*e.g.,* display brightness) of components be maintained within specifications consistent with desired image quality over that lifespan, or will performance decrease due to age and/or being subject to outdoor conditions with wide temperature ranges and precipitation?

(15) We seek comment on the anticipated reliability of CMS as compared to outside rearview mirrors, including any reliability data that may be available for production or prototype CMSs.

(16) We seek comment on the anticipated replacement cost for a CMS that becomes inoperable due to damage or malfunction, and how that cost compares to the replacement cost of traditional powered and unpowered outside rearview mirrors.

(17) We seek comment on whether and, if so, how a CMS can be weatherproofed to prevent condensation, or large water droplets, forming inside the camera enclosure, which could reduce image clarity. NHTSA has observed condensation in cameras mounted on the underside of outside rearview mirrors of recent model year production vehicles resulting in part of the camera view being unusable (*e.g.,* the water blocks a portion of the camera's field of view). How should adequate weatherproofing be defined? Would the durability tests in FVMSS No. 111, S14.3 for backup cameras be sufficient, and if so, why? What other test procedures exist for demonstrating adequate weatherproofing of cameras, and have those procedures been validated?

(18) Depending on the mounting location, cameras may be subject to environmentally-caused lens obstructions (*e.g.,* dirt, ice, rain drops). We seek comment on how to prevent or mitigate such lens obstructions. What performance requirements and associated test procedures simulating these conditions have been developed to evaluate whether the camera is providing a useful image?

System Availability When Vehicle Ignition Is Off

(19) Although it is not one of the primary safety purpose of rearview mirrors, drivers often use the outside rearview mirrors after turning off the ignition and preparing to exit the vehicle to determine whether it is safe to open the vehicle door when parked alongside a traffic lane. We seek comment on whether NHTSA consider requiring that a CMS be capable of serving this function by being operational in some capacity either at all times or for a specified period of time after opening the driver's car door. What new performance criteria would need to be developed for this purpose and what has been done to develop those criteria?

Miscellaneous

(20) Are there any other safety concerns that are closely related to the performance of CMS that are not addressed in this notice? If so, what are they, and what is the degree of their importance?

(21) We seek comment on the potential short-term and long-term economic impacts of CMS. In particular, we seek comment on the level of consumer interest in vehicles equipped with CMS. We also seek comment on the extent of reduced drag associated with the installation of CMS and on the resulting amount of improved fuel economy. Finally, we seek comment on the magnitude of the cost differential between equipping a vehicle with CMS and equipping a vehicle with rearview mirrors, and on the extent to which improved fuel economy would offset increased equipment costs associated with CMS.

V. Public Participation

(a) How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of this ANPRM. NHTSA will consider the comments and information received in developing its eventual proposal for how to proceed on permitting CMS technology as a compliance option for the outside rearview mirror requirements of FMVSS No. 111.

(b) How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed in the correct docket, please include the docket number of this document (NHTSA–2018–0021) in your comments.

Your primary comments should not be more than 15 pages long. However, you may attach additional documents, such as supporting data or research, to your primary comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submission. Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf;* DOT's guidelines may be accessed at *https://www.transportation.gov/sites/dot.gov/files/docs/DOT%20Information%20Dissemination%20Quality%20Guidelines.pdf.*

(c) How can I be sure that my comments were received?

If you submit comments by hard copy and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you submit comments electronically, your comments should appear automatically in Docket No. NHTSA–2018–0021 on *https://www.regulations.gov.* If they do not appear within two weeks of posting, we suggest that you call the Docket Management Facility at 1–800–647–5527.

(d) How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you must submit three copies of your complete submission, including the information that you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

In addition, you should submit a copy (two copies if submitting by mail or hand delivery) from which you have deleted the claimed confidential business information to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

(e) Will the agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, NHTSA will also consider comments received after that date.

(f) How can I read the comments submitted by other people?

You may read the comments received at the address given in the **ADDRESSES** section. The hours of the docket are indicated above in the same location. You may also read the comments on the internet, identified by the docket number at the heading of this notice, at *https://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the docket for new material.

VI. Rulemaking Notices and Analyses

a. Executive Orders 12866, 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order.

NHTSA has considered the impact of this ANPRM under Executive Order 12866, Executive Order 13563, and the DOT's regulatory policies and procedures found in DOT Order 2100.6, ''Policies and Procedures for Rulemakings.'' As discussed above, the agency lacks the necessary information to develop a proposal at this time due to a number of unanswered questions and unresolved considerations. This rulemaking has been determined to be not ''significant'' under DOT Order 2100.6 and the policies of the Office of Management and Budget.

b. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This action is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is an advance notice of proposed rulemaking.

c. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* no analysis is required for an ANPRM. However, vehicle manufacturers and equipment manufacturers are encouraged to comment if they identify any aspects of the potential rulemaking that may apply to them.

d. Executive Order 13132 (Federalism)

As an ANPRM, NHTSA does not believe that this document raises sufficient federalism implications to warrant the preparation of a federalism assessment. NHTSA believes that federalism issues would be more appropriately considered if and when the agency proposes changes to FMVSS No. 111 to permit CMS.

e. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

f. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no information collection requirements associated with this ANPRM. Any information collection requirements and the associated burdens will be discussed in detail once a proposal has been issued.

g. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. As NHTSA has not yet developed specific regulatory requirements, the NTTAA does not apply for purposes of this ANPRM.

h. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure of State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). NHTSA has determined that this ANPRM would not result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of $100 million annually.

i. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has preliminarily determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

j. Plain Language

The Plain Language Writing Act of 2010 (Pub. L. 111–274) requires that Federal agencies write documents in a clear, concise, and well-organized manner. While the Act does not cover regulations, Executive Orders 12866 and 13563 require each agency to write all notices in plain language that is simple and easy to understand. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Is the discussion in the notice clearly written?
- Does the notice contain technical language or jargon that is not clear?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?

If you have any responses to these questions, please include them in your comments on this ANPRM.

k. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number

(RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

APPENDIX—ASPECTS OF LIGHT VEHICLE CMS PERFORMANCE REGULATED UNDER UNECE R46

Aspect of performance [41]	Description	UNECE R46 citation
Structural design	Requirement that the CMS meet various size, shape, and material restrictions.	6.2.2.1
Monitor Luminance	Requirement that CMS monitor luminance be adjustable	6.2.2.3.1, 6.2.2.3.5.1
System availability indicator	Requirement that the CMS indicate to the driver if the system is unavailable.	6.2.2.3.2, 16.1.2
Monitor isotropy	Requirement that the monitor show a uniform image. Limits for luminance when measured at various viewing angles (directional uniformity) and at various locations on the screen (lateral uniformity).	6.2.2.3.3.1
Luminance and contrast rendering	Monitor luminance and contrast limits for different conditions (direct sunlight, diffuse ambient light, sunset and night).	6.2.2.3.3.2
Grey scale rendering	Requirement that the CMS be able to display a minimum tonal range of distinguishable different grey steps [42].	6.2.2.3.3.3
Color rendering	Requirement that the CMS be able to accurately reproduce certain colors [43].	6.2.2.3.3.4
Image artifacts (aberrations)	Requirement that CMS image aberrations be noted in the owner's manual	6.2.2.3.3.5
Smear	Limits for the white stripes artifact appearing on an image created by very bright light sources.	6.2.2.3.3.5.1
Blooming and lens flare	Limits for the area of image loss caused by bright lights flooding the image (blooming) and light scattering inside the lens (lens flare).	6.2.2.3.3.5.2
Point light sources	Requirements for CMS to show distinctively two point light sources (e.g. passing beam headlights).	6.2.2.3.3.5.3
Sharpness	Requirements for the monitor to accurately show zones of different tones, or colors, without blurring the boundaries between set zones. Limits are provided for the horizontal and vertical direction.	6.2.2.3.3.6.1
Depth of field	Requirements for resolution of the CMS to show a sufficiently clear image at various distances.	6.2.2.3.3.6.2
Geometric distortion	Limits for the level of distortion of the CMS image relative to a rectilinear or pinhole projection.	6.2.2.3.3.7
Flicker	Requirement that the monitor be free of flicker [44]	6.2.2.3.3.8.1
Frame rate	Requirement that the CMS operate at a minimum frame rate, and that the movements of objects in front of the camera be rendered smooth and fluid.	6.2.2.3.4.1.
Image formation time	Limit on the amount of time permitted for the monitor to form an image [45]	6.2.2.3.4.2
System latency	Limit on the time delay between when an event occurs and when it is rendered on the monitor.	6.2.2.3.4.3
Impact testing	Requirement that an externally mounted CMS camera meet certain impact requirements.	6.3.1
Field of vision	Requirement that CMS devices meet the same minimum field of vision requirements as mirror.	15.2.4
Activation and deactivation	Requirements for when and under what conditions a CMS must activate or deactivate.	16.1.1
Default view	In default view the system is required to show the minimum required field of vision.	16.1.1.1
Overlays	Requirements relating to what information may be overlaid on the CMS image, and limits on the size of overlays.	16.1.1.3
Magnification factor	Requirement that the magnification of the CMS image be within a certain range.	16.1.3.1
Resolution	Requirement for the minimum distinguishable details observable in an image.	16.1.3.2
Magnification aspect ratio	Limits for the ratio of horizontal to vertical magnification of the image	16.1.4
Monitors	Requirements relating to where the monitors may be located inside the vehicle and how the left and right fields of vision may be displayed.	16.1.5

[41] Performance metrics used for these aspects of performance are performed per ISO 16505:2015, unless otherwise noted.

[42] Grey scale chart per ISO 14524:2009.

[43] Color coordinates per CIE 1976 UCS.

[44] Test performed per ISO 13406–2:2001.

[45] Test performed per ISO 9241–305:2008.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95 and 501.4.

James Clayton Owens,

Acting Administrator.

[FR Doc. 2019–22036 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2017–0018; 4500030115]

Endangered and Threatened Wildlife and Plants; 90-Day Finding for the Bone Cave Harvestman

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist the Bone Cave harvestman as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that delisting the Bone Cave harvestman may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a review of the status of the Bone Cave harvestman to determine whether delisting the species is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding the species. Based on the status review, we will issue a 12-month finding that will address whether or not delisting the Bone Cave harvestman is warranted, in accordance with the Act.

DATES: This finding was made on October 10, 2019. As we commence work on the status review, we seek any new information concerning the status of, or threats to, the species or its habitat and relevant conservation measures in place. We will consider any relevant information that we receive during our work on the status review.

ADDRESSES: *Supporting documents:* A summary of the basis for the petition finding is available on *http://www.regulations.gov* under docket number FWS–R2–ES–2017–0018. In addition, this supporting information is available for public inspection, by appointment, during normal business hours by contacting the person specified in **FOR FURTHER INFORMATION CONTACT.**

Submitting information: If you have new scientific or commercial data or other information concerning the status of, or threats to, the Bone Cave harvestman, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter docket number FWS–R2–ES–2017–0018. Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2017–0018, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, telephone: 505–761–4781, email: *adam_zerrenner@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (*i.e.,* ''list'' a species), remove a species from the Lists (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

The Service and National Marine Fisheries Service revised the regulations at 50 CFR 424.14 to clarify the procedures under which the Services evaluate petitions effective October 27, 2016 (81 FR 66462; September 27, 2016). We originally received the petition that is the subject of this document on June 2, 2014, with supplemental information received on October 6, 2016. We therefore evaluated this petition under the 50 CFR 424.14 requirements that were in effect prior to October 27, 2016, as those requirements applied when the petition and supplemental information were received. At that time, our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding was ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)(1)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or

required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) or amelioration of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. For a petition to delist a species, the information presented in the petition must include evidence sufficient to suggest that these threats affecting the species may have been ameliorated to the point that the species may no longer meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act (16 U.S.C. 1531 *et seq.*).

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summary of Finding

Species and Range

Bone Cave harvestman (*Texella reyesi*); Texas.

Petition History

On June 2, 2014, we received a petition dated June 2, 2014, from John Yearwood, Kathryn Heidemann, Charles and Cheryl Shell, the Walter Sidney Shell Management Trust, the American Stewards of Liberty, and Steven W. Carothers requesting that the endangered Bone Cave harvestman be delisted due to recovery and error in information. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required at that time at 50 CFR 424.14(a). We evaluated this petition under the 50 CFR 424.14 requirements that were in effect prior to October 27, 2016, as explained above under Background.

On June 1, 2015, the Service published a 90-day finding in the **Federal Register** (80 FR 30990) that the petition did not present substantial scientific or commercial information indicating that the petitioned action was warranted. On December 15, 2015, the American Stewards of Liberty, Charles and Cheryl Shell, Walter Sidney Shell Management Trust, Kathryn Heidemann, and Robert V. Harrison, Sr., challenged the June 1, 2015, 90-day finding in Federal district court. The Service subsequently sought the court's permission to reconsider the 90-day finding after concluding that certain materials accompanying the petition were inadvertently not considered in the 2015 90-day finding. On December 22, 2016, the court granted the Service's request and ordered the Service to deliver a new 90-day finding to the **Federal Register** on or before March 31, 2017. That deadline was subsequently extended to May 1, 2017. On May 4, 2017, the Service published a new 90-day finding in the **Federal Register** (82 FR 20861) that the petition did not present substantial scientific or commercial information indicating that the petitioned action was warranted.

On October 5, 2017, the American Stewards of Liberty, Charles and Cheryl Shell, Walter Sidney Shell Management Trust, Kathryn Heidemann, and Robert V. Harrison, Sr., challenged the May 4, 2017, 90-day finding in Federal district court. On March 28, 2019, the court vacated the 2017 90-day finding and remanded that 90-day finding to the Service for further consideration consistent with the court's opinion. This finding addresses the 2014 petition in light of the court's order.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Bone Cave harvestman due to potential reduction or amelioration of threats associated with development (Factor A) and predation (Factor C). The petition also presents substantial information that the existing regulatory mechanisms may be adequate to address impacts of these threats (Factor D).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2017–0018 under ''Supporting Documents.''

Conclusion

On the basis of our evaluation of the information presented in the petition under section 4(b)(3)(A) of the Act, we have determined that the petition summarized above for the Bone Cave harvestman presents substantial scientific or commercial information indicating that delisting the species may be warranted. Therefore, we are initiating a status review to determine whether delisting the species is warranted under the Act. At the conclusion of the status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether delisting the Bone Cave harvestman is not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 9, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 191003–0054]

RIN 0648–BI76

List of Fisheries for 2020

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comment.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2020, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2020 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: Comments must be received by November 12, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0041, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal:

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0041;*
2. Click the ''Comment Now!'' icon, complete the required fields;
3. Enter or attach your comments.

Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Suzie Teerlink, Alaska Region, 907–586–7240; Kevin Brindock, Pacific Islands Region, 808–725–5146. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP). This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality

or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is ''frequent,'' ''occasional,'' or ''remote'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean and the Atlantic Ocean, Gulf of Mexico, and Caribbean sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. SARs are brief reports summarizing the status of each stock of marine mammals occurring in waters under U.S. jurisdiction, including information on the identity and geographic range of the stock, population statistics related to abundance, trend, and annual productivity, notable habitat concerns, and estimates of human-caused M/SI by source. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2020 LOF generally summarizes data from 2012–2016. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the 5-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than 5 years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program.*

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in

Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for 5 years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at *https://www.fisheries.noaa.gov/permit/high-seas-fishing-permits.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* linked to the ''List of Fisheries Summary'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register, renew and receive my Marine Mammal Authorization Program authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal. In the Greater Atlantic and Southeast Regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year.

Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by the beginning of the calendar year, or with renewed fishing licenses, must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION**). Authorization certificates may also be obtained by visiting the MMAP website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations* or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to

accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Kevin Brindock.

Sources of Information Reviewed for the 2019 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were established by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2020 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the 2018 SARs, which are based on data from 2012–2016. The SARs referenced in this LOF include: 2016 (82 FR 29039; June 27, 2017), 2017 (83 FR 32093; July 11, 2018) and 2018 (84 FR 28489; June 19, 2019). The SARs are available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

Summary of Changes to the LOF for 2020

The following summarizes changes to the LOF for 2020, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS re-classifies one fishery in the LOF for 2020. NMFS also makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2020 are identical to those provided in the LOF for 2019 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), CA (California), GMX (Gulf of Mexico), HI (Hawaii), NC (North Carolina), OR (Oregon), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS proposes to rename the Category III CA/OR coonstripe shrimp fishery to the CA coonstripe shrimp fishery and clarifies that the OR coonstripe shrimp pot fishery is a component of the Category III WA/OR shrimp pot/trap fishery. NMFS also proposes to reclassify the CA coonstripe shrimp fishery from a Category III to a Category II based on one incident of an entangled humpback whale that would have been classified as a serious injury if the whale had not been subsequently disentangled (Carretta *et al.,* 2019).

Targeted effort for coonstripe shrimp with pot gear is limited to fishing effort in California, where a specific permit exists for the coonstripe shrimp fishery. In Oregon and Washington, there have been only a few landings of small amounts of coonstripe shrimp with pot gear over the last 5 years (PacFIN landings data). As a result, the CA coonstripe shrimp pot fishery is distinct in terms of management and fishery participation. The WA/OR shrimp pot/trap fishery is categorized as a Category III fishery on the LOF. This fishery encompasses the very limited effort for coonstripe shrimp as well as other shrimp species, such as pink shrimp and spot prawn in both WA and OR. Given that fishing with pot/trap gear for shrimp in OR and WA is already associated with the WA/OR shrimp pot/trap fishery, we propose to clarify that the limited coonstripe shrimp pot fishing effort that may occur in OR is associated with the Category III WA/OR shrimp pot/trap fishery.

In July 2017, a humpback whale was reported entangled near Crescent City, CA, in multiple sets of fishing gear, including coonstripe shrimp pot gear. While this humpback whale was ultimately disentangled, Carretta et al. (2019) determined this entanglement would have constituted a serious injury or mortality for the CA/OR/WA stock of humpback whale without human intervention. Most of the gear associated

with the entanglement was identified as coonstripe shrimp pot gear. This one entanglement event results in an estimate of at least 0.2 M/SI per year, which equates to 1.2 percent of the current PBR (PBR = 16.7 whales; Carretta *et al.,* 2019a) for the CA/OR/WA stock of humpback whale. The estimated total fisheries M/SI for the CA/OR/WA stock of humpback whale is 14.1, which is greater than 10 percent of PBR (Tier 1 analysis). Therefore, because the estimated M/SI is between 1 and 50 percent of PBR (Tier 2 analysis), NMFS proposes to reclassify the CA coonstripe shrimp fishery as a Category II fishery.

Fishery Name and Organizational Changes and Clarification

NMFS proposes to clarify that the Category II AK Southeast salmon drift gillnet fishery and Category III AK Southeast salmon purse seine fishery include both the AK Metlakatla salmon drift gillnet fishery and the AK Metlakatla salmon purse seine fishery. The Metlakatla Indian Community manages fisheries, including the commercial salmon fisheries, within their jurisdiction (Annette Island Reserve). The Metlakatla salmon fisheries are fished in the same region and using the same gear types as the corresponding State-managed salmon fisheries; therefore, NMFS clarifies that the Metlakatla commercial salmon fishing fleets are included in the AK Southeast salmon purse seine and AK Southeast salmon drift gillnet fisheries. Based on this proposed clarification, NMFS also proposes to remove the Category III AK Metlakatla salmon purse seine fishery from the LOF.

Number of Vessels/Persons

NMFS proposes to update the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category I

- HI deep-set longline fishery from 142 to 145 vessels/persons;

Category II

- HI shallow-set longline fishery from 13 to 18 vessels/persons;
- American Samoa longline fishery from 20 to 15 vessels/persons;
- CA thresher shark/swordfish drift gillnet (≥14 inch (in) mesh) fishery from 18 to 14 vessels/persons;
- CA halibut/white seabass and other species set gillnet (>3.5 in mesh) fishery from 50 to 37 vessels/persons;
- CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) fishery from 30 to 22 vessels/persons;
- WA Puget Sound Region salmon drift gillnet fishery from 210 to 154 vessels/persons;
- CA coonstripe shrimp pot fishery from 36 to 14 vessels/persons;
- CA spiny lobster fishery from 194 to 186 vessels/persons;
- CA spot prawn pot fishery from 25 to 23 vessels/persons;
- CA Dungeness crab pot fishery from 570 to 501 vessels/persons;
- OR Dungeness crab pot fishery from 433 to 342 vessels/persons;
- WA/OR/CA sablefish pot fishery from 309 to 155 vessels/persons;
- WA coastal Dungeness crab pot fishery from 228 to 197 vessels/persons;

Category III

- American Samoa bottomfish handline fishery from 1092 to 2095 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS proposes to add the Eastern North Pacific stock of gray whale to the list of species/stocks incidentally killed or injured in the Category II CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery. An observer documented a gray whale mortality in the CA thresher shark/swordfish drift gillnet in 2013 (Carretta *et al.,* 2019).

NMFS proposes to add the Eastern North Pacific stock of gray whale to the list of species/stocks incidentally killed or injured in the Category II CA halibut/white seabass and other species set gillnet (>3.5 in mesh) fishery based on a self-reported entanglement in 2015.

NMFS proposes to add the Alaska stock of ribbon seal to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea Aleutian Islands rockfish trawl fishery based on an observed mortality in 2014.

NMFS proposes to add CA/OR/WA stock of humpback whale to the list of species/stocks incidentally killed or injured in the Category II CA coonstripe shrimp pot fishery based on a non-serious injury in 2017 (Carretta *et al.,* 2019). This entangled humpback whale was ultimately disentangled, however, Carretta et al. (2019) determined this entanglement would have constituted a serious injury or mortality for the CA/OR/WA stock of humpback whale without human intervention.

NMFS proposes to add the California stock of long-beaked common dolphin to the list of species/stocks incidentally killed or injured in the Category II CA spot prawn pot fishery based on a stranding report. In 2017, a long-beaked common dolphin was found dead and entangled in CA spot prawn pot gear (Carretta *et al.,* 2019).

NMFS proposes to add the Western U.S. stock of Steller sea lion to, and remove the Alaska stock of Dall's porpoise from, the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea Aleutian Islands Pacific cod longline fishery. Four Steller sea lion mortalities were observed, three in 2015 and one in 2014. There have been no recent Dall's porpoise mortalities or serious injuries observed.

NMFS proposes to add the Eastern U.S. stock of Steller sea lion to the list of species/stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery based on an observed mortality in 2015.

NMFS proposes to add four stocks to the list of species/stocks incidentally killed or injured in the Category III to WA/OR/CA groundfish, bottomfish longline/set line fishery based on observed injuries and mortalities reported in Jannot *et al.* 2018: (1) U.S. stock of California sea lion; (2) California breeding stock of Northern elephant seal; (3) CA/OR/WA stock of sperm whale; and (4) Eastern U.S. stock of Steller sea lion.

NMFS proposes to add the Alaska stock of Dall's porpoise to the list of species/stocks incidentally killed or injured in the Category III AK Kodiak salmon purse seine fishery based on a self-reported mortality in 2013.

NMFS proposes to add the Eastern U.S. stock of Steller sea lion to the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska halibut longline fishery based on an observed mortality in 2015.

NMFS proposes to add two stocks to the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea Aleutian Islands Pacific cod trawl fishery: (1) Alaska stock of ribbon seal based on an observed mortality in 2014; and (2) Alaska stock of bearded seal based on an observed mortality in 2013.

NMFS proposes to remove the Hawaii stock of sperm whale from the list of species/stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery. From 2012–2016, there were no observed mortalities or injures of the Hawaii stock of sperm whale in the Hawaii deep-set longline fishery (Bradford, 2018, Carretta *et al.,* 2018).

NMFS proposes to remove the Alaska stock of Dall's porpoise from the list of species/stocks incidentally killed or injured in the Category II AK Aleutian Islands pollock trawl fishery based on no recently observed mortalities or injuries.

NMFS proposes to remove the Hawaii stock of short-finned pilot whale from the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery. From 2012–2016, there were no observed mortalities or injures of the Hawaii stock of short-finned pilot whale in the Hawaii shallow-set longline fishery (Bradford, 2018, Carretta *et al.,* 2018).

NMFS proposes to remove two stocks from the list of species/stocks incidentally killed or injured in the Category II American Samoa longline fishery including: (1) Unknown stock of Cuvier's beaked whale; and (2) unknown stock of bottlenose dolphin. There were no observed mortalities or injuries of Cuvier's beaked whales or bottlenose dolphins in the American Samoa longline fishery from 2012–2016 (Bradford, 2018, Bradford and Forney, 2017).

NMFS proposes to remove the Alaska stock of ribbon seal from the list of species/stocks incidentally killed or injured in the Category III AK Aleutian Islands Atka mackerel trawl fishery based on no recently observed mortalities or injuries.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Name and Organizational Changes and Clarification

NMFS proposes to add a superscript ''1'' to the Western North Atlantic stock of gray seals to indicate it is driving the Category I classification of the Northeast sink gillnet fishery. The gray seal mean combined annual mortality in the Northeast sink gillnet fishery is estimated to be 821 animals each year, which represents 59.1 percent of PBR (1,389 animals). Observer coverage from 2012–2016 was 15, 11, 18, 14 and 10 percent, respectively.

NMFS proposes to add a superscript ''1'' to the Central Georgia estuarine stock of bottlenose dolphins to indicate it is driving the Category II classification of the Atlantic blue crab trap/pot fishery. In 2011 and 2013, there were two documented bottlenose dolphins entangled in crab trap/pot gear. The mean annual estimated mortality and serious injury is 21.1 percent of PBR (1.9) (Waring *et al.,* 2016).

NMFS proposes to add a superscript ''1'' to the Western North Atlantic stock of gray seals to indicate it is driving the Category II classification of the mid-Atlantic bottom trawl fishery. The gray seal mean combined annual mortality in the mid-Atlantic bottom trawl fishery is 20 animals per year, which represents 1.4 percent of PBR (1,389 animals). Observer coverage from 2012–2016 was 5, 6, 8, 9 and 9.7 percent, respectively.

NMFS proposes to remove the superscript ''1'' from the Western North Atlantic stock of long-finned pilot whales to indicate the stock is no longer driving the Category I classification of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. The long-finned pilot whale mean combined annual mortality in the pelagic longline fishery is estimated to be 2.6 animals per year, which represents 7.4 percent of PBR. Observer coverage from 2012–2016 was 7, 9, 10, 12 and 15, respectively.

Number of Vessels/Persons

NMFS proposes updates to the estimated number of vessels/persons in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) as follows:

Category I

- Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery from 280 to 201 vessels/persons;

Category II

- NC inshore gillnet fishery from 2,850 to 2,676 vessels/persons;
- Southeastern U.S. Atlantic shark gillnet fishery from 23 to 21 vessels/persons;
- Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery from 1,384 to 1,101 vessels/persons;
- Atlantic blue crab trap/pot fishery from 7,714 to 6,679 vessels/persons;
- NC long haul seine fishery from 30 to 22 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS proposes to add the Western North Atlantic stock of hooded seal to the list of species/stocks incidentally killed or injured in the Category I Mid-Atlantic gillnet fishery based on an observed hooded seal mortality in 2016. Observer coverage from 2012–2016 was 2, 3, 5, 6 and 8 percent, respectively.

NMFS proposes to add the Sarasota Bay, Little Sarasota Bay stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery. In 2016, one dolphin was disentangled from commercial stone crab trap/pot gear (Hayes *et al.,* 2019).

NMFS proposes to add the Mississippi River Delta stock of bottlenose dolphin to the list species/stocks incidentally killed or injured in the Category II Gulf of Mexico menhaden purse seine fishery based on two self-reported mortalities documented in 2018.

NMFS proposed to add the Mobile Bay, Bonsecour Bay stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category III Gulf of Mexico blue crab trap/pot fishery based on one documented entangled stranding mortality in 2015 (Hayes *et al.,* 2019).

NMFS proposes to remove two stocks from the list of species/stocks incidentally killed or injured in the Category I Northeast sink gillnet fishery: (1) Western North Atlantic stock of hooded seal; and (2) Western North Atlantic long-finned pilot whale. The last observed M/SI of these stocks in the Northeast sink gillnet fishery in was in 2004 and 2010, respectively, and the fishery continues to be observed.

Following consultation with the U.S. Fish and Wildlife Service (USFWS), NMFS proposes to remove the Florida stock of West Indian manatee from the list species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. From 2008 to 2012, there were no documented fishery related injuries or mortalities in shrimp trawl fisheries (USFWS, 2014). NMFS also proposes to update the Atlantic spotted dolphin, GMX continental and oceanic stock name on the list of species and/or stocks incidentally killed or injured in the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery to the stock's current name, Atlantic spotted dolphin, Northern Gulf of Mexico.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS proposes updates to the estimated number of HSFCA permits for high seas fisheries (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 67 to 53 HSFCA permits;
- Western Pacific pelagic longline (HI deep-set component) fishery from 142 to 145 HSFCA permits;

Category II

- Pacific highly migratory species drift gillnet fishery from 6 to 5 HSFCA permits;
- South Pacific tuna purse seine fishery from 38 to 33 HSFCA permits;
- South Pacific albacore troll longline fishery from 11 to 6 HSFCA permits;
- South Pacific tuna longline fishery from 3 to 2 HSFCA permits;
- Western Pacific pelagic longline (HI shallow-set component) fishery from 13 to 18 HSFCA permits;

- Pacific highly migratory species handline/pole and line fishery from 48 to 41 HSFCA permits;
- South Pacific albacore troll handline/pole and line fishery from 15 to 11 HSFCA permits;
- Western Pacific pelagic handline/pole and line fishery from 6 to 5 HSFCA permits;
- Atlantic highly migratory species troll fishery from 1 to 0 HSFCA permits;
- South Pacific albacore troll fishery from 24 to 17 HSFCA permits;
- South Pacific tuna troll fishery from 3 to 1 HSFCA permits;
- Western Pacific pelagic troll fishery from 6 to 5 HSFCA permits;

Category III

- Northwest Atlantic bottom longline fishery from 2 to 3 HSFCA permits;
- Pacific highly migratory species longline fishery from 128 to 108 HSFCA permits;
- Pacific highly migratory species purse seine fishery from 10 to 5 HSFCA permits;
- Pacific highly migratory species troll fishery from 150 to 119 HSFCA permits.

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS proposes to remove the Hawaii stock of sperm whale from the list of species/stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery. From 2012–2016, there were no observed mortalities or injures for the Hawaii stock of sperm whale in the Hawaii deep-set longline fishery (Bradford, 2018, Carretta *et al.,* 2018).

NMFS proposes to remove the Hawaii stock of short-finned pilot whale from the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery. From 2012–2016, there were no observed mortalities or injures for the Hawaii stock of short-finned pilot whale in the Hawaii shallow-set longline fishery (Bradford, 2018, Carretta *et al.,* 2018).

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this LOF, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMAP reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2016. This list includes all species and/or stocks known to be killed or injured in a given fishery, but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by adding a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the exclusive economic zone (EEZ) boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately on Table 1 or 2 and Table 3, are considered the same fisheries on either side of the

EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Longline/Set Line Fisheries:		
HI deep-set longline * ^	145	Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic;[1] False killer whale, MHI Insular;[1] False killer whale, NWHI; Humpback whale. Central North Pacific; Kogia *spp.* (Pygmy or dwarf sperm whale), HI; Pygmy killer whale, HI; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-finned pilot whale, HI; Striped dolphin, HI.
Category II		
Gillnet Fisheries:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	14	Bottlenose dolphin, CA/OR/WA offshore; California sea lion, U.S.; Dall's porpoise, CA/OR/WA; Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA; Long-beaked common dolphin, CA; Minke whale, CA/OR/WA; Northern elephant seal, CA breeding; Northern right-whale dolphin, CA/OR/WA; Pacific white-sided dolphin, CA/OR/WA; Risso's dolphin, CA/OR/WA; Short-beaked common dolphin, CA/OR/WA; Short-finned pilot whale, CA/OR/WA;[1] Sperm Whale, CA/OR/WA.[1]
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	37	California sea lion, U.S.; Gray whale, Eastern North Pacific; Harbor seal, CA; Humpback whale, CA/OR/WA;[1] Long-beaked common dolphin, CA; Northern elephant seal, CA breeding; Sea otter, CA; Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) [2].	22	California sea lion, U.S.; Long-beaked common dolphin, CA; Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet [2]	1,862	Beluga whale, Bristol Bay; Gray whale, Eastern North Pacific; Harbor seal, Bering Sea; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, North Pacific; Spotted seal, AK; Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet [2]	979	Beluga whale, Bristol Bay; Gray whale, Eastern North Pacific; Harbor seal, Bering Sea; Northern fur seal, Eastern Pacific; Spotted seal, AK.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA;[1] Harbor seal, GOA; Humpback whale, Central North Pacific; Humpback whale, Western North Pacific; Sea otter, Southwest AK; Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet; Dall's porpoise, AK; Harbor porpoise, GOA; Harbor seal, GOA; Humpback whale, Central North Pacific;[1] Sea otter, South central AK; Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet; Dall's porpoise, AK; Harbor porpoise, GOA;[1] Harbor seal, GOA; Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet [2]	162	Dall's porpoise, AK; Harbor porpoise, GOA; Harbor seal, GOA; Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet [2]	113	Harbor porpoise, Bering Sea; Northern sea otter, Southwest AK; Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK; Harbor porpoise, GOA;[1] Harbor seal, GOA; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, North Pacific; Sea otter, South central AK; Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK; Harbor porpoise, Southeast AK; Harbor seal, Southeast AK; Humpback whale, Central North Pacific;[1] Pacific white-sided dolphin, North Pacific; Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet [2]	168	Gray whale, Eastern North Pacific; Harbor Porpoise, Southeastern AK; Harbor seal, Southeast AK; Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	154	Dall's porpoise, CA/OR/WA; Harbor porpoise, inland WA;[1] Harbor seal, WA inland.
Trawl Fisheries:		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK; Gray whale, Eastern North Pacific; Harbor porpoise, Bering Sea; Harbor seal, Bering Sea; Humpback whale, Western North Pacific;[1] Killer whale, AK resident;[1] Killer whale, GOA, AI, BS transient;[1] Northern fur seal, Eastern Pacific; Ringed seal, AK; Ribbon seal, AK; Spotted seal, AK; Steller sea lion, Western U.S.;[1] Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK; Beluga whale, Bristol Bay; Beluga whale, Eastern Bering Sea; Beluga whale, Eastern Chukchi Sea; Harbor seal, AK; Humpback whale, Central North Pacific; Humpback whale, Western North Pacific; Northern fur seal, Eastern Pacific; Ribbon seal, AK; Ringed seal, AK; Spotted seal, AK; Steller sea lion, Western U.S.[1]
AK Bering Sea, Aleutian Islands rockfish trawl	17	Killer whale, ENP AK resident;[1] Killer whale, GOA, AI, BS transient;[1] Ribbon seal, AK.
Pot, Ring Net, and Trap Fisheries:		
CA coonstripe shrimp pot	14	Gray whale, Eastern North Pacific; Harbor seal, CA; Humpback whale, CA/OR/WA.
CA spiny lobster	186	Bottlenose dolphin, CA/OR/WA offshore; Humpback whale, CA/OR/WA;[1] Gray whale, Eastern North Pacific; Southern sea otter.
CA spot prawn pot	23	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA;[1] Long-beaked common dolphin, CA.
CA Dungeness crab pot	501	Blue whale, Eastern North Pacific;[1] Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA.[1]
OR Dungeness crab pot	342	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA.[1]
WA/OR/CA sablefish pot	155	Humpback whale, CA/OR/WA.[1]
WA coastal Dungeness crab pot	197	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA.[1]
Longline/Set Line Fisheries:		
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Killer whale, Eastern North Pacific AK resident; Killer whale, GOA, BSAI transient;[1] Northern fur seal, Eastern Pacific; Ringed seal, AK; Spotted seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska sablefish longline	295	Sperm whale, North Pacific; Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
HI shallow-set longline * ^	18	Blainville's beaked whale, HI; Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic;[1] Humpback whale, Central North Pacific; Risso's dolphin, HI; Rough-toothed dolphin, HI; Striped dolphin, HI.
American Samoa longline[2]	15	False killer whale, American Samoa; Rough-toothed dolphin, American Samoa; Short-finned pilot whale, unknown.
HI shortline[2]	9	None documented.
Category III		
Gillnet Fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA; Humpback whale, Central North Pacific; Sea otter, South central AK; Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	296	None documented.
HI inshore gillnet	36	Bottlenose dolphin, HI; Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	15	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S.; Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast; Northern elephant seal, CA breeding.
Miscellaneous Net Fisheries:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Dall's porpoise, AK; Humpback whale, Central North Pacific; Humpback whale, Western North Pacific.
AK Southeast salmon purse seine	315	Humpback whale, Central North Pacific.
AK roe herring and food/bait herring beach seine	10	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	936	Harbor seal, GOA; Harbor seal, Prince William Sound.
WA/OR sardine purse seine	42	None documented.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S.; Harbor seal, CA.
CA squid purse seine	80	Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR Lower Columbia River salmon seine	10	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.
HI lift net	17	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	23	None documented.
HI seine net	24	None documented.
Dip Net Fisheries:		
CA squid dip net	115	None documented.
Marine Aquaculture Fisheries:		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented.
WA salmon net pens	14	California sea lion, U.S.; Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
Troll Fisheries:		
WA/OR/CA albacore surface hook and line/troll	705	None documented.
CA halibut hook and line/handline	unknown	None documented.
CA white seabass hook and line/handline	unknown	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll.	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll.	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
American Samoa tuna troll	13	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	2,117	Pantropical spotted dolphin, HI.
HI rod and reel	322	None documented.
Commonwealth of the Northern Mariana Islands tuna troll.	40	None documented.
Guam tuna troll	432	None documented.
Longline/Set Line Fisheries:		
AK Bering Sea, Aleutian Islands Greenland turbot longline.	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	Northern fur seal, Eastern Pacific; Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	855	Steller sea lion, Eastern U.S.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore; California sea lion, U.S.; Northern elephant seal, California breeding; Sperm whale, CA/OR/WA; Steller sea lion, Eastern U.S.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent five years of data.
HI kaka line	15	None documented.
HI vertical line	3	None documented.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Bearded seal, AK; Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Bearded seal, AK; Ribbon seal, AK; Ringed seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Harbor seal, AK; Northern elephant seal, North Pacific; Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	55	Harbor seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK; Fin whale, Northeast Pacific; Northern elephant seal, North Pacific; Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	Steller sea lion, Western U.S.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	47	California sea lion, U.S.; Harbor porpoise, unknown; Harbor seal, unknown; Northern elephant seal, CA breeding; Steller sea lion, unknown.
CA sea cucumber trawl	16	None documented.
WA/OR/CA shrimp trawl	300	None documented.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S.; Dall's porpoise, CA/OR/WA; Harbor seal, OR/WA coast; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, CA/OR/WA; Steller sea lion, Eastern U.S.
Pot, Ring Net, and Trap Fisheries:		
AK Bering Sea, Aleutian Islands sablefish pot	6	None documented.
AK Bering Sea, Aleutian Islands Pacific cod pot	59	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Bowhead whale, Western Arctic; Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	Harbor seal, GOA.
AK Gulf of Alaska sablefish pot	248	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.
CA rock crab pot	124	Gray whale, Eastern North Pacific; Harbor seal, CA.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	5	Humpback whale, Central North Pacific.
HI fish trap	9	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	10	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	33	None documented.
Hook-and-Line, Handline, and Jig Fisheries:		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	Fin whale, Northeast Pacific.
AK halibut jig	71	None documented.
American Samoa bottomfish	2095	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	357	None documented.
HI pelagic handline	534	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	0	None documented.
Harpoon Fisheries:		
CA swordfish harpoon	6	None documented.
Pound Net/Weir Fisheries:		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	3	None documented.
Bait Pens:		
WA/OR/CA bait pens	13	California sea lion, U.S.
Dredge Fisheries:		
AK scallop dredge	108 (5 AK)	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.
HI handpick	46	None documented.
HI lobster diving	19	None documented.
HI spearfishing	163	None documented.
WA/CA kelp	4	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
WA/OR bait shrimp, clam hand, dive, or mechanical collection.	201	None documented.
OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection.	10	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK)	Killer whale, unknown; Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
Live Finfish/Shellfish Fisheries:		
CA nearshore finfish live trap/hook-and-line	93	None documented.
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington; [1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3; ^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Gillnet Fisheries:		
Mid-Atlantic gillnet	3,950	Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Southern Migratory coastal; [1] Bottlenose dolphin, Northern NC estuarine system; [1] Bottlenose dolphin, Southern NC estuarine system; [1] Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Hooded seal, WNA; Humpback whale, Gulf of Maine; Minke whale, Canadian east coast.
Northeast sink gillnet	3,163	Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Fin whale, WNA; Gray seal, WNA; [1] Harbor porpoise, GME/BF; Harbor seal, WNA; Harp seal, WNA; Humpback whale, Gulf of Maine; Minke whale, Canadian east coast; North Atlantic right whale, WNA; Risso's dolphin, WNA; White-sided dolphin, WNA.
Trap/Pot Fisheries:		
Northeast/Mid-Atlantic American lobster trap/pot	8,485	Humpback whale, Gulf of Maine; Minke whale, Canadian east coast; North Atlantic right whale, WNA.[1]
Longline Fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *.	201	Atlantic spotted dolphin, Northern GMX; Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Cuvier's beaked whale, WNA; False killer whale, WNA; Harbor porpoise, GME, BF; Kogia *spp.* (Pygmy or dwarf sperm whale), WNA; Long-finned pilot whale, WNA; Mesoplodon beaked whale, WNA; Minke whale, Canadian East coast; Pantropical spotted dolphin, Northern GMX; Pygmy sperm whale, GMX; Risso's dolphin, Northern GMX; Risso's dolphin, WNA; Rough-toothed dolphin, Northern GMX; Short-finned pilot whale, Northern GMX; Short-finned pilot whale, WNA; [1] Sperm whale, Northern GMX.
Category II		
Gillnet Fisheries:		
Chesapeake Bay inshore gillnet [2]	248	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet [2]	248	Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, and estuarine; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,676	Bottlenose dolphin, Northern NC estuarine system; [1] Bottlenose dolphin, Southern NC estuarine system.[1]

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Northeast anchored float gillnet [2]	852	Harbor seal, WNA; Humpback whale, Gulf of Maine; White-sided dolphin, WNA.
Northeast drift gillnet [2]	1,036	None documented.
Southeast Atlantic gillnet [2]	273	Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Northern FL coastal; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	21	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal); North Atlantic right whale, WNA.
Trawl Fisheries		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Harbor seal, WNA.
Mid-Atlantic bottom trawl	633	Bottlenose dolphin, WNA offshore; [1] Common dolphin, WNA; [1] Gray seal, WNA; [1] Harbor seal, WNA; Risso's dolphin, WNA; [1] White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA; Gray seal, WNA; Harbor seal, WNA; Long-finned pilot whale, WNA.[1]
Northeast bottom trawl	2,238	Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Harp seal, WNA; Long-finned pilot whale, WNA; Risso's dolphin, WNA; White-sided dolphin, WNA.[1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, Northern Gulf of Mexico; Bottlenose dolphin, Charleston estuarine system; Bottlenose dolphin, Eastern GMX coastal; [1] Bottlenose dolphin, GMX bay, sound, estuarine; [1] Bottlenose dolphin, GMX continental shelf; Bottlenose dolphin, Mississippi River Delta; Bottlenose dolphin, Mobile Bay, Bonsecour Bay; Bottlenose dolphin, Northern GMX coastal; [1] Bottlenose dolphin, SC/GA coastal; [1] Bottlenose dolphin, Southern migratory coastal; Bottlenose dolphin, Western GMX coastal.[1]
Trap/Pot Fisheries:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot [2].	1,101	Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay; Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion); Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Sarasota Bay, Little Sarasota Bay.
Atlantic mixed species trap/pot [2]	3,332	Fin whale, WNA; Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	6,679	Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Central GA estuarine system; [1] Bottlenose dolphin, Charleston estuarine system; [1] Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Northern FL coastal; [1] Bottlenose dolphin, Northern GA/Southern SC estuarine system; Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Northern NC estuarine system; [1] Bottlenose dolphin, Northern SC estuarine system; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Southern GA estuarine system; Bottlenose dolphin, Southern Migratory coastal; [1] Bottlenose dolphin, Southern NC estuarine system; West Indian manatee, FL.
Purse Seine Fisheries:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Mississippi River Delta; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern GMX coastal; [1] Bottlenose dolphin, Western GMX coastal.[1]
Mid-Atlantic menhaden purse seine [2]	19	Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Southern Migratory coastal.
Haul/Beach Seine Fisheries:		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal; [1] Bottlenose dolphin, Northern NC estuarine system; [1] Bottlenose dolphin, Southern Migratory coastal.[1]
NC long haul seine	22	Bottlenose dolphin, Northern NC estuarine system; [1] Bottlenose dolphin, Southern NC estuarine system.
Stop Net Fisheries:		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system; Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
Pound Net Fisheries:		
VA pound net	26	Bottlenose dolphin, Northern migratory coastal; Bottlenose dolphin, Northern NC estuarine system; Bottlenose dolphin, Southern Migratory coastal.[1]
Category III		
Gillnet Fisheries:		
Caribbean gillnet	>991	None documented in the most recent five years of data.
DE River inshore gillnet	unknown	None documented in the most recent five years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent five years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent five years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
Trawl Fisheries:		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
Marine Aquaculture Fisheries:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
Purse Seine Fisheries:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	None documented in most recent five years of data.
Longline/Hook-and-Line Fisheries:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	Bottlenose dolphin, WNA offshore; Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented.
Trap/Pot Fisheries:		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay estuarine; Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Mobile Bay, Bonsecour Bay; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Western GMX coastal; West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir.	>1	Harbor porpoise, GME/BF; Harbor seal, WNA; Minke whale, Canadian east coast; Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Dredge Fisheries:		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
Haul/Beach Seine Fisheries:		
Caribbean haul/beach seine	15	None documented in the most recent five years of data.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system; Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Choctawhatchee Bay; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay; Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern FL coastal; Bottlenose dolphin, Northern GA/Southern SC estuarine; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Northern migratory coastal; Bottlenose dolphin, Northern NC estuarine; Bottlenose dolphin, Southern migratory coastal; Bottlenose dolphin, Southern NC estuarine system; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Western GMX coastal; Short-finned pilot whale, WNA.

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic; [1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEA

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Longline Fisheries:		
Atlantic Highly Migratory Species *	53	Atlantic spotted dolphin, WNA; Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Cuvier's beaked whale, WNA; False killer whale, WNA; Killer whale, GMX oceanic; Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA; Long-finned pilot whale, WNA; Mesoplodon beaked whale, WNA; Minke whale, Canadian East coast; Pantropical spotted dolphin, WNA; Risso's dolphin, GMX; Risso's dolphin, WNA; Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) * ^	145	Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic; Humpback whale, Central North Pacific; Kogia *spp.* (Pygmy or dwarf sperm whale), HI; Pygmy killer whale, HI; Risso's dolphin, HI; Short-finned pilot whale, HI; Striped dolphin, HI.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEA—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category II		
Drift Gillnet Fisheries:		
Pacific Highly Migratory Species * ^	5	Long-beaked common dolphin, CA; Humpback whale, CA/OR/WA; Northern right-whale dolphin, CA/OR/WA; Pacific white-sided dolphin, CA/OR/WA; Risso's dolphin, CA/OR/WA; Short-beaked common dolphin, CA/OR/WA.
Trawl Fisheries:		
Atlantic Highly Migratory Species **	1	No information.
CCAMLR	0	Antarctic fur seal.
Purse Seine Fisheries:		
South Pacific Tuna Fisheries	33	No information
Western Pacific Pelagic	1	No information.
Longline Fisheries:		
CCAMLR	0	None documented.
South Pacific Albacore Troll	6	No information.
South Pacific Tuna Fisheries **	2	No information.
Western Pacific Pelagic (HI Shallow-set component) * ^	18	Blainville's beaked whale, HI; Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic; Fin whale, HI; Guadalupe fur seal; Humpback whale, Central North Pacific; Mesoplodon sp., unknown; Northern elephant seal, CA breeding; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-beaked common dolphin, CA/OR/WA; Striped dolphin, HI.
Handline/Pole and Line Fisheries:		
Atlantic Highly Migratory Species	2	No information.
Pacific Highly Migratory Species	41	No information.
South Pacific Albacore Troll	11	No information.
Western Pacific Pelagic	5	No information.
Troll Fisheries:		
Atlantic Highly Migratory Species	0	No information.
South Pacific Albacore Troll	17	No information.
South Pacific Tuna Fisheries **	1	No information.
Western Pacific Pelagic	5	No information.
Category III		
Longline Fisheries:		
Northwest Atlantic Bottom Longline	3	None documented.
Pacific Highly Migratory Species	108	None documented in the most recent 5 years of data.
Purse Seine Fisheries:		
Pacific Highly Migratory Species * ^	5	None documented.
Trawl Fisheries:		
Northwest Atlantic	4	None documented.
Troll Fisheries:		
Pacific Highly Migratory Species *	119	None documented

List of Terms, Abbreviations, and Symbols Used in Table 3: CA—California; GMX- Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic.

* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for 5 years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	*Category I:* Mid-Atlantic gillnet; Northeast/Mid-Atlantic American lobster trap/pot; Northeast sink gillnet. *Category II:* Atlantic blue crab trap/pot; Atlantic mixed species trap/pot; Northeast anchored float gillnet; Northeast drift gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet;* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	*Category I:* Mid-Atlantic gillnet. *Category II:* Atlantic blue crab trap/pot; Chesapeake Bay inshore gillnet fishery; Mid-Atlantic haul/beach seine; Mid-Atlantic menhaden purse seine; NC inshore gillnet; NC long haul seine; NC roe mullet stop net; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl;^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot;^ VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ..	*Category I:* HI deep-set longline. *Category II:* HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I:* Mid-Atlantic gillnet; Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	*Category I*: Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category II*: CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II:* Mid-Atlantic bottom trawl; Mid-Atlantic mid-water trawl (including pair trawl); Northeast bottom trawl; Northeast mid-water trawl (including pair trawl).

* Only applicable to the portion of the fishery operating in U.S. waters; ^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any entity with combined annual fishery landing receipts less than $11 million is considered a small entity for purposes of the Regulatory Flexibility Act. Under the former, lower size standards, all entities subject to this action were considered small entities; thus, they all would continue to be considered small under the new standards.

Under existing regulations, all individuals participating in Category I or II fisheries must register under the MMPA and obtain an authorization certificate. The authorization certificate authorizes the taking of non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Additionally, individuals may be subject to a TRP and requested to carry an observer. NMFS has estimated that up to approximately 49,804 fishing vessels, most with annual revenues below the SBA's small entity thresholds, may operate in Category I or II fisheries. As fishing vessels operating in Category I or II fisheries, they are required to register with NMFS. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, individuals who have a state or Federal fishing permit or landing license, or who are authorized through another related state or Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Through this integrated process, registration under the MMPA, including the $25 registration fee, is only required for vessels participating in a Category I or II non-permitted fishery. All Category I and II fisheries listed on the 2020 proposed LOF are permitted through state or Federal processes, and registration under the MMPA is covered through the integrated process. Therefore, this proposed rule would not impose any direct costs on small entities.

The MMPA requires any vessel owner or operator participating in a fishery listed on the LOF to report to NMFS, within 48 hours of the end of the fishing trip, all marine mammal incidental mortalities and injuries that occur during commercial fishing operations. These marine mammal mortalities and injuries are reported using a postage-paid, OMB approved form (OMB number 0648–0292). This postage-paid form requires less than 15 minutes to complete and can be dropped in any mailbox, faxed, emailed, or completed online within 48 hours of the vessels return to port. Therefore, record keeping and reporting costs associated with this LOF are minimal and would not have a significant impact on a substantial number of small entities.

If a vessel is requested to carry an observer, vessels will not incur any direct economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that TRP would be summarized in subsequent rulemaking actions.

This proposed rule contains existing collection-of-information (COI)

requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS preliminarily determined that publishing this proposed LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement or Environmental Assessment, as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: October 3, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 191001–0049]

RIN 0648–BI35

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Whiting; Pacific Coast Groundfish Fishery Management Plan; Amendment 21–4; Catch Share Program, 5-Year Review, Follow-on Actions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes this measure to enact a range of Follow-on Actions identified in the course of conducting the Pacific Coast Groundfish Trawl Catch Share Program 5-Year Review. These actions are intended to complete outstanding elements of the Pacific Coast Groundfish Trawl Catch Share Program, respond to problems identified after implementing the program, and modify outdated regulations. This action proposes regulations in accordance with Amendment 21–4 to

the Pacific Coast Groundfish Fishery Management Plan, and would revise elements in four areas of the Catch Share Program.

DATES: Comments on this proposed rule must be received no later than October 29, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0106 by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0106,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic Access

This proposed rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, or email: *colin.sayre@noaa.gov.*

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I. Background

The proposed action would complete outstanding elements of the Pacific Coast Groundfish Trawl Catch Share Program (Catch Share Program), respond to problems identified after Catch Share Program implementation, and modify outdated regulations. The proposed measures would: Allow the at-sea whiting sector to more fully and efficiently harvest its allocation through more flexible set-aside management of constraining bycatch species; improve utilization of Individual Fishing Quota (IFQ) and overall economic efficiency for the shorebased IFQ trawl sector; ensure fair and equitable access to resources in the event of at-sea Pacific Whiting Catcher-Processor (C/P) coop failure; and provide a more robust evaluation of Catch Share Program performance. This action also includes clarifying non-substantive changes to the regulatory language for the Cost Recovery Program.

The Council deemed the proposed regulations necessary and appropriate to implement these actions in an August, 23rd, 2019, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the proposed regulations in this action and whether they are consistent with the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson-Stevens Act and its National Standards, and other applicable law.

Pacific Coast Groundfish Trawl Catch Share Program

On January 1, 2011, NMFS implemented the Catch Share Program through Amendment 20 and Amendment 21 (75 FR 60867; October 1, 2010) to the Pacific Coast Groundfish FMP. Amendment 20 established a limited entry IFQ system for shorebased trawl vessels and cooperatives for the at-sea Pacific whiting mothership (MS) and C/P sectors. The intent of the Catch Share Program was to increase net economic benefits and create economic stability for individual trawl fishery participants, provide full utilization of the trawl sector allocation, and achieve individual accountability for catch and bycatch in the Pacific Coast groundfish fishery. Amendment 21 established fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the Catch Share Program by streamlining its administration, providing stability to the fishery, and addressing bycatch.

Catch Share Program 5-Year Review Follow-On Actions

Section 303A of the Magnuson-Stevens Act requires periodic reviews of limited access privilege programs (LAPPs), such as the Catch Share Program, starting five years after implementation. This review provides managers with information to determine whether Catch Share Program outcomes have been consistent with program goals and objectives and expected environmental impacts. Starting with implementation of the Catch Share Program in 2011, NMFS collected both baseline and annual socioeconomic data to judge the effectiveness of the Catch Share Program for the 5-Year Review. The Council approved the final version of the first 5-Year Review at its November 2017 meeting.

To aid in reviewing and refining the Catch Share Program, the Council appointed an ad hoc committee called the Community Advisory Board (CAB) at its September 2016 meeting. The CAB provides the perspective of fishing communities on Catch Share Program performance, potential improvements, and other advice the Council requests to inform the program review. In May 2017, the CAB developed a list of issues for the Council to consider for rulemakings after completing the 5-Year Review. At its June 2017 meeting, the CAB provided the Council with a priority list of follow-on actions from which six were selected for further development. The action issues the CAB selected were: Meeting the at-sea whiting fishery bycatch needs; trawl sablefish area-management; revising shoreside IFQ accumulation limits to increase attainment; meeting shoreside IFQ sector harvest complex needs; setting limits on fixed-gear gear switching; and setting C/P sector accumulation limits on permit ownership and harvesting/processing.

At its November 2017 meeting, in a single package, called the ''Follow-on Actions,'' the Council adopted the 5-

Year Review document and provided preliminary guidance for developing a range of alternatives from a subset of the action issues selected by the CAB, as follows:

- Adjust the management approach and FMP formulas for previously-overfished non-whiting stocks caught in the at-sea Pacific whiting fishery;
- Revise individual species annual quota pound (QP) vessel limits;
- Allow post-season QP trading and provide post-season relief from vessel QP limits;
- Eliminate the September 1 expiration for QP that have not been moved to a vessel account;
- Establish accumulation limits for C/P-endorsed permit ownership and processing amount;
- Require the submission of C/P-endorsed permit ownership information during the annual permit renewal process; and
- Require Quota Share (QS) permit owners to provide information on ownership and participation to the NMFS Northwest Fishery Science Center Economic Data Collection Program.

At its November 2017 meeting, the Council decided to analyze alternatives for a range of action issues identified for follow-on action as part of 2019–2020 biennial Pacific Coast groundfish harvest specifications (83 FR 66638; December 27, 2018), and deferred several others issues for consideration in future groundfish actions. In March 2018, the CAB provided input and recommendations as the Council adopted a final range of alternatives to be included in the follow-on actions for analysis. At its September 2018 meeting, the Council adopted preliminary preferred alternatives for each issue included in the Follow-on Action package. The Council selected the final preferred alternatives for the remaining follow-on actions to be included in Amendment 21–4 at its November 2018 meeting.

Concurrent with this proposed rule, NMFS also published a Notice of Availability to announce the proposed Amendment 21–4 to the Pacific Coast Groundfish FMP. The Notice of Availability requests public review and comment on proposed changes to the Council FMP document (84 FR 45706; August 30, 2019).

II. Summary of Proposed Regulations

A. At-Sea Whiting Fishery Set-Aside Bycatch Management

The Pacific Coast groundfish FMP accounts for non-whiting groundfish bycatch in the at-sea Pacific whiting C/P and MS sectors in a number of different ways. For most stocks, the Council recommends an expected annual bycatch level for the at-sea Pacific whiting fishery, and deducts it before allocating catch to the trawl sector. These deductions, known as set-asides, do not require closure of the at-sea Pacific whiting sectors, nor do they require any other management action if catch exceeds the expected amount of a set-aside. However, as a part of Amendment 21, the Council set formal allocations for four species, all of which were overfished at the time. The Council established allocations of these stocks for the at-sea Pacific whiting fishery in order to constrain catch. If catch in the at-sea C/P sector or MS sector exceeds the allocation for these stocks, NMFS is required to automatically close the sector. Canary rockfish, widow rockfish, darkblotched rockfish, and Pacific ocean perch (POP) were managed as allocations for the at-sea Pacific whiting fishery under Amendment 21.

In the past five years, the at-sea sectors have encountered these species with greater frequency as stocks increased under rebuilding efforts. In October of 2014 the MS sector experienced an unexpectedly large bycatch of darkblotched rockfish in a single haul that caused the sector to exceed its allocation for this species. The automatic closure provision in regulations at 50 CFR 660.60(d)(1) requires NMFS to close the at-sea Pacific whiting MS or C/P sectors when a non-whiting groundfish species with allocations is reached or projected to be reached. This early fishery closure left a significant portion of the MS sector's Pacific whiting allocation unattained. NMFS took inseason action to reapportion darkblotched rockfish from the C/P sector in order to reopen and allow the MS sector to fully attain its whiting allocation (79 FR 67095; November 12, 2014).

In 2018 widow rockfish was reapportioned from the MS cooperative sector to the C/P cooperative sector to avoid a fishery closure similar to the one that occurred in 2014 (83 FR 5952; September 15, 2018). In January 2018 the final rule for Amendment 21–3 (83 FR 757; January 8, 2018) converted darkblotched rockfish and POP from allocations to set-asides. Formulas in the regulations at § 660.55(c)(1)(i)(A) and (B) are used to determine set-aside amounts of darkblotched rockfish and POP. To ensure the action did not increase the risk of exceeding darkblotched rockfish or POP annual catch limits (ACLs), the final rule for Amendment 21–3 also added exceedance of the set-aside amount, plus an available buffer reserve for unforeseen catch events, to the list of circumstances requiring automatic closure for the at-sea sectors (MS and C/P). In the 2019–20 biennial harvest specifications and management measures (December 12, 2018; 83 FR 63970), the Council recommended, and NMFS approved, an action that removed the requirement that NMFS automatically close the at-sea sector if the set-asides for darkblotched rockfish or POP are exceeded. Amendment 21–3 further increased the flexibility of at-sea sectors to target their whiting allocation and provided economic relief from automatic fishery closures. Under regulations at § 660.150(c)(2)(B) and § 660.160(c)(3) NMFS still has the authority to take inseason action should a sector's catch of species exceed its set-aside amount with risk of exceeding harvest specifications, cause unforeseen impact on another fishery, or result in other conservation concerns.

In the at-sea Pacific whiting fishery, bycatch of canary rockfish and widow rockfish are currently managed as allocations. Under this management approach each at-sea sector receives allocations of canary rockfish and widow rockfish bycatch, and automatic closure of an at-sea sector is required if the allocation is exceeded. The amount of canary rockfish bycatch available to the at-sea sectors is determined and allocated each biennium. The available widow rockfish bycatch allocation is determined using a set formula in the groundfish FMP and regulations at § 660.55(c)(1)(i)(C).

This proposed action would remove the allocations of widow rockfish and canary rockfish and instead create set-asides in the at-sea sectors, consistent with set-aside management for POP and darkblotched rockfish. This action would also remove from the regulations formulas used to determine set-aside or allocation amounts for darkblotched rockfish, POP, and widow rockfish, and instead use the biennial specification process to determine set-aside amounts available to the at-sea Pacific whiting sectors. The Council recommended using the existing FMP formulas to establish initial amounts in the biennial harvest specifications and management measure process. The status quo methods for determining set-asides or allocations available for harvest of these rockfish species, and changes proposed by Amendment 21–4 are provided in Table 1.

TABLE 1—CURRENT AND PROPOSED ALLOCATION AND MANAGEMENT MEASURES FOR BYCATCH ROCKFISH STOCKS IN THE AT-SEA PACIFIC WHITING SECTORS

Species	Status quo allocation method	Status quo management measures	Proposed allocation method	Proposed management measures
Canary Rockfish.	Determined through biennial harvest specifications.	Allocation—Automatic closure when fully harvested.	Set-aside amount based on expected Pacific whiting fishery bycatch of this species determined during biennial harvest specifications process.	When set-aside is reached no action is taken, the Council may choose to take inseason action if there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns.
Darkblotched Rockfish.	FMP Formula: 9 percent or 25 mt, whichever is greater, of the total limited entry (LE) trawl allocation.	Set-aside—No action required if catch exceeds set-aside.		
Pacific Ocean Perch (POP).	FMP Formula; 17 percent or 30 mt, whichever is greater, of the total LE trawl allocation.	Set-aside—No action required if catch exceeds set-aside.		
Widow Rockfish.	FMP Formula: 10 percent or 500 mt, whichever is greater, distributed proportional to the sectors' Pacific whiting allocation.	Allocation—Automatic closure when fully harvested.		

Changing the method used to determine set-asides from set formulas to management through the biennial specifications process would provide greater flexibility to managers when determining bycatch amounts for these four rockfish species, allowing managers to appropriately anticipate bycatch in the at-sea whiting sector within the process of setting biennial harvest specifications and management measures. As with previous changes to bycatch management for the at-sea Pacific whiting fishery, this action would reduce the risk of constraining attainment of the full at-sea sector whiting allocation in the event that bycatch limits of these rockfish species are exceeded. Under the proposed set-aside management, the sector would not automatically close, and other management measures would not be required if bycatch of these species exceeds set-aside amounts. If catch of any of these four species exceeds the set-aside and there is risk of exceeding a harvest specification, unforeseen impact on other fisheries, or conservation concerns, NMFS and the Council may take inseason action (*e.g.,* time or area closures) to slow catch in the trawl fishery. Currently, all other non-whiting species in the Pacific whiting fishery are managed as set-asides with amounts set during the biennial specifications process. Expected bycatch levels set during the specification process are generally high enough to cover maximum Pacific whiting fishery bycatch each year without risk to other harvest guidelines. Set-aside amounts of darkblotched rockfish and POP determined in the 2019–20 harvest specifications are higher than have historically been caught by the at-sea sector. In addition, the biomass for both canary rockfish and widow rockfish has increased greatly in recent years as a result of rebuilding efforts. Therefore, the Council determined it is unlikely that catch in the at-sea Pacific whiting sectors will exceed set-asides for these four rockfish species at a level that would result in overfishing.

B. Shorebased IFQ Trawl Sector Quota Transfers

The proposed measures would adjust the quota trading provisions for participants in the shorebased IFQ sector. The changes would allow for post-season quota trading, remove the annual vessel limit for post-season trades, and remove a quota transfer deadline.

Currently, shorebased IFQ fishery participants who have caught more than their available QP for any stock or stock complex during a given fishing year enter the following fishing year with their vessel accounts in deficit. Participants must cover deficits with the following year's QP allocation. In most fishing years, there are remaining unused QP available in other vessel accounts at the end of the fishing year. The proposed action would expand the quota trading provision to allow participants to cover deficits after the end of the fishing year by either (1) using QP from the immediately following fishing year (status quo) or (2) trading with other participants to acquire surplus QP from the fishing year in which the deficit occurred (base year), or a combination of both methods. After the end of the groundfish fishing year on December 31st, QS permit owners would be able to trade surplus QP to QS permit owners with a deficit of QP from the base fishing year during a post-season transfer period. The post-season trading window would last from January 1st until on or about March 14th of the immediately following fishing year; NMFS would provide fishery participants advance notice of the dates of the post-season trading window through public notice. Surplus QP traded during the post-season trading window could only be transferable for the purpose of curing vessel account deficits, and would not be eligible for fishing. For example, a QS permit owner

starts the 2020 fishing year with 2,000 quota pounds of POP quota on January 1, and ends the year on December 31 with POP catch totaling 2,250 quota pounds, accruing a deficit of 250 quota pounds. The QS permit owner would be able to choose to use 250 quota pounds of their 2021 POP quota allocation to cover the deficit, or to purchase unused 2020 POP quota left over from other QS permit owners during the post-season trading window; the QS permit owner would also be able to choose a combination of both of these options.

The post-season trading provision interacts with existing carryover provisions in regulations at § 660.140(e)(5). Surplus QP and QP deficits at the end of a fishing year can be carried-over to the following fishing year. The surplus carryover limit is the amount of surplus QP from the base year that can be fished in the immediately following fishing year. Surplus QP carryover is limited to a maximum of 10 percent of a QS permit owner's total allocation for a stock or stock complex, provided that total carryover for the stock or stock complex does not exceed the ABC for the following year, consistent with provisions of the Magnuson-Stevens Act National Standard 1 Guidelines. The deficit carryover limit is the amount of deficit QP that a vessel may carry into the following fishing year without violating the carryover regulations. The deficit carryover limit is a maximum of 10 percent of a QS permit owners total cumulative QP (used and unused) in the vessel account 30 days after the date the deficit is documented. Under the current regulations, a QS permit owner that has 25 percent of their total QP for a given stock unused after December 31 may carryover and fish unused QP equal to 10 percent of the base year's total, forgoing the remaining 15 percent from the base year. There is no limit on the amount of deficit QP that QS permit owners carryover from the base year into the following fishing year, and all deficits require pound-for-pound payback before the vessel is considered eligible to fish in the shorebased IFQ fishery in the following year. As an example of the interaction between the proposed post-season trading provision and surplus carryover, a QS permit owner with a QP surplus of 25 percent for a given stock, rather than forgoing 15 percent of the surplus QP over the carryover limit, may instead trade the unused QP to another QS permit owner with a deficit for the same given stock. The trade described in this example would occur during the post-season trading window (January 1st to on or about March 14th of each year), and prior to NMFS issuing carryover surplus QP into the following year vessel accounts. The carryover provisions for QP surplus and deficits will remain in place, allowing QS permit owners the option to either conduct post-season trading or use surplus carryover to maximize opportunities to use surplus QP and cover QP deficits.

An additional component of this proposed action would also allow vessels to cover end-of-the-year deficits that exceed the annual vessel limit with post-season QP trading, QP allocation for the following fishing year, or a combination, without restriction from the annual QP vessel limit of the base or following year. The Catch Share Program initially included annual vessel limits to ensure no individual or entity acquired excess, or otherwise unfair access, to fishing privileges. Deficits exceeding the annual QP vessel limit have occurred in the fishery when an unexpectedly high bycatch event known as a ''lightning-strike'' takes place. These events are extremely rare and can result from unpredictable and dense congregations of a single bycatch species in one area where trawling occurs. Though infrequent, lightning-strike hauls over the annual QP vessel limit can greatly impact the ability of the affected QS permit owner to operate in subsequent years. QS permit owners are required to cover the QP deficits that result from lighting strikes, but are also constrained by the annual QP vessel limit from the base fishing year. For this reason, the QS permit owner must forego fishing until they cover the QP deficit with QP from the following fishing year under the base year annual QP vessel limit, in some cases over multiple fishing years. This action would allow QS permit owners with deficits exceeding the annual QP vessel limit to cover the deficit by trading post-season for available unused QP, or to use their QP allocations from the following fishing year to cure the deficit. While QS permit owners would no longer be limited by the annual vessel QP limits in curing deficits, they would violate the carryover regulations if the deficit exceeds the deficit carryover limit. Vessels affected by lightning-strike hauls would have the ability to cover deficits more easily, and return to fishing in a shorter timeframe under the proposed action.

Finally, this action would eliminate the September 1st quota transfer deadline for shorebased IFQ fishery participants. Current regulations in § 660.140 (d) require QS permit owners to transfer QP from a QS account to a vessel account by September 1st. Each year, QS permit owners receive disbursements of a percentage of the total allocations for each IFQ stock or stock complex directly to QS accounts. This allocated percentage is expressed in QPs and cannot be fished until the QP is transferred to a vessel account. Any unused QP that have not been transferred from a QS account to a vessel account expire September 1 of the year they were issued. The proposed action would make unused QP in QS accounts available for transfer to a vessel account, for trading and fishing, until December 31st of the fishing year for which they were issued. Under the proposed action, unused QP would remain in a QS account after January 1st and would be available for transfer to a vessel account for use in post-season trading in the following year until the end of the post-season trading period.

This proposed action would help reduce the overall costs of participation in the shorebased IFQ sector and ensure the maximum amount of annual IFQ allocations are used to harvest fish rather than to cover the base year's QP deficits. The Council's analysis of these proposed measures did not indicate that they are likely to encourage participants to engage in fishing practices that regularly exceed annual QP vessel limits. Because QS permit owners are still required to cover deficits pound-for-pound, fishing into deficit would carry the cost of purchasing QP to cover deficits the following fishing year.

C. Catcher Processor (C/P) Permit Accumulation Limits

The proposed action would establish a limit of five at-sea whiting C/P permits that any individual or entity may own or control in the event the C/P sector cooperative fails. When developing a limited access privilege program, the Magnuson-Stevens Act requires that the Council ''ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges.'' During implementation of the Catch Share Program, accumulation limits were included for the shorebased IFQ sector and the at-sea MS sector, to meet requirements under Section 303A(c)(5)(D) of the Magnuson-Stevens Act. However, no maximum share of

limited access privileges in the C/P sector was established.

At the time of the Catch Share Program's development, the C/P sector had a single voluntary coop that divided by agreement among coop members the entire catch allocated to this sector. The Council and NMFS decided that the rationalization program adopted through Amendment 20 would incorporate the voluntary coop structure already in place and require the annual issuance of a coop permit for the privilege of harvesting the allocated catch in this particular sector. In the event the coop failed in the future, Amendment 20 provided for the management of the CP sector with an IFQ program. The previously existing self-organized coop did not include accumulation limits, and none were added when the coop was incorporated as a LAPP through Amendment 20.

During the Catch Share program 5-year review, the Council discussed C/P coop sector accumulation limits and adopted a June 13, 2017, control date to support future consideration of accumulation limits (83 FR 18259; April 26, 2018). In this proposed action, an accumulation limit of owning or controlling a maximum of five C/P-endorsed permits would be applied to the C/P sector only in the event that the current C/P cooperative fails and NMFS subsequently implements an IFQ system for the C/P sector. NMFS will determine that the cooperative has failed after any C/P-endorsed permits owners withdraw from the coop, one or more members voluntarily choose to dissolve the coop, or the coop agreement is no longer valid. The designated coop manager is required to notify NMFS of the failure, or the Regional Administrator may conduct an independent investigation to determine whether coop failure has occurred. Under the proposed action, after receiving notification from the coop manager or if NMFS has made an independent determination of a coop failure, NMFS will begin the process of implementing an IFQ program for the at-sea C/P sector. Through public notice, NMFS will announce the date on which an IFQ program will become effective for the C/P sector. Before that date, a publicly announced divestiture period will be provided in which any entities that control C/P-endorsed permits must take action to comply with the C/P accumulation limit. The proposed rule for this action provides regulatory language that sets forth criteria for the purpose of determining ownership or control a person or entity has over a C/P endorsed permit. This language is modeled after the regulatory language currently applicable to the shorebased IFQ sector. After NMFS implements the IFQ-based C/P fishery, no individual or entity may own or control more than five C/P-endorsed permits, and no person or entity may own or control any quota associated with permits in excess of the five permit limit. Any individual or entity found to own or control more than five C/P-endorsed permits will be required to divest ownership of any excess permits following a divestiture period. Upon determination of a coop failure, a divestiture period will occur starting with the date the coop failed and ending on the date an IFQ program is implemented for the C/P whiting sector. Prior to the date an IFQ program is implemented, there will be a divestiture period during which any person owning more than five C/P-endorsed permits will be required to divest of excess permits. After the date in which an IFQ program is implemented, any C/P-endorsed permits in excess of the accumulation limit may be revoked by NMFS and associated QS redistributed to other C/P-endorsed permit owners.

The Council also considered whether to limit the amount of at-sea whiting allocation a single entity or individual possessing a C/P permit could process with the intent that no single entity could process an excessive proportion of the sector allocation for Pacific whiting. After taking into account analysis and public comments, the Council selected the status quo (''No Action'' alternative) as the final preferred alternative for C/P processing limits. Under the status quo, a single entity may process up to 100 percent of the C/P sector whiting allocation. This decision was made to maintain the flexibility that the coop system provides. Currently three fishing companies control the ten C/P endorsed permits in the coop; if one company's vessels were unable to make it to the fishing grounds, it is possible that a processing limit could impede another company's harvest of fish on behalf of the absent vessels, thereby restricting full attainment of the at-sea sectors' whiting allocation. The Council also determined C/P permit accumulation limits and conversion to IFQ system in the event of coop failure would achieve the same goal as processing accumulation limits in the absence of the cooperative management structure.

D. New Data Collections

1. C/P Endorsed Permit Ownership Interest

The proposed action would establish a data collection for C/P permit owners. The Catch Share Program requires mandatory submission of ownership information from catcher vessels and MS vessels at the time of permit application or renewal. The data collection, known as the Trawl Identification of Ownership Interest form, helps NMFS enforce accumulation limits and ensures no individual or entity obtains excessive limited access privileges. When the Catch Share Program was established, it did not include an accumulation limit and consequently did not require a collection of ownership information. This action would establish a requirement for the at-sea whiting C/P sector permit owners to complete the Trawl Identification of Ownership Interest form annually during C/P endorsed permit renewal.

The form is used to collect basic trawl vessel or permit owner information, such as vessel name, permit number, owner name and legal address, and the names and addresses of other individuals and entities that have an ownership interest and percentage of ownership for the vessel or permit. This proposed rule would also support future consideration by the Council in the event accumulation limits are required for the at-sea C/P sector as described in Section C of this preamble.

2. Quota Share Permit Owner Participation and Economic Data

The proposed action would establish an economic data collection for quota share (QS) permit owners. Currently, any owners, charterers, or lessees of any vessel, shorebased processor, and first receiver sites participating in the Catch Share Program are required to submit annual Economic Data Collection (EDC) forms. The information collected through EDC forms includes but is not limited to annual data related to costs, earnings, value, labor, operations, physical characteristics, ownership and leasing information for vessels, first receiver sites or processors. The EDC forms also include questions related to costs and earnings from quota trading (including sales and leases) and the pattern of owner participation in the fishery. However, these forms do not currently collect information from QS permit owners who are not also owners, charterers or lessees of vessels, shorebased processors, or first receiver sites.

Some participants in the Catch Share Program owned a vessel in the past, and received an allocation of IFQ and associated QS permit when the program was first implemented in 2011, but have since sold their vessel while retaining their QS permit. Reducing the number of active vessels was one of the intended

outcomes of rationalizing the trawl fishery under the Catch Share Program, and the Council anticipated that some participants would own and trade quota, but not actively fish or process catch. The Catch Share Program was designed to provide historic fishery participants who exited the fishery continued benefits through QS ownership. The existing EDC form was designed to collect detailed economic data on only active fishery participation associated with vessel, processor, or first receiver ownership; the same level of economic and participation data is not currently collected from the category of QS permit owner that does not also own or operate a vessel or shorebased processor/first receiver. Because historic fishery participants are not required to complete an EDC form, the Council and NMFS lack knowledge about how economic benefits from these inactive or non-fishing permit owners impact fishing communities.

This action would create a mandatory requirement for all categories of QS permit owners to complete an EDC Quota Share Permit Owner urvey form that collects information related to QS permit owner annual participation in the fishery, and costs and earnings related to QS permit ownership. This survey will be collected electronically via webform during the online QS permit application and renewal process. Information collected on this survey will provide NMFS and the Council with better understanding of Catch Share Program performance, economic costs and benefits conferred to fishery dependent communities. Better evaluation of program performance will support the sustained fishing community participation in the Catch Share Program, and to the extent practicable, minimize adverse economic impacts on fishing communities.

E. Clarifications to Cost Recovery Regulatory Text

On March 20, 2014, NMFS published a Public Notice (NMFS–SEA–14–12) discussing two clarifications to the Pacific Coast Groundfish Trawl Rationalization Cost Recovery Program that went into effect in January 2014 (78 FR 75268; December 11, 2013). This proposed rule would implement regulatory language necessary to reflect these two program clarifications. The first proposed adjustment clarifies that the deposit principal may be used to refund cost recovery payments made by credit card through *Pay.gov.* The second proposed clarification specifies that in the C/P sector only retained fish, and not discards, are used in calculating ex-vessel revenue as it relates to determining cost recovery fees.

F. Technical Corrections

In addition to proposed regulatory changes to implement the Council's recommendations, this rule also proposes minor technical corrections. Specifically, these minor technical corrections remove obsolete baseline dates that were included during implementation of the Catch Share Program, such as the years when initial trawl allocations were issued, the first date on which quota transfers were permitted, and the dates when economic data collections were initiated.

Correction and Clarification for the Amendment 21–4 Notice of Availability

NMFS is making the following correction and clarification to text published in the Notice of Availability (NOA) on August 30, 2019 (84 CFR 45706). On page 45708 of the NOA, language stating ''The proposed FMP amendment is intended to allow the Council increased flexibility to adjust bycatch limits inseason for the at-sea whiting sectors . . .'' should omit the word ''inseason'', because the Council does not adjust set-asides through inseason action. The Council can adjust set-asides during each biennial harvest specification cycle, as described earlier in the same paragraph in the NOA and also in this preamble in section II, A, ''At-sea Whiting Fishery Set-Aside Bycatch Management.''

We are also clarifying the meaning of the language on page 45708 of the NOA that describes Quota Share permit owners who would be responsible for completing EDC forms under the proposed rule. Following is the NOA language, as clarified, with additional language noted in italics: ''The proposed action would also require *all* Quota Share permit owners, *including those* that do not also own charter or lease a vessel, shorebased processor or first receiver site to submit participation and quota cost/earning information through a subset of the Catch Share Economic Data Collection program.''

III. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action is contained in the **SUMMARY** section and at the beginning of the **SUPPLEMENTARY INFORMATION** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates). A small *harvesting business* has combined annual receipts of $11 million [1] or less for all affiliated operations worldwide.

A small *fish-processing business* is one that employs 750 or fewer persons for all affiliated operations worldwide. NMFS is applying this standard to C/Ps for the purposes of this rulemaking, because these vessels earn the majority of their revenue from selling processed fish.

For *marinas and charter/party boats,* a small business is one that has annual receipts not in excess of $7.5 million. A *wholesale business* servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

For the purposes of this rulemaking, a *nonprofit organization* is determined to be ''not dominant in its field of

[1] On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015; codified at 50 CFR 200.2). The $11 million standard became effective on July 1, 2016, and after that date it is to be used in all NMFS rules subject to the RFA. Id. at 81194. This NMFS rule is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry, respectively.

operation'' if it is considered small under one of the following SBA size standards: *Environmental, conservation, or professional organizations* are considered small if they have combined annual receipts of $15 million or less, and *other organizations* are considered small if they have combined annual receipts of $7.5 million or less. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

Description of the Reasons Why Action by the Agency Is Being Considered

This action proposes changes to the Catch Share Program intended to complete outstanding elements of the program, respond to problems identified after implementing the program, and modify outdated regulations. A complete description of the action, why it is being considered, and the legal basis for this action are contained in Amendment 21–4, and elsewhere in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which the Rule Applies, and Estimate of Economic Impacts by Entity Size and Industry

For the purpose of the RFA analysis, this proposed rule will impact entities that own quota share permits and entities that both process and harvest groundfish. For RFA purposes NMFS classifies a business primarily engaged in commercial fishing (NAICS code 11411) as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Based on the holdings of first receiver permits in the West Coast Region permits database, 22 non-whiting quota share permit owners are estimated to be primarily engaged in seafood product preparation and packaging. According to the NMFS size standard, three of the entities that own three first receiver permits are considered small. These small processing entities were issued 1.7 percent of the non-whiting QP issued in 2018, the most recent year available. Some of these small processing entities also own groundfish permits, required on both catcher vessels and C/Ps, which would be regulated by the proposed rule; three small entities primarily engaged in seafood processing own two limited entry groundfish permits.

Limited entry groundfish permit vessels are required to self-report size across all affiliated entities. Of the businesses that earn the majority of their revenue from commercial fishing, 30 groundfish vessel permits are owned by seven entities that are considered large according to the SBA size standard and as self-reported on groundfish permits and first receiver site license permits. Six of these seven large processing entities were issued 10.2 percent of the non-whiting QP issued in 2018 across sixteen quota share permits.

Entities that are not registered as trusts, estates, governments, or non-profits are assumed to earn the majority of their revenue from commercial fishing.This definition is used for 124 QS permit owners, who collectively received 76.5 percent of the quota pounds issued in 2018. Of 118 trawl endorsed permits, 117 are owned by commercial fishing entities in 2019; 5 of these entities self-reported as large. Of the businesses who earn the majority of their revenue from commercial fishing, one that self-reported as large, owns four groundfish permits and one quota share permit. Many groundfish trawl permit owners also own quota share permits; however, it is not possible with available data to tabulate unique ownership across quota share permits and groundfish permits, so the numbers provided likely represent the maximum number of entities impacted.

The RFA recognizes and defines a small governmental jurisdiction as any government or district with a population of less than 50,000 persons. According to the public IFQ Account database as of June 19, 2018, the City of Monterey owns quota shares of ten species. The U.S. Census estimates the population of Monterey to be 28,454 as of July 1, 2017, so the City of Monterey would be considered a small governmental jurisdiction under the RFA definition. The City of Monterey received 0.5 percent of the quota pounds issued for 2018, according to the public IFQ Account database.

According to the public IFQ Account database, six not-for-profit organizations own quota share in the Catch Share Program and would be impacted by this proposed rule. The RFA defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field. NMFS uses the SBA size standards to determine whether a not-for-profit organization is a ''small organization.'' By SBA size standards, a small organization has combined annual receipts of $15 million or less for environmental, conservation, or professional organizations, and $7.5 million or less for other organizations.

Five of these not-for-profit organizations would be considered small by the RFA definition and the SBA size standard, using 2016 annual receipts of $120–500 thousand dollars, as reported on IRS form 990. One not-for-profit organization self-reported as large, based on fiscal year 2017 receipts of $1.1 billion. Collectively, the five small not-for-profit organizations received 7.2 percent of the non-whiting quota pounds issued in 2018 (issued annually through a separate rulemaking process) and the large not-for-profit organization received 0.5 percent. The large not-for-profit organization also owned two limited entry trawl permits that would be impacted by the management measures of the rule. The small not-for-profits owned 3 permits.

Finally, 11 personal or family trusts/estates owned quota share permits and would potentially be impacted by the trawl sector allocation under this proposed rule. All of these are assumed to be smaller than the RFA size standard. Collectively, these eight small entities received 4.2 percent of the non-whiting quota pounds issued for 2018. Five of these entities owned five groundfish permits.

This action is expected to have a significant economic impact on a substantial number of small entities; however, the effects on the regulated small entities identified in this analysis are expected to range from neutral to positive. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profits for any small entities. An initial regulatory flexibility analysis was prepared to support this conclusion.

Description of Record-Keeping, and Reporting, Requirements of This Proposed Rule

This proposed rule would require modifications to current recordkeeping and reporting requirements for two information collections. Under the Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection (OMB Control Number 0648–0620) C/P-endorsed permit owners would be required by the proposed rule to submit

annual ownership interest information via the Trawl Identification of Ownership Interest form. Under the West Coast Groundfish Trawl Economic Data Collection (OMB Control Number 0648–0618) a new Quota Share Permit Owner survey form would be implemented by this proposed rule, and all owners of a quota share permit would be required to submit the completed form annually. A description of the revision for the two existing information collection requirements follows.

C/P Endorsed Permit Ownership Interest Form

The modifications would require C/P endorsed permit owners to complete Trawl Owner Identification of Interest forms during annual permit renewal under OMB Control Number 0648–0620. Currently there are 10 C/P endorsed permits approved by NMFS in the Catch Share program. These permits are held by three companies with no single company owning more than five permits. As each company is a controlling entity, three is the minimum number of affected entities that would be expected to require submission of one Trawl Identification of Ownership Interest form for each C/P endorsed permit. The requested change in information collection would require from C/P permit owners the same level of ownership interest identification as required of mothership and catcher vessel permit owners. The current cooperative structure of the C/P sector helps to ensure no single entity acquires excessive privilege in the sector. However, in the event of a coop failure, it would be necessary to set accumulation limits, which would require NMFS to track ownership interest in C/P endorsed permits. Additionally, NMFS does not anticipate any new fishery entrants will apply for C/P endorsed permits, nor will NMFS approve any new C/P endorsed permits.

Economic Data Collection From Quota Share Permit Owners

The proposed action would require changes to the Catch Share Program Economic Data Collection OMB Control Number 0648–0618. The proposed rule would change reporting requirements for owners of quota share permits to submit information to the Catch Share Program Economic Data Collection (EDC) Program. Participants in the Catch Share Program who own, lease or charter vessels, shorebased processors, or first receiver sites are required to submit annual economic data to the EDC Program through survey forms corresponding to these characteristics of participation. The EDC Program currently does not require submission of forms from quota share permit owners who do not also own, lease or charter vessels, shorebased processors, or first receiver sites. The proposed rule would add a requirement for submission of EDC forms from all participants who own a quota share permit, including those who do not otherwise participate in the fishery other than by owning a quota share permit. Quota share permit owners will submit this form electronically via webform during the annual quota share account application and renewal process. The proposed submission deadline for the Quota Share Permit Owner survey will be November 30th in order to align with other quota share account application and renewal materials, rather than September 1st, as is required for other EDC forms.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This rule is not expected to result in adverse impacts to small entities. Thus, there are no significant alternatives to the proposed rule that would minimize adverse economic impacts on small entities. The Council did consider alternatives to the proposed rule which would have had a lower level of benefits to small entities; however, the Council did not consider alternatives that would have had greater benefits to small entities, as these would not have been consistent with other applicable laws.

Paperwork Reduction Act (PRA) Collection-of-Information Requirements

This action contains a revision of two existing information collection requirements, which have previously been approved by the Office of Management and Budget (OMB). The changes under this proposed rule are subject to review and approval by OMB. NMFS has submitted these requirements to OMB for approval under Control Number 0648–0620 Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection, and under Control Number 0648–0618 West Coast Groundfish Trawl Economic Data Collection.

Under this proposed rule, modifications to OMB Control Number 0648–0620 would require completion of the Trawl Identification of Ownership Interest form by three different fishing companies that own the 10 at-sea Pacific Whiting C/P-endorsed limited entry permits. The public reporting burden is expected to require approximately 3.5 minutes to complete each form once per year during C/P-endorsed permit renewal. In the first year, respondents may require more time to complete the forms, requiring a one-time estimate of 45 minutes per form for a total annual burden increase of 7.5 hours in the first year, and 35 minutes in following years. The total copy costs per form under this collection would be $0.35, for a total increase of $3.5 to annual public burden costs.

Based on 2018 data from EDC responses and the public QS permit database, the public reporting burden for the change in requirement under Control Number 0648–0618 is expected to include approximately 178 Quota Share permit owners. The new reporting requirement would add to the EDC collection approximately 73 new respondents who are QS permit owners, who are not also owners, charterers, or lessees of vessels, or processors and other first receiver sites, and as a result have not previously completed EDC forms. Current burden time estimates for the EDC are approximately 8 hours per year and include questions relating to both QS permit ownership and vessel operations. The new form would collect more detailed QS permit ownership information than in prior years, increasing the total public burden hours. The new QS Permit owner survey is expected to take approximately 1 hour, once per year, for all 178 respondents to complete, adding 178 hours to the total (for an increase from 2,224 hours to 2,402 hours) These forms would be collected electronically during the QS permit renewal process, thereby reducing the mailing costs to respondents. Respondents would be asked to retain a copy of the survey for their records (at $0.20 per survey), and would increase total costs by $36 (from $4,120 to $4,156).

Public comment is sought regarding: Whether the proposed collection of information requirements are necessary for the proper performance of the agency, including whether the information shall have practical utility; the accuracy of the burden statement; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collected information, including through the use of automated

collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *https://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indians.

Dated: October 2, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. Authority citation for part 660 continues to read as follows;

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.55:

■ a. Revise paragraphs (a), (c)(1), (d), and (j), and

■ b. Remove and reserve paragraph (f)(2).

The revisions read as follows:

§ 660.55 Allocations.

(a) *General.* The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, separate allocations for the trawl and nontrawl fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, for those species not subject to the trawl and nontrawl allocations specified under Amendment 21 and in paragraph (c)(1) of this section, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N lat is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

* * * * *

(c) * * * (1) Species/species groups and areas allocated between the trawl and non-trawl fisheries are allocated based on the amounts and percentages in the table below. IFQ species not listed in the table below are allocated between the trawl and nontrawl fisheries through the biennial harvest specifications process.

ALLOCATION AMOUNTS AND PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors (percent)	All non-treaty non-trawl sectors (percent)
Lingcod	45	55.
Pacific Cod	95	5.
Sablefish S. of 36° N lat	42	58.
PACIFIC OCEAN PERCH	95	5.
WIDOW	91	9.
Chilipepper S. of 40°10′ N lat	75	25.
Splitnose S. of 40°10′ N lat	95	5.
Yellowtail N. of 40°10′ N lat	88	12.
Shortspine N. of 34°27′ N lat	95	5.
Shortspine S. of 34°27′ N lat	50 mt	Remaining Yield.
Longspine N. of 34°27′ N lat	95	5.
DARKBLOTCHED	95	5.
Minor Slope RF North of 40°10′ N lat	81	18.
Minor Slope RF South of 40°10′ N lat	63	37.
Dover Sole	95	5.
English Sole	95	5.
Petrale Sole	95	5.
Arrowtooth Flounder	95	5.
Starry Flounder	50	50.
Other Flatfish	90	10.

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation amounts and percentages as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for species/species groups and areas. For IFQ species the trawl allocation is further subdivided within each of the trawl sectors (MS, C/P, and IFQ) as specified in § 660.140, 660.150, and 660.160 of subpart D. The whiting allocation is further subdivided among the trawl sectors as specified in paragraph (c)(1)(i) of this section.

(ii) *Nontrawl fishery allocation.* For each species/species group and area, the nontrawl fishery allocation is derived by subtracting from the corresponding harvest guideline the trawl allocations specified in paragraph (c) of this section and during the biennial harvest specifications The nontrawl allocation will be shared between the limited entry fixed gear, open access, and recreational fisheries as specified through the biennial harvest specifications process and consistent with allocations in the PCGFMP.

* * * * *

(d) *Commercial harvest guidelines.* To derive the commercial harvest guideline, the fishery harvest guideline is further reduced by the recreational set-asides. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery, as appropriate.

* * * * *

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For Pacific Coast treaty Indian fisheries, set-asides will be deducted from the TAC, OY, ACL, or ACT when specified. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts may be adjusted through the biennial harvest specifications and management measures process.

* * * * *

■ 3. In § 660.60:

■ a. Revise paragraphs (d) introductory text, (d)(1) introductory text, and (d)(1)(i);

■ b. Remove paragraph (d)(1)(iii);

■ c. Redesignate paragraphs (d)(1)(iv) through (vii) as (d)(1)(iii) through (vi), respectively.

The revisions read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) *Automatic actions.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions will be initiated in the following circumstances:

(i) Close the MS or C/P sector when that sector's Pacific whiting allocation is reached, or is projected to be reached. The MS sector non-coop fishery will be closed by automatic action when the Pacific whiting or non-whiting allocation to the non-coop fishery has been reached or is projected to be reached.

* * * * *

Table 1b to Part 660, Subpart C—2019, Allocations by Species or Species Group [Amended]

■ 4. In Table 1b to part 660, subpart C—2019, Allocations by Species or Species Group, Remove footnotes ''c' through 'f', and redesignate footnote 'g' as 'c'.

Table 1d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2019 [Removed]

■ 5. Remove Table 1d to part 660, subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2019, and footnotes.

Table 1e to Part 660, Subpart C—Whiting and Non-Whiting Initial Issuance Allocation Percentage for IFQ Decided Through the Harvest Specifications, 2011 [Redesignated]

■ 6. Redesignate Table 1e to part 660, subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011 as Table 1d to part 660, subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011.

Table 2d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2020 [Removed]

■ 7. Remove Table 2d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2020 and Beyond and footnotes

■ 8. In § 660.111, amend the definition of *Ex-vessel value* by revising paragraph (3) to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value * * *

(3) For the C/P Coop Program, the value as determined by the aggregate pounds of all groundfish species catch (as defined in § 660.11) retained on board, by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced pursuant to § 660.115(b)(2).

* * * * *

■ 9. In § 660.113, add paragraph (b)(1)(iv), and revise paragraphs (d)(5)(ii)(A)(*2*), (d)(5)(ii)(A)(*4*) and (*5*) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(iv) All owners of a quota share (QS) permit as defined at § 660.25(c)

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(A) * * *

(*2*) The weight of each species of groundfish retained on board.

* * * * *

(*4*) The ex-vessel value of each species of groundfish retained on board,

(*5*) The net ex-vessel value of each species of groundfish retained on board,

* * * * *

■ 10. In § 660.114, revise paragraphs (a), (b), and (c) to read as follows:

§ 660.114 Trawl fishery—economic data collection program.

(a) *General.* The economic data collection (EDC) program collects mandatory economic data from participants in the trawl rationalization program. NMFS requires submission of EDC forms to gather ongoing, annual economic data, including, but not limited to the following categories of information related to participation in the trawl rationalization program:

(1) Annual data related to QS permit owner activity and characteristics of participation in the fishery, costs and earnings from quota trades, and quota leasing.

(2) Annual data related to costs, earnings, value, labor, operations, physical characteristics, ownership and leasing information for vessels, first receiver sites, or shorebased processors.

(b) *Economic data collection program requirements.* The following fishery participants in the limited entry groundfish trawl fisheries are required to comply with the following EDC program requirements:

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA.)
(1) Limited entry trawl catcher vessels.	(i) Annual/ongoing economic data.	(A) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit. (B) [Reserved].	(*1*) For permit owner, a limited entry trawl permit application (including MS/CV-endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i). (*2*) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP or IBQ pounds) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(vi) and § 660.140(e). (*3*) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP or IBQ pounds if own QS or IBQ) will not be authorized, until the required EDC for their operation of that vessel is submitted.
(2) Motherships	(i) Annual/ongoing economic data.	(A) All owners, lessees, and charterers of a mothership vessel registered to an MS permit. (B) [Reserved]	(*1*) For permit owner, an MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i). (*2*)For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(vi). (*3*) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(3) Catcher processors.	(i) Annual/ongoing economic data.	(A) All owners, lessees, and charterers of a catcher processor vessel registered to a C/P-endorsed limited entry trawl permit. (B) [Reserved]	(*1*) For permit owner, a C/P-endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i). (*2*) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(vi). (*3*) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(4) First receivers/shorebased processors.	(i) Annual/ongoing economic data.	(A) All owners of a first receiver site license. (B) All owners and lessees of a shorebased processor (as defined under "processor" at § 660.11, for purposes of EDC) that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver.	(*1*) A first receiver site license application will not be considered complete until the required EDC for that license owner associated with that license is submitted, as specified at § 660.140(f)(3). See paragraph (b)(4)(i)(A) of this table.
(5) Quota Share Permit Owners.	(i) Annual/ongoing economic data.	(A) All owners of a Quota Share permit and account (as defined under § 660.25 (c)). (B) [Reserved]	(*1*) A Quota Share permit application or permit renewal package will not be considered complete until the required EDC for that permit is submitted, as specified at § 660.140, subpart D. (2*)* [Reserved].

(c) *Submission of the EDC forms, and deadline*—(1) *Submission of the EDC form.* The complete, certified EDC forms must contain valid responses for all data fields, and must be submitted either by paper or web form submission as follows:

(i) *Paper form submission.* Paper forms must be submitted to ATTN: Economic Data Collection Program (FRAM Division), NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112.

(ii) *Web form submission.* Completed EDC web forms must be submitted electronically via the Economic Data Collection Program Web Form portal through *NOAA.gov/fisheries* and the signature page faxed, mailed, or hand-delivered to NWFSC.

(2) *Deadline.* Complete, certified EDC forms must be mailed and postmarked by or hand-delivered to NMFS NWFSC no later than September 1 each year for the prior year's data.

(3) *Quota Share Permit Owner Survey Submissions and Deadline.* Quota Share Permit Owner survey forms are submitted by webform only during the quota account application and renewal process specified at § 660.140(d)(2). The complete certified Quota Share Permit

Owner survey must be submitted no later than November 30 of each year.

* * * * *

■ 11. In § 660.115, revise paragraphs (d)(1)(ii)(B) and (C) to read as follows:

§ 660.115 Trawl fishery—cost recovery program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment.

(C) *Deposit principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to the Fund subaccount to which the deposit principal relates. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Coop Program. The cost recovery form will be available on the *pay.gov* website.

* * * * *

■ 12. In § 660.140, revise paragraphs (d)(1)(ii) introductory text, (d)(2)(iii) introductory text, paragraphs (d)(3)(i)(D), (d)(3)(ii)(B)(*2*), (d)(3)(ii)(B)(*3*), (e)(3)(iii)(A) and (B), paragraphs (e)(4)(i) introductory text, and paragraphs (e)(4)(ii), and (e)(5) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ website and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.,* decimal amounts less than 0.5 round down and 0.5 and greater round up). NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.,* no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account between January 1 and December 31 of the year for which they were issued in order to be fished.

* * * * *

(2) * * *

(iii) *QS permit application process.* NMFS will accept a QS permit application from January 1 to November 30 of each calendar year. QS permit applications received between December 1 and December 31 will be processed by NMFS in the following calendar year. NMFS will issue only one QS permit to each unique person, as defined at § 660.11 subject to the eligibility requirements at paragraph (d)(2)(i) of this section. Each applicant must submit a complete application. A complete application includes a QS permit application form, payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, and a complete economic data collection form as required under § 660.114. NMFS may require additional documentation as it deems necessary to make a determination on the application. The QS permit application will be considered incomplete until the required information is submitted.

* * * * *

(3) * * *

(i) * * *

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, a complete economic data collection form as required under § 660.114. The QS permit renewal will be considered incomplete until the required information is submitted.

* * * * *

(ii) * * *

(B) * * *

(*2*) *Transfer of QS or IBQ between QS accounts.* QS permit owners may transfer QS or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.,* greater than or equal to 0.001 percent). QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

(*3*) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.,* no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to annual vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by December 31 each year in order to be fished. All QP or IBQ pounds expire at the end of the post-

season transfer period of the year after which they were issued. If, in any year, the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery or NMFS releases additional QP consistent with § 660.60(c) and paragraph (d)(1)(ii) of this section, NMFS will credit QS accounts with additional QP proportionally, based on the QS percent for a particular QS permit owner and the increase in the shorebased trawl allocation specified at paragraph (d)(1)(ii)(D) of this section.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(A) *General.* QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. Transfers of QP or IBQ pounds are subject to annual vessel accumulation limits. QP or IBQ pounds must be transferred in whole pounds (*i.e.,* no fraction of a QP or IBQ pound can be transferred). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.,* account reconciliation, system maintenance, or for emergency fishery management reasons).

(B) *Transfer procedures.* QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer request by logging onto the online vessel account. Following the instructions provided on the website, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (*e.g.,* USCG documentation number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and whether the transfer complies with vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred between vessel accounts at any time during January 1 through December 31 each year unless otherwise notified by NMFS. Unused QP from the previous fishing year (base year) may be transferred for the purpose of covering end-of-the-year vessel account deficits through the end of the post-season transfer period described at paragraph (e)(5)(iv) of this section.

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the annual QP vessel limit in any year, except as allowed by paragraph (e)(5)(iii) of this section. The annual QP vessel limit is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

* * * * *

(ii) *Trawl identification of ownership interest form.* Any person that owns a vessel registered to a limited entry trawl permit and that is applying for or renewing a vessel account shall document those persons that have an ownership interest in the vessel greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not generate and issue a vessel account unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(5) *Carryover of Surplus and Deficit QP or IBQ.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year (the base year) to the next immediately following year or allows a deficit in a vessel account from fishing during the base year to be covered in the immediately following year with QP or IBQ pounds from the base year or the a immediately following year, up to a carryover limit without violating the provisions of this section.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ (unused QP or IBQ pounds) for any IFQ species following the post-season transfer period specified at paragraph (e)(5)(iv) of this section, may carryover for use in the year immediately following the base year amounts of unused QP or IBQ pounds up to its carryover limit specified at (e)(5)(ii) of this section, and subject to the limitations of this paragraph. After the post-season transfer period is concluded, NMFS will complete determination of surplus QP or IBQ pound amounts that may be carried over into the following year up to the surplus carryover limit specified at paragraph (e)(5)(ii) of this section. The amount of surplus QP or IBQ pounds issued as carryover will be reduced in proportion to any reduction in the ACL-between the base year and the immediately following year. At the end of the post-season transfer period, any base year QP or IBQ pounds remaining in vessel accounts will be suspended from use while NMFS calculates annual surplus carryover amounts. NMFS will consult with the Council in making its final determination of the IFQ species and total QP or IBQ amounts to be issued as annual surplus carryover. After NMFS completes determination of the annual surplus carryover amounts for each vessel account, suspended QP or IBQ pounds in excess of the annual surplus carryover amount will expire. NMFS will subsequently release any remaining suspended QP or IBQ pounds for issuance as surplus carryover to vessel accounts from which they were suspended, and notify vessel account owners of the issuance. Surplus carryover QP or IBQ pounds are valid for the year in which they are issued (*i.e.,* the year immediately following the base year). Surplus carryover amounts that would place a vessel above the annual QP vessel limits for the immediately following year (specified at paragraph (e)(4) of this section) will not be issued. Amounts issued as surplus QP or IBQ pounds do not change the shorebased trawl allocation in the year in which the carryover was issued. Surplus QP or IBQ pounds may not be carried over for more than one year.

(ii) *Surplus Carryover Limit.* The limit for the surplus carryover is calculated by multiplying 10 percent by the cumulative total QP or IBQ pounds (used and unused) transferred into a vessel account for the base year, less any transfers out of the vessel account, QP resulting from reapportionment of whiting specified at § 660.60(d), additional QP issued to the account during the year (as specified at § 660.60(c)(3)(ii)), and previous carryover amounts. The percentage used for the carryover surplus limit may be changed by Council recommendation during the biennial specifications and

management measures process or by routine management measures as specified in § 660.60(c).

(iii) *Deficit QP or IBQ pounds* After the end of the base year, a vessel account may cover the full amount of any deficit (negative balance) of QP or IBQ pounds using QP or IBQ from the following year, base year QP or IBQ pounds, through the post-season transfer period, or a combination, without restriction by annual QP vessel limits. A vessel account acquiring QP or IBQ after the base year to cover a deficit resulting from catch in excess of the base year annual QP vessel limits may still be in violation of annual vessel QP limit provisions specified at paragraph (e)(4)(i) of this section, or other provisions of this section, if the deficit exceeds the deficit carryover limit specified at paragraph (e)(5)(iii)(B) of this section. If an IFQ species is reallocated between the base year and the following year due to changes in management areas or subdivision of a species group as specified at paragraph (c)(3)(vii) of this section, a vessel account will not carryover the deficit for that IFQ species into the following year. A vessel account with a deficit for any IFQ species in the base year, may cover that deficit during the post-season transfer period or with QP or IBQ pounds from the following year without violating the provisions of this section if all of the following conditions are met:

(A) The vessel account owner declares out of the Shorebased IFQ Program for the remainder of the year in which the deficit occurred. The vessel account owner must submit a signed, dated, and notarized letter to OLE, declaring out of the Shorebased IFQ Program for the remainder of the year and invoking the carryover provision to cover the deficit. Signed, dated, and notarized letters may be submitted to NMFS, West Coast Region, Office of Law Enforcement, ATTN VMS, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. If the vessel account owner covers the deficit later within the same calendar year, the vessel may re-enter the Shorebased IFQ Program. If the deficit is documented less than 30 days before the end of the calendar year, exiting out of the Shorebased IFQ Program for the remainder of the year is not required.

(B) The amount of QP or IBQ pounds required to cover the deficit from the current fishing year is less than or equal to the vessel's carryover limit for a deficit. The carryover limit for a deficit is calculated as 10 percent of the total cumulative QP or IBQ pounds (used and unused, less any transfers out of the vessel account, and any previous carryover amounts) in the vessel account 30 days after the date the deficit is documented;

(C) Sufficient QP or IBQ pounds are transferred into the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year or the date the deficit is documented (whichever is later) but not later than the end of the post-season transfer period; and

(D) The total QP required to cover the vessel's total catch from the base year is not greater than the annual QP vessel limit for the base year.

(iv) *Post-Season QP or IBQ transfers.* A vessel account with a deficit (negative balance) of QP or IBQ pounds after December 31 for any IFQ species may conduct post-season transfers to cure the deficit by obtaining available unused QP or IBQ pounds remaining in other vessel accounts from the base fishing year. Vessel account owners may conduct post-season transfers of QP and IBQ pounds according to transfer procedures specified in paragraph (e)(3)(iii) of this section, and subject to the following conditions:

(A) Post-season transfers may be conducted during a period starting January 1 and ending 14 calendar days after NMFS has completed its determination of the total base year IFQ catch for all vessels for end-of-the-year account reconciliation. NMFS will issue a public notice when end-of-the-year account reconciliation has been completed, on or about March 1 of each year.

(B) QP or IBQ pounds from the base fishing year transferred during the post-season transfer period may not be fished in any way, and may only be transferred for the purpose of covering deficits carried into the immediately following fishing year from the base fishing year.

(C) After the post-season transfer period, remaining QP and IBQ pounds surplus and deficits from the base fishing year are subject to carryover provisions specified at paragraphs (e)(5)(ii) and (e)(5)(iii) of this section.

* * * * *

■ 13. In § 660.150 revise paragraphs (c) and (d)(1)(iii)(A)(*1*)(*v*) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) *MS Coop Program species and allocations*—(1) *MS Coop Program species.* All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs, as described in Table 1d to subpart C of this part.

(2) *Annual mothership sector sub-allocations.* Annual allocation amount(s) will be determined using the following procedure:

(i) *MS/CV catch history assignments.* Catch history assignments will be based on catch history using the following methodology:

(A) *Pacific whiting catch history assignment.* Each MS/CV endorsement's associated catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. If multiple MS/CV endorsements and their associated CHAs are registered to a limited entry permit, that permit may be simultaneously registered to more than one MS coop or to both a coop(s) and non-coop fishery. Once assigned to a permitted MS coop or to the non-coop fishery, each MS/CV endorsement's catch history assignment remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established, the information for the conversion of catch history assignment to pounds will be made available to the public through a **Federal Register** announcement and/or public notice and/or the NMFS website. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.,* less than 0.5 rounds down and 0.5 and greater rounds up).

(*1*) In years where the Pacific whiting harvest specification is known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation for Pacific whiting will be made by the start of the season.

(*2*) In years where the Pacific whiting harvest specification is not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the MS Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the MS Coop Program.

(B) *Non-whiting groundfish species catch*—(*1*) At-sea set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken. Set asides may be adjusted through the biennial

specifications and management measures process as necessary.

(*2*) Groundfish species not addressed in paragraph (c)(2)(i)(B)(*1*) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

(*3*) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10′ N lat.

(C) Rounding rules may affect distribution of the MS Coop Program allocations among the catch history assignments for individual MS/CV-endorsed permits. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation.

(ii) *Annual coop allocations*—(A) *Pacific whiting.* Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each member MS/CV-endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop do not bring catch allocation to a permitted MS coop.

(B) If all MS/CV-endorsed permits are members of a single coop in a given year and there is not a non-coop fishery, then NMFS will allocate 100 percent of the MS Coop Program allocation to that coop.

(iii) *Annual non-coop allocation*—(A) *Pacific whiting.* The non-coop whiting fishery is authorized to harvest a quantity of Pacific whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.

(B) *Announcement of the non-coop fishery allocations.* Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a **Federal Register** announcement and/or public notice and/or the NMFS website.

(3) *Reaching an allocation or sub-allocation.* When the mothership sector Pacific whiting allocation, or Pacific whiting sub-allocation is reached or is projected to be reached, the following action may be taken:

(i) Further harvesting, receiving or at-sea processing by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation is projected to be reached. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a mothership may continue to process catch that was on board before at-sea processing was prohibited. Pacific whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(ii) When a permitted MS coop sub-allocation of Pacific whiting-is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an NMFS-accepted inter-coop agreement.

(iii) When the non-coop fishery sub-allocation of Pacific whiting is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in the non-coop fishery must cease.

(4) [Reserved]

(5) *Announcements.* The Regional Administrator will announce in the Federal Register when the mothership sector allocation of Pacific whiting is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by email, internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(6) *Redistribution of annual allocation*—(i) *Between permitted MS coops (inter-coop).* (A) Through an inter-coop agreement, the designated coop managers of permitted MS coops may distribute Pacific whiting allocations among one or more permitted MS coops, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

(*1*) *Between the MS coop and non-coop fisheries.* Pacific whiting may not be redistributed between the coop and non-coop fisheries.

(*2*) *Between Pacific whiting sectors.* Pacific whiting may not be redistributed between the mothership sector and catcher/processor sector. Whiting may not be redistributed to the Shorebased IFQ Program.

(7) *Processor obligation and mutual agreement exceptions*—(i) *Processor obligation.* Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated for each MS/CV endorsement and associated catch history assignment.

(ii) *Expiration of a processor obligation.* Processor obligations expire at the end of each calendar year when the MS Coop Permit expires.

(iii) *Processor obligation when MS coop allocation is redistributed.* When a permitted MS coop redistributes Pacific whiting allocation within the permitted MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such allocations must be delivered to the mothership registered to the MS permit to which the allocation was obligated under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* An MS/CV-endorsed permit's catch history assignment can be released from a processor obligation through a mutual agreement exception. The MS/CV-endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the release of the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner must identify a processor obligation for a new MS permit.

(v) *MS permit withdrawal.* If an MS permit withdraws from the mothership fishery before the resulting amounts of catch history assignment have been announced by NMFS, any MS/CV-endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the MS permit owner must provide written notification of its withdrawal to NMFS and all MS/CV-endorsed permits that are obligated to the MS permit, and the owner of each

MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for a new MS permit.

(vi) *Submission of a mutual agreement exception or MS permit withdrawal.* Written notification of a mutual exception agreement or MS permit withdrawal must be submitted to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115.

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) * * *

(*v*) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

* * * * *

■ 14. In § 660.160:

■ a. Revise paragraph (c)(1) introductory text, paragraphs (c)(1)(i), (c)(3)(i) and (ii);

■ b. Remove paragraph (c)(3)(iii);

■ c. Remove and reserve paragraph (c)(5);

■ d. Revise paragraphs (c)(6), (c)(7), and (d)(1)(iii)(A)(1)(*iii*), and paragraph (e)(1) introductory text;

■ e. Add paragraph (e)(1)(iv);

■ f. Revise paragraph (h)(1) introductory text, and paragraphs (h)(2) through (4);

■ g. Add paragraph (h)(5).

The revisions and additions read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(c) * * *

(1) *C/P Coop Program species.* All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs.

(i) Species with formal allocations to the C/P Coop Program: Pacific whiting.

* * * * *

(3) * * *

(i) At-sea sector set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(ii) Groundfish species not addressed in paragraph (c)(3)(i) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

* * * * *

(5) [Reserved]

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the catcher/processor sector allocation of Pacific whiting is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by email, internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register,** in which instance public comment will be sought for a reasonable period of time thereafter.

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) * * *

(*iii*) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

* * * * *

(e) * * *

(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery-must be registered to a valid limited entry permit with a C/P endorsement subject to the limited entry permit provisions given at § 660.25(b).

* * * * *

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing a C/P-endorsed permit shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a C/P-endorsed permit unless the Trawl Identification of Ownership Interest Form has been completed.

* * * * *

(h) * * * (1) *Conditions for determination of coop failure.* The Regional Administrator will determine that a permitted C/P coop has failed if any one of the following occurs:

* * * * *

(2) *Notification of coop failure.* If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop to allow the Regional Administrator to make a determination of coop failure. The Regional Administrator may also make an independent determination of a coop failure based on factual information collected by or provided to NMFS. NMFS will notify the designated coop manager in writing in the event the Regional Administrator determines the coop has failed.

(3) *Coop permit no longer in effect.* Upon determination of a coop failure, the C/P coop permit will no longer be in effect.

(4) *Conversion to IFQ Fishery.* The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a determination of a coop failure, or as soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ-based fishery for the C/P sector. Each C/P-endorsed permit will receive an equal amount of QS from the total C/P sector allocation. That QS will not be transferable separate from the C/P-endorsed permit until a determination is made to allow such transfers, necessary regulations are implemented, and public notice is provided. Any use of QP or IBQ pounds associated with C/P endorsed permits is prohibited until the regulations for a C/P sector IFQ system are implemented.

(5) *Accumulation Limits.* C/P Sector accumulation limits will take effect in the event that the C/P coop fails and converts to an IFQ-based fishery. If an IFQ fishery is implemented, any individual or entity may own or control a maximum of five C/P endorsed permits and QS allocations associated with those permits, as described in paragraph (e)(5)(iv) of this section. C/P endorsed permit accumulation limits will only take effect after determination

of a coop failure is made and the following administrative process occurs:

(i) *Divestiture Period.* Upon determination of a coop failure, a divestiture period will occur starting with the date that co-op failure has been determined and running through the date on which an IFQ program is implemented for the C/P sector or another date specified in the IFQ program implementing regulations. During the divestiture period, an individual or entity may not acquire ownership or control over a total of more than five C/P-endorsed permits. Any entity that already owns or controls more than five C/P-endorsed permits may not acquire additional permits. During the divestiture period any entity who owns or controls C/P-endorsed permits may sell or trade any permits it owns. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section.

(ii) *Divestiture and redistribution process.* After conversion to an IFQ fishery and completion of the divestiture period, any person owning or controlling C/P-endorsed permits must be in compliance with accumulation limits, even if that ownership is not reflected in the ownership records available to NMFS as specified at § 660.140 (e)(1)(iv). Permit owners found to exceed the five permit accumulation limit for C/P-endorsed permits after the divestiture period are in violation of the accumulation limits and required to completely divest of ownership or control of C/P-endorsed permits that exceed the accumulation limit. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section. If NMFS finds that any entity owns or controls more than five C/P-endorsed permits, NMFS will make an Initial Administrative Determination (IAD) that the entity must divest of control or ownership of permits that exceed the accumulation limit within 30 days or NMFS will revoke the excess permits in accordance with § 660.25(h)(2)(ii). The permit owner will have the opportunity to appeal the IAD through the National Appeals Office under the provisions established at 15 CFR part 906. All QS associated with revoked permits will be redistributed to all other C/P-endorsed permit owners in proportion to their QS holdings, based on current ownership records, on or about January 1 of the calendar year following the year in which the permits are revoked. This redistribution process will not allow any entity to receive more than 50 percent of the total QS allocations for the C/P sector.

(iii) *Abandonment of C/P-endorsed permits.* C/P-endorsed permits owners that own or control more than the five permit accumulation limit may voluntarily abandon C/P-endorsed permits if they notify NMFS in writing during the divestiture period specified at paragraph (h)(5)(i) of this section or within 30 days of conversion to an IFQ fishery. The written abandonment request must include the C/P endorsed permit number and the associated QS allocation percentage that will be abandoned. Either the C/P-endorsed permit owner or an authorized representative of the C/P-endorsed permit owner must sign the request. C/P-endorsed permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned C/P-endorsed permit, and the QS associated with that permit will be redistributed as described under paragraph (h)(5)(ii) of this section. No compensation will be due for any abandoned permit, or associated QS or QP.

(iv) *Review of C/P-permit ownership interest and accumulation limits.* NMFS may request additional information from C/P-permit owners as necessary to verify compliance with accumulation limits in the event of C/P coop failure and conversion to IFQ fishery. If NMFS discovers through review of the Trawl Identification of Ownership Interest Form that a person is not in compliance with accumulation limits, the person will be subject to divestiture provisions specified in paragraph (h)(5)(ii) of this section.

(v) *Definition of Ownership or Control.* For the purpose of determining ownership or control a person or entity has over a C/P endorsed permit, all of the following criteria apply:

(A) The person or entity has the right to direct, or does direct, in whole or in part, the business of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(B) The person or entity has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the C/P permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(C) With the exception of banks and other financial institutions that rely on permits as collateral for loans as described under paragraphs (h)(5)(v)(G) of this section, the person or entity has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of the C/P permit associated QS, or the resulting QP.

(D) The person or entity, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(E) The person or entity has the right to restrict, or does restrict, any activity related to the C/P permit, associated QS or the resulting QP, including, but not limited to, use of permits, or associated QS, or disposition of fish harvested and processed under the resulting QP, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(F) The person or entity has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the C/P permit, associated QS, or the resulting QP, are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(G) With the exception of banks and other financial institutions that rely on permits as collateral for loans, the person or entity has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of C/P permits, associated QS, or the resulting QP.

(*1*) To qualify for this exception for banks and other financial institutions that rely on permits as collateral for loans, a bank or other financial institution must be regularly or primarily engaged in the business of lending, and must not be engaged in business with, or be controlled by, entities whose primary business is the harvesting, processing, or distribution of fish or fish products.

(*2*) Any state or federally chartered bank or financial institution that meets the requirement of paragraph (h)(5)(v)(G)(1) of this section does not need to submit additional information to NMFS.

(*3*) Any entity that is not a state or federally chartered bank or financial institution must submit a letter requesting the exception and disclose the identity and interest share of any shareholder with a 2 percent or more ownership interest in the lender through submission of the Trawl Identification

of Ownership Interest Form (see paragraph (e)(1)(iv) of this section). The lender must make subsequent annual submissions of the letter and Trawl Identification of Ownership Interest Form to maintain the exception. Letters requesting the exception and complete Trawl Identification of Ownership Interest Forms may be submitted to NMFS, West Coast Region, Permits Office, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. NMFS will only accept complete applications.

(H) The person or entity has the ability through any means whatsoever to control or have a controlling influence over the entity to which a permit associated QS is registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 191002–0053]

RIN 0648–BI45

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Vessel Movement, Monitoring, and Declaration Management for the Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes revisions to reporting and monitoring provisions for vessels participating in the Pacific Coast groundfish fishery. This proposed action would: Increase the position transmission rate for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, open access vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap); allow midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea; exempt groundfish trawl vessels from observer coverage while testing authorized fishing gear; and allow shorebased Individual Fishing Quota fixed gear vessels to deploy pot gear in one management area while retrieving gear from another management area on a single trip. The proposed action will increase monitoring efficiency and effectiveness, improve enforcement of restricted areas, and increase operational flexibility for groundfish fishery participants.

DATES: Comments on this proposed rule must be received on or before November 12, 2019.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2019–0093, by any of the following methods:

- *Online Submission:* Go to the Federal e-Rulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0093,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Shannon Penna, Fishery Management Specialist, West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the analytic document supporting this action, are available via the Federal eRulemaking Portal: *http://www.regulations.gov, docket NOAA–NMFS–2019–0093,* or by contacting the Pacific Fisheries Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, Fishery Management Specialist, 562–980–4238, or *shannon.penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Between September 2014 and April 2016, the Pacific Fishery Management Council (Council) developed and considered management measures to address a range of vessel and gear movement issues and aggregated these issues under a single vessel movement monitoring agenda item. Additional details about the Council's considerations are included in the Council's analytic document (see **ADDRESSES**), and included in the discussion of individual measures below.

The Council deemed the proposed regulations consistent with and necessary to implement this action in a July 17, 2019, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the Council's proposed measures in this action and whether they are consistent with the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Summary of the Proposed Regulations

This section discusses proposed regulatory revisions that are expected to increase NMFS's ability to enforce fishing activity in and around restricted areas, and result in cost savings, increased profitability, and flexibility for the groundfish fishery. The proposed measures would:

- Increase the position transmission rate requirements for certain vessels using NOAA NMFS type-approved vessel monitoring system (VMS) units;
- Amend the definition for continuous transit;
- Allow midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea;
- Exempt groundfish trawl vessels from observer coverage while testing authorized fishing gear; and,
- Allow shorebased Individual Fishing Quota (IFQ) fixed gear vessels to retrieve pot gear in one management area and deploy that gear in another management area on a single trip.

A. Increased Position Transmission Rate for Groundfish VMS

Vessels participating in the limited entry groundfish fishery (limited entry

''A'' endorsed permit), open access vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap), are required to install a NMFS Office of Law Enforcement (OLE) type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing. These units automatically record a vessel's position (*i.e.,* the vessel's geographic location in latitude and longitude coordinates), and transmit those coordinates to a communications service provider. The current regulations require that VMS units transmit a vessel's position once every hour, 24 hours a day throughout the fishing year. Less frequent position reporting, at least once every four hours, may be authorized when a vessel has temporarily paused participation in the fishery and remains in port for an extended period of time. The VMS units record vessel positions at a random time during each hour so that vessel operators are unaware of when the vessel position is being recorded.

An Initial Decision in a 2013 enforcement case (NOAA Case No. SW1002974) concluded that the current requirement of hourly position reports was insufficient to prove that a vessel was not operating in continuous transit through a restricted area as required by regulation. While the raw data from the VMS communications provider in the case did provide reliable information about vessel location and speed, it only accounted for a five second period out of each hour.

The Council recommended increasing the vessel position frequency to increase NMFS's ability to enforce fishing activity around restricted areas. This proposed action would require an increase in the position transmission rate to every 15 minutes per hour for groundfish vessels using NMFS type-approved VMS units. This increase in frequency would produce more course, location, and speed data to improve NMFS's ability to identify whether vessels are continuously transiting in restricted areas or not.

Increasing the VMS position transmission rate from once every hour to every 15 minutes will increase vessel operating costs. While vessels can choose from a variety of VMS service providers, the average monthly operating costs for transmissions every 15 minutes is $105 per month ($69 to $150 range) compared to an average of $50 per month ($37 to $65 range) for a single transmission per hour.

The Council recommended two exemptions that would reduce redundant reporting and may provide cost savings to some portions of the fleet. For the first exemption, vessels that have installed and are using electronic monitoring (EM) systems for the duration of the fishing year would be allowed to maintain the current position transmission rate of one transmission per hour. EM systems include a Global Positioning System (GPS) that records the vessel position every 10 seconds. Because EM systems record vessel positions so frequently, it is not necessary to also increase the VMS position transmission rates. The GPS data are recorded to a hard drive, which the captain removes every 10 days and mails to the Pacific States Marine Fisheries Commission. For the second exemption, limited entry trawl vessels fishing with midwater trawl gear would be allowed to maintain the current position transmission rate of one transmission per hour. Limited entry vessels are only allowed to use midwater trawl gear to target whiting or non-whiting groundfish species during the primary whiting season from May 15 to December 31 each year. These vessels are also limited to using midwater trawl gear seaward of the trawl rockfish conservation area (RCA) south of 40°10′ North (N), but can use midwater trawl gear anywhere within the Exclusive Economic Zone north of 40°10′ N. Because there are only very broad seasonal and area restrictions associated with midwater trawl gear, and because these vessels are not generally subject to smaller geographic areas restrictions such as the trawl RCA and essential fish habitat conservation areas (EFHCAs) the increased position transmission rate is not necessary for restricted area enforcement for vessels using midwater trawl gear. Limited entry vessel operators would be allowed to change their transmission rates or VMS declaration reports on a trip-by-trip basis when necessary.

B. Continuous Transit Definition

Vessels are allowed to continuously transit through restricted areas, such as EFHCA, and restricted areas, when fishing gear is properly stowed and the vessel is on a direct course. This action proposes to revise the current definition of ''continuous transiting or transit through'' to encompass a broader array of vessel activity that is akin to loitering within a restricted area, whether that be by means of a source of power or by drifting with the prevailing water current or weather conditions. Under this revised definition, visual, electronic, or other evidence of vessel activity should provide information on vessel speed and course sufficient to indicate direct and expeditious transiting of a restricted area.

C. Exemption From Observer Coverage While Testing Gear

Groundfish vessels participating in the Shorebased IFQ Program, the Mothership (MS) Coop Program, or the Catcher/processor (C/P) Coop Program are required to have 100 percent observer coverage when fishing. Currently, when fishermen want to test their fishing gear during an open or closed season, they must contact the West Coast Groundfish Observer Program (WCGOP) prior to departure. Although gear testing does not usually involve the retention of fish, it falls under the definition of fishing as defined in the Magnuson-Stevens Act. These vessels sometimes inquire if certain gear testing situations are considered fishing activity and if they are required to carry an observer. NMFS has previously reviewed these on a case-by-case basis.

Vessels with a NMFS required positioning system (VMS, EM) installed must also notify NMFS OLE which fishery or sector they will be participating in with a declaration. This declaration allows NMFS OLE to determine the restricted area closures with which the vessel is required to comply and whether the vessel is in compliance with restricted area regulations, based on the vessel's course as transmitted from the VMS unit. Other than EM, there is currently no way to remotely confirm that a vessel is testing fishing gear, and not engaged in fishing activity.

This action would establish a definition for gear testing. The proposed definition states that gear testing is the deployment of lawful gear without retaining fish, for purposes, including, but not limited to: Deployment of nets using open codends; calibration of engines and transmission under load (*i.e.,* towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.,* engine, transmission, shaft, propeller, etc.). NMFS welcomes comments on the sufficiency of this definition, and recommendations to refine and clarify the types of activity that would qualify for gear testing.

This action would also exempt groundfish vessels participating in the Shorebased IFQ, MS, and C/P sectors from the requirement to carry an observer while testing gear. A vessel would not need an observer because gear testing activity would specifically prohibit retaining fish. In addition to being prohibited from retaining fish while gear testing, vessels would be prohibited from testing experimental gear, testing with a closed codend, terminal gear, or with open pots, and from testing gear in groundfish conservation areas or EFHCAs.

To be exempted from observer coverage while testing gear, vessels would need to communicate with both WCGOP and NMFS OLE. Vessels would be required to notify WCGOP by phone: or email, of the gear testing activity at least 48 hours prior to departing on a trip to test gear or equipment. This action would also add a VMS declaration code for ''Gear testing.'' When a vessel operator calls the West Coast Groundfish Declaration Line to declare ''Gear testing,'' the VMS technician would review the information submitted and determine if the vessel is eligible for this declaration. This measure would result in observer coverage cost savings on trips to test fishing gear or equipment.

D. Declaration Changes at Sea for Whiting Fishery

Currently, midwater catcher trawl vessels participating in the Pacific whiting fishery are restricted to landing either at a mothership or shoreside processor. After Pacific whiting catcher vessels have made their delivery obligation to a mothership, they are not allowed to make a tow for a delivery to a shoreside processor without returning to port first. This proposed regulatory revision would remove restrictions on catcher vessels to allow them to change their declarations while at sea by calling the West Coast Groundfish Declaration Line. After a vessel offloads onto a mothership, it could immediately change its declaration from one of the ''Pacific whiting mothership sector'' declarations to one of the ''Pacific whiting shorebased IFQ'' declarations to make a tow and offload on shore, or vice versa.

Allowing vessels to change their declarations at sea would provide a vessel the opportunity to optimize available resources before returning to port. As a result, vessels will spend less time at sea, and in transit to and from fishing ports, which will ultimately reduce the cost of fuel and crew.

E. Movement of IFQ Fishpot Gear Across Management Lines

At the time the Council selected final alternatives for this rule, vessels fishing in the shorebased IFQ program using fixed gear (*i.e.,* pot gear) were prohibited from moving gear from one management area to another during a single trip. The area of operation of the shorebased IFQ fixed gear fishery stretches along the entire west coast and is divided into four management areas (50 CFR 660.140). Vessels were required to land catch from a single management area prior to returning to deploying gear in a different management area. In addition, fish caught from one management area could not be on board while in a different management area from which they were caught. For example, if a fisherman retrieves fixed gear in area B, they could land their fish from area B before deploying that gear in area C.

The prohibition on harvesting fish in two management areas during a single trip was put into place because the area of harvest is an important element in stock assessment. In addition, allocations to different fishing fleets and gear types stem from area-based stock management. However, this prohibition had negative impacts on fishery participants. For example, unlike trawl and longline vessels who can stow all of their gear on deck, pot gear vessels may have to make multiple trips to move their gear from one management area to the next. Some vessel owners report that the prohibition is expensive to their operations, particularly for those owners that fish out of ports in close proximity to a management line.

The revised regulations would explicitly allow vessels retrieving pots from one management area to retain their catch on board and move to a second management area to deploy pots. These pots may be either baited or not baited. The vessel may then return to port to deliver their fish, then return to retrieve their pots from the second management area. Although the proposed adjustment increases operational flexibility in deploying pots, vessels are still only permitted to retain and land fish from a single management area. This will ensure the integrity of data to support stock assessments and catch monitoring for a single management area. Overall, fishing vessels will spend less time at sea, which should reduce the cost of fishing.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order (E.O.) 12866.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An initial regulatory flexibility analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**). When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

Description of the Reasons Why Action By the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Action

A description of the action, why it is being considered, and the legal basis for this action is contained in the **SUMMARY** section and at the beginning of the **SUPPLEMENTARY INFORMATION** section of the preamble, and is not repeated here.

Description and Estimate of the Number of Small Entities To Which This Proposed Rule Would Apply

For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2).

A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

For the purposes of our Regulatory Flexibility Act (RFA) analysis, the proposed action is considered to regulate ownership entities that are potentially affected by the action. The U.S. Small Business Association (SBA) established criteria for business in the fishery sector to qualify as small entities. Limited entry groundfish vessels directly regulated by this action are required to renew a permit annually, and the application asks for entity size including affiliation. Of those who responded as being large entities, 15 permits owned by 9 large entities were attached to vessels that participated in bottom trawl or fixed gear groundfish fisheries in 2018 and are the most likely to be impacted by the rule.

Of the 571 vessels impacted by this rule, none had annual ex-vessel revenue on the West Coast (participation in other fisheries is not known) greater than the NMFS $11 million size standard. The top three revenue vessels, all in the IFQ fishery, had an average revenue of $1.9 million in 2018 in all West Coast fisheries. In contrast, the bottom ten earning vessels had revenues in all West Coast fisheries of less than $1,000.

Description of the Proposed Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

This action contains a revision to an information collection requirement, which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: West Coast Region Vessel Monitoring System Requirement for the Pacific Groundfish Fishery. This action proposes to adjust the position transmissions rate for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, open access vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap). Vessel owners would be required to increase their position transmission rate from once per hour to four times per hour. Vessels that are operating with electronic monitoring will be exempt from this increase and allowed to continue with a rate of four times per hour.

The proposed action would add a declaration for gear testing so vessels will be exempt from observer coverage while testing gear and restricted from harvesting fish, and allow Groundfish midwater trawl vessels participating in the Shorebased IFQ Program and the MS Coop Program, to make a new declaration from sea and allowed to make a tow for a delivery to a shoreside processor without returning to port first. The numbers of declaration reports the vessel operator is required to submit to NMFS would not change under this request. Therefore, no small entity would be subject to additional reporting requirements.

Public comment is sought regarding the following: Whether this proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

NMFS considered sub alternatives to the proposed rule that may have minimized significant economic impact, but not meet stated objectives of applicable statutes. The Council briefly considered increasing the position transmission signal to every 30 minutes or every 20 minutes, but rejected those alternatives from further analysis because those position transmission signals may not be frequent enough to provide information to enforce small restricted areas, or provide enough information to calculate a vessel's course for enforcement of continuous transit requirements.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: October 3, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, revise the definition of ''Continuous transiting or transit through'' and add the definition of ''Gear Testing'' in alphabetical order, to read as follows:

§ 660.11 General Definitions

* * * * *

Continuous transiting or transit through means that a vessel crosses a groundfish conservation area or EFHCA on a heading as nearly as practicable to a direct route, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay.

* * * * *

Gear Testing means the deployment of lawful gear without retaining fish, for the following purposes, including, but not limited to: Deployment of nets using open codends; calibration of engines and transmission under load (*i.e.,* towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.,* engine, transmission, shaft, propeller, etc.).

* * * * *

■ 3. In § 660.13, revise paragraphs (d)(1)(ii) and (d)(4)(iv)(A)(30) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(ii) Limited entry midwater trawl vessels targeting Pacific whiting may change their declarations while at sea between the Pacific whiting shorebased IFQ sector and the mothership sector as specified at paragraph (4)(iv)(A) of this section. The declaration must be made to NMFS before a different sector is fished.

* * * * *

(4) * * *

(iv) * * *

(A) * * *

(30) Gear testing.

* * * * *

■ 4. In § 660.14, revise paragraphs (d)(1), (d)(2), (d)(3), and (d)(5) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: 888–585–5518 or *wcd.vms@noaa.gov.*

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: 888–585–5518 or *wcd.vms@noaa.gov.* An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(3) *Transceiver unit operation.* Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section.

(i) *Position frequency.* The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every 15 minutes, 24 hours a day, throughout the year unless an exemption in (ii) of this paragraph applies or a valid exemption report, as described in paragraph (d)(4) of this section, has been received by NMFS OLE. The signal indicating the vessel's position can consist of either: a single position report transmitted every 15 minutes; or a series of position reports, at no more than a 15 minute interval, combined and transmitted at least once every hour.

(ii) *Exemptions to position frequency requirement.* (A) *Electronic monitoring exemption.* If a vessel has an electronic monitoring system installed and in use for the duration of a given fishing year, the mobile transceiver unit must transmit a signal at least once every hour.

(B) *Midwater trawl exemption.* If a limited entry trawl vessel is fishing with midwater trawl gear under declarations (d)(4)(iv)(A), the mobile transceiver unit must transmit a signal at least once every hour.

(C) *In port exemption.* If a vessel remains in port for an extended period of time, the mobile transceiver unit must transmit a signal at least once every four hours. The mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempt under paragraph (d)(4) of this section.

* * * * *

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: 888–585–5518 or *wcd.vms@noaa.gov* and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

* * * * *

■ 5. In § 660.112, revise paragraph (a)(4), and add paragraphs (a)(7) and (b)(1) (xvii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(4) *Observers.* (i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage unless exempt from the observer coverage requirement for gear testing activity and have satisfied the declaration and notification requirements, as described in § 660.140(h), § 660.150(j), or § 660.160(g).

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).

(iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

(7) *Gear testing.* (i) Retain fish while gear testing.

(ii) Fish with a closed codend, use terminal gear (*i.e.,* hooks), or fish with open pot gear while gear testing.

(iii) Test gear in groundfish conservation areas described in § 660.70, or EFHCAs described in §§ 660.76 through 660.79.

(iv) Test experimental gear, or any other gear not currently approved for groundfish fishing.

* * * * *

(b) * * *

(1) * * *

(xvii) When declared into the limited entry groundfish non-trawl Shorebased IFQ fishery, retain fish caught with fixed gear in more than one IFQ management area, specified at § 660.140(c)(1), on the same trip.

* * * * *

■ 6. In 660.140, add paragraphs (c)(2) and (h)(1)(i)(A)(*4*) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(2) A vessel using fixed gear declared into the limited entry groundfish non-trawl Shorebased IFQ fishery may deploy pot or trap gear in multiple IFQ management areas on a trip provided the vessel does not retrieve gear from more than one IFQ management area during a trip.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(A) * * *

(*4*) Is exempt from the requirement to maintain observer coverage as specified in this paragraph (h) while gear testing as defined in § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

■ 7. In 660.150, add paragraph (j)(1)(i)(C) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(j) * * *

(1) * * *

(i) * * *

(C) *Gear testing exemption.* Vessels are exempt from the requirement to maintain observer coverage as specified in this paragraph (j) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

■ 8. In 660.160, add paragraph (g)(1)(iv) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(g) * * *

(1) * * *

(iv) *Gear testing exemption.* Vessels exempt from the requirement to maintain observer coverage as specified in this paragraph (g) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

[FR Doc. 2019–21954 Filed 10–9–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 197

Thursday, October 10, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to SPIRITWOOD INGREDIENTS, LLC of FERGUS FALLS, MINNESOTA, an exclusive license to U.S. Patent No. 10,021,882, ''VALUE-ADDED PRODUCTS FROM SMALL GRAINS, METHOD OF MAKING AND USES THEREOF,'' issued on July 17, 2018.

DATES: Comments must be received on or before November 12, 2019.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in THIS INVENTION is assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license THIS INVENTION as SPIRITWOOD INGREDIENTS, LLC of FERGUS FALLS, MINNESOTA has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2019–22183 Filed 10–9–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to BSURE TECHNOLOGIES, INC. of HAYWARD, CALIFORNIA, an exclusive license to U.S. Patent Application Serial No. 16/444,235, ''BIOSENSOR PLATFORM FOR RAPID DIAGNOSTIC TESTING,'' filed on JUNE 18, 2019.

DATES: Comments must be received on or before November 12, 2019.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in THIS INVENTION are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license THIS INVENTION as BSURE TECHNOLOGIES, INC. of HAYWARD, CALIFORNIA has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2019–22184 Filed 10–9–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 7, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 12, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Agricultural Resource Management, Chemical Use, and Post-Harvest Chemical Use Surveys.

OMB Control Number: 0535–0218.

Summary of Collection: The primary functions of the National Agricultural Statistics Service (NASS) are to prepare and issue State and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors. Detailed economic and environmental data for various crops and livestock help to maintain a stable economic atmosphere and reduce the risk for production, marketing, and distribution operations. The Agricultural Resource Management Surveys (ARMS), are the primary source of information for the U.S. Department of Agriculture on a broad range of issues related to agricultural resource use, cost of production, and farm sector financial conditions. NASS uses a variety of survey instruments to collect the information in conjunction with these studies. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: ARMS is the only annual source of whole farm information available for objective evaluation of many critical issues related to agriculture and the rural economy, such as: Whole farm finance data, marketing information, input usage, production practices, and crop substitution possibilities. Without these data, decision makers cannot analyze and report on critical issues that affect farms and farm households when pesticide regulatory actions are being considered.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 131,619.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 105,774.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22171 Filed 10–9–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

DATES: October 7, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by November 12, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: On-line Registration for FSA-Sponsored Events and Conferences.

OMB Control Number: 0560–0226.

Summary Of Collection: The collect of information is necessary for people to register on-line to make payment and reservation to attend Farm Service Agency (FSA) hosted events and conferences. The respondents will need to submit the information on-line to pay and to make reservation prior to attending any conferences and events. Respondents that do not have access to the internet can register by mail or fax.

Need and Use of the Information: FSA will collect the name, organization, organizations address, country, phone number, State, payment options and special accommodations from respondents and how they learned of the conference. The information collection element also includes race, ethnicity, gender and veteran status. FSA will use the information to get payment, confirm and make hotel and other necessary arrangement for the respondents.

Description of Respondents: Individuals or households; Farms: Business or other for-profit; Federal government, Not-for-profit institutions; State, Local or Tribal Government

Number of Respondents: 900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22170 Filed 10–9–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Questionnaire for Building Permit Official

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2019–0011, to the Federal e-Rulemaking Portal: *http://*

www.regulations.gov. All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William Abriatis, U.S. Census Bureau, EID, CENHQ, Room 7K181, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–3686 (or via the internet at *William.M.Abriatis@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a three-year extension of the current Office of Management and Budget (OMB) clearance of the Questionnaire for Building Permit Official (SOC–QBPO). The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaire SOC–QBPO to collect information from state and local building permit officials on: (1) The types of residential permits they issue, (2) the length of time a permit is valid, (3) how they store permits, and (4) the geographic coverage of the permit system. We need this information to carry out the sampling for the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the Principal Economic Indicators New Residential Construction and New Residential Sales.

The current OMB clearance is scheduled to expire on May 31, 2020. We will continue to use the current CAPI questionnaire. The overall length of the interview and the sample size will not change.

II. Method of Collection

The Census Bureau uses its field representatives to obtain information on the operating procedures of a permit office using the SOC–QBPO. The field representative visits the permit office, conducts the interview with office staff, and completes this electronic form.

III. Data

OMB Control Number: 0607–0125.

Form Number(s): SOC–QBPO.

Type of Review: Regular submission.

Affected Public: State and local Government.

Estimated Number of Respondents: 1,017.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 254 hours.

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–22124 Filed 10–9–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE) to correct a ministerial error.

DATES: Applicable October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5518 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2019, Commerce published the *Final Results* of the 2016–2017 administrative review of CWP from the UAE in the **Federal Register**.[1] On August 28, 2019, Ajmal Steel Tubes & Pipes Ind. L.L.C./Noble Steel Industries L.L.C. (collectively, Ajmal Steel), one of two companies selected for individual examination in this administrative review, alleged the existence of a ministerial error in Commerce's *Final Results*.[2]

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers

[1] *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 44845 (August 27, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Ajmal Steel's Letter, ''Antidumping Duty Review of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates; Correction of Clerical or Ministerial Errors,'' dated August 28, 2019.

ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . .''

Ministerial Errors

Commerce committed an inadvertent error within the meaning of section 735(e) of the Act and 19 CFR 351.224(f) by failing to correct an alignment error in certain data fields in Ajmal Steel's Excel database that should have been apparent in our review, prior to converting this database to SAS. Accordingly, we determine, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), that we made a ministerial error in the *Final Results.* Pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct this error. This correction results in a change to Ajmal Steel's weighted-average dumping margin, and also changes the rate calculated for the non-individually-examined companies. For a detailed discussion of the ministerial error allegation, as well as Commerce's analysis, *see* Ministerial Error Memorandum.[4]

Amended Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period June 8, 2016 through November 30, 2017:

Exporter/producer	Weighted-average dumping margin (percent)
Ajmal Steel	1.83
Universal Tube and Plastic Industries, Ltd./THL Tube and Pipe Industries LLC (TTP)/KHK Scaffolding and Formwork LLC (collectively, Universal)	1.65

Review-Specific Average Rate Applicable to the Following Companies: [5]

Exporter/producer	Weighted-average dumping margin (percent)
Abu Dhabi Metal Pipes and Profiles Industries Complex	1.74
Ferrolab LLC	1.74
Global Steel Industries	1.74
Lamprell	1.74
Link Middle East Ltd	1.74
PSL FZE	1.74
Three Star Metal Ind LLC	1.74

Disclosure

We intend to disclose the calculations performed for these amended final results in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

Pursuant to 19 CFR 351.212(b)(1), because Ajmal Steel and Universal reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer-specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [6] of the cash deposit rates calculated for Ajmal Steel and Universal. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.[7]

We intend to issue liquidation instructions for Ajmal Steel and the companies covered by the non-reviewed companies' rate to CBP 15 days after publication of these amended final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 27, 2019, the date of publication date of the *Final Results* of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the amended final results; (2) for previously reviewed or investigated companies, including those for which Commerce may have determined had no shipments during the POR, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this or an earlier review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 5.95 percent established in the LTFV investigation.[8] These deposit requirements, when imposed, shall remain in effect until further notice.

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 the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which

[3] *See* 19 CFR 351.224(f).

[4] *See* Memorandum, ''Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates; 2016–2017 Antidumping Duty Administrative Review—Ministerial Error Allegation,'' dated concurrently with this notice (Ministerial Error Memorandum).

[5] This rate is based on the simple-average of the margins calculated for those companies selected for individual review. *See* Memorandum, ''Calculation of the Non-Reviewed Companies' Rate for the Amended Final Results in the Less-Than-Fair-Value Administrative Review of Circular Welded Carbon-Quality Steel Pipe from the UAE,'' dated concurrently with this notice.

[6] This rate was calculated as discussed in a footnote, above.

[7] *See* section 751(a)(2)(C) of the Act.

[8] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016).

continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: September 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–22204 Filed 10–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary Determination of No Shipments; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding reviews for all but four companies and preliminarily determines that these four companies had no shipments of subject merchandise during the period of review (POR) January 1, 2018 through December 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835.

SUPPLEMENTARY INFORMATION:

Background

After initiating this review with respect to multiple companies or company groupings,[1] interested parties timely withdrew review requests for all but four companies. For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum which is hereby adopted by this notice.[2]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and 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 at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by the order is wooden bedroom furniture, subject to certain exceptions.[3] Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9403.50.9042, 9403.50.9045, 9403.50.9080, 9403.90.7005, 9403.90.7080, 9403.50.9041, 9403.60.8081, 9403.20.0018, 9403.90.8041, 7009.92.1000 or 7009.92.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the order remains dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213. For a full description of the methodology underlying our preliminary results of review, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided in Appendix I to this notice.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative, 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. Certain interested parties withdrew their review requests with respect to all but four companies or company groupings for which Commerce initiated this review[4] by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order for these companies. Therefore, Commerce is rescinding this review, in part, with respect to the companies listed in Appendix II to this notice. The review will continue with respect to the following four companies: (1) Eurosa (Kunshan) Co., Ltd. and Eurosa Furniture Co., (PTE) Ltd.; (2) Shenyang Shining Dongxing Furniture Co., Ltd.; (3) Sunforce Furniture (Hui -Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.; and (4) Yeh Brothers World Trade Inc.

Preliminary Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information, and the no shipment certifications submitted by the four companies under review, Commerce preliminarily determines that the following four companies did not have any shipments of subject merchandise during the POR: (1) Eurosa (Kunshan) Co., Ltd. and Eurosa Furniture Co., (PTE) Ltd.; (2) Shenyang Shining Dongxing Furniture Co., Ltd.; (3) Sunforce Furniture (Hui -Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.; and (4) Yeh Brothers World Trade Inc.

For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with Commerce's practice in non-market economy (NME) cases, Commerce is not rescinding this review with respect to

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Wooden Bedroom Furniture from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (*Order*).

[4] *See* Petitioners' Letter, ''Wooden Bedroom Furniture From The People's Republic of China: Partial Withdrawal Of Request For Administrative Review, dated June 27, 2019; *see also* Kimball International, Inc.'s, Kimball Furniture Group, Inc.'s, and Kimball Hospitality Inc.'s Letter, ''Wooden Bedroom Furniture from The People's Republic of China: Withdrawal of Request for Administrative Review,'' dated June 27, 2019; and Guangzhou Maria Yee Furnishings Ltd.'s, PYLA HK LIMITED's, and MARIA YEE, INC.'s Letter, ''Wooden Bedroom Furniture from the People's Republic of China: Maria Yee's Withdrawal of Request for Review,'' dated June 28, 2019.

these four companies, but intends to complete the review with respect to the companies for which it has preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review.[5]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically using ACCESS, within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*e.g.,* in paper form) with the APO/Dockets Unit in Room 18022 of the main Commerce building and stamped with the date and time of receipt by 5 p.m. ET on the due date.

Unless extended, Commerce intends to issue the final results of this review, which will include the results of its analysis of issues raised in any briefs received, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[6] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Pursuant to Commerce's practice in NME cases, if we continue to determine that the four companies noted above had no shipments of subject merchandise, any suspended entries of subject merchandise during the POR under their case numbers will be liquidated at the China-wide entity rate.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed China and non-China exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 216.01 percent;[8] and (3) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 3, 2019.

Christian Marsh,

Deputy 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. Partial Rescission
V. Discussion of the Methodology
VI. Conclusion

Appendix II

Companies for Which the Review is Rescinded

- Billionworth Enterprises Ltd
- Carven Industries Ltd. (BVI)
- Carven Industries Ltd. (HK)
- Dongguan Chengcheng Group Co., Ltd
- Dongguan Fortune Furniture Ltd
- Dongguan Mu Si Furniture Co., Ltd
- Dongguan Nova Furniture Co., Ltd
- Dongguan Singways Furniture Co., Ltd
- Dongguan Sunrise Furniture Co
- Dongguan Sunrise Furniture Co., Ltd
- Dongguan Sunshine Furniture Co., Ltd
- Dongguan Yongpeng Furniture Co., Ltd
- Dongguan Yujia Furniture Co., Ltd
- Dongguan Zhenxin Furniture Co., Ltd
- Dongguan Zhisheng Furniture Co., Ltd
- Dorbest Ltd
- Dream Rooms Furniture (Shanghai) Co. Ltd
- Fairmont Designs
- Fine Furniture (Shanghai) Ltd
- Fleetwood Fine Furniture LP
- Fortune Glory Industrial, Ltd. (HK Ltd.)
- Fortune Glory Industrial Ltd. (H.K. Ltd.)
- Fortune Furniture Ltd
- Fujian Lianfu Forestry Co., Ltd. (Aka Fujian Wonder Pacific, Inc.)
- Fuzhou Huan Mei Furniture Co., Ltd
- Golden Lion International Trading Ltd
- Golden Well International (HK), Ltd./ Producer: Zhangzhou XYM Furniture Product Co., Ltd
- Guangdong New Four Seas Furniture Manufacturing Ltd
- Guangdong Yihua Timber Industry Co., Ltd
- Guangzhou Lucky Furniture Co., Ltd
- Guangzhou Maria Yee Furnishings Ltd
- Hang Hai Woodcraft's Art Factory
- Hang Hai Woodcrafts Art Factory
- Jasonwood Industrial Co., Ltd. S.A
- Jiangmen Kinwai International Furniture Co., Ltd

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, *infra.*

[6] *See* 19 CFR 351.212(b).

[7] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[8] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments in Part;* 2017, 84 FR 24749 (May 29, 2019).

- Jiangmen Kinwai Furniture Decoration Co., Ltd
- Jiangmen Kinwai Furniture Decoration Co., Ltd
- Jiangsu Dare Furniture Co., Ltd
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd
- Jiangsu Yuexing Furniture Group Co., Ltd
- Jiashan Zhenxuan Furniture Co., Ltd
- Jiedong Lehouse Furniture Co., Ltd
- Lianjiang Zongyu Art Products Co., Ltd
- King's Way Furniture Industries Co., Ltd
- Kingsyear, Ltd
- Lianjiang Zongyu Art Products Co., Ltd
- Meizhou Sunrise Furniture Co., Ltd
- Meizhou Sunrise Furniture Co., Ltd
- Maria Yee, Inc
- Nanhai Jiantai Woodwork Co. Ltd
- Nantong Yangzi Furniture Co. Ltd
- Nantong Wangzhuang Furniture Co. Ltd
- Nathan International Ltd
- Nathan Rattan Factory
- Perfect Line Furniture Co., Ltd
- PuTian JingGong Furniture Co., Ltd
- Pyla HK Ltd
- Qingdao Beiyuan lndustry Trading Co., Ltd
- Qingdao Beiyuan Shengli Furniture Co., Ltd
- Rui Feng Woodwork Co., Ltd
- Rui Feng Woodwork Co., Ltd. AKA Rui Feng Woodwork (Dongguan) Co., Ltd
- Rui Feng Lumber Development Co., Ltd
- Rui Feng Lumber Development Co., Ltd. AKA Rui Feng Lumber Development (Shenzhen) Co., Ltd
- Shanghai Jian Pu Export & Import Co., Ltd
- Shanghai Maoji Imp & Exp Co., Ltd
- Shanghai Sunrise Furniture Co., Ltd
- Shenzhen Diamond Furniture Co., Ltd
- Shenzhen Forest Furniture Co., Ltd
- Shenzhen Jiafa High Grade Furniture Co., Ltd
- Shenzhen Jichang Woodproducts Co. Ltd
- Shenzhen New Fudu Furniture Co., Ltd
- Shenzhen Wonderful Furniture Co., Ltd
- Shenzhen Xingli Furniture Co., Ltd
- Shing Mark Enterprise Co., Ltd
- Songgang Jasonwood Furniture Factory
- Superwood Co. Ltd
- Taicang Sunrise Wood Industry, Co., Ltd
- Taicang Sunrise Wood Industry Co., Ltd
- Taicang Fairmont Designs Furniture Co., Ltd
- Tradewinds Furniture Ltd
- Tradewinds Furniture Ltd. (successor-in-interest to Nanhai Jiantai Woodwork Co.)
- Tube-Smith Enterprise (Haimen) Co., Ltd
- Tube-Smith Enterprise (Zhangzhou) Co., Ltd
- Wanvog Furniture (Kunshan) Co., Ltd
- Weimei Furniture Co., Ltd
- Wuxi Yushea Furniture Co., Ltd
- Xiamen Yongquan Sci-Tech Development Co., Ltd
- Xilinmen Group Co. Ltd
- Yihua Lifestyle Technology Co., Ltd
- Yihua Timber Industry Co., Ltd
- Yihua Timber Industry Co., Ltd. (a.k.a. Guangdong Yihua Timber Industry Co., Ltd.)
- Zhangjiagang Daye Hotel Furniture Co. Ltd
- Zhangzhou Guohui Industrial & Trade Co. Ltd
- Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd
- Zhong Shan Fullwin Furniture Co., Ltd
- Zhongshan Fookyik Furniture Co., Ltd
- Zhongshan Golden King Furniture Industrial Co., Ltd
- Zhoushan For-Strong Wood Co., Ltd

[FR Doc. 2019–22133 Filed 10–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–849]

Refillable Stainless Steel Kegs From Mexico: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on refillable stainless steel kegs from Mexico.

DATES: Applicable October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Allison Hollander or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on August 19, 2019, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation, including its affirmative determination of critical circumstances, with respect to imports of refillable stainless steel kegs from Mexico.[1] On October 3, 2019, the ITC notified Commerce of its final determination pursuant to section 735(b)(1)(B) of the Act that the establishment of an industry in the United States is materially retarded by reason of the LTFV imports of refillable stainless steel kegs from Mexico, and its determination that critical circumstances do not exist with respect to imports of subject merchandise from Mexico.[2]

[1] *See Refillable Stainless Steel Kegs From Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 84 FR 42894 (August 19, 2019).

[2] *See* Notification Letter from the ITC, dated October 3, 2019 (ITC Letter).

Scope of the Order

The merchandise covered by this order are refillable stainless steel kegs from Mexico. For a complete description of the scope of the order, *see* the Appendix to this notice.

Antidumping Duty Order

As stated above, on October 3, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that the establishment of an industry in the United States is materially retarded within the meaning of section 735(b)(1)(B) of the Act by reason of imports of refillable stainless steel kegs from Mexico sold at LTFV, and further found that critical circumstances do not exist with respect to imports of subject merchandise from Mexico. Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order.

Because the ITC determined that the establishment of an industry in the United States is materially retarded by imports of refillable stainless steel kegs from Mexico that are sold at LTFV, section 736(b)(2) of the Act is applicable. Accordingly, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the refillable stainless steel kegs from Mexico exceeds the export price (or constructed export price) of the merchandise for entries of refillable stainless steel kegs from Mexico which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's final affirmative determination under section 735(b) of the Act.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to suspend liquidation of all appropriate entries of refillable stainless steel kegs from Mexico as described in the Appendix to this notice which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. We will also instruct CBP to require, at the same time as importers would normally deposit estimated customs duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below. The all others rate applies to all producers or exporters not specifically listed.

In accordance with section 736(b)(2) of the Act, Commerce will instruct CBP to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the ITC's final affirmative determination under section 735(b) of the Act. Further, Commerce will instruct CBP to terminate the suspension of liquidation of, and to liquidate without regard to antidumping duties, entries of refillable stainless steel kegs from Mexico which are entered, or withdrawn from warehouse, for consumption prior to the date of publication of the ITC's affirmative determination under section 735(b) of the Act.

Provisional Measures and Critical Circumstances

Because the ITC determined, in accordance with section 735(d) of the Act, that the establishment of an industry in the United States is materially retarded within the meaning of section 735(b)(1)(B) of the Act by reason of imports of refillable stainless steel kegs from Mexico sold at LTFV, and further found that critical circumstances do not exist with respect to imports of subject merchandise from Mexico,[3] provisional measures are inapplicable. Similarly, because of the ITC's final negative determination of critical circumstances, pursuant to section 735(c)(3) of the Act, Commerce will instruct CBP to terminate any retroactive suspension of liquidation, release any bond or other security, and refund any cash deposit required to secure the payment of antidumping duties with respect to entries of refillable stainless steel kegs from Mexico entered, or withdrawn from warehouse, for consumption before the date of publication of the ITC's final affirmative determination under section 735(b) of the Act.

Estimated Weighted-Average Dumping Margins

The weighted-average dumping margins are as follows:

Producer/exporter	Weighted-average dumping margin (percent)
THIELMANN Mexico S.A. de C.V	18.48
Portinox Mexico S.A. de C.V	18.48
Geodis Wilson Mexico S.A. de C.V.	18.48
All Others	18.48

[3] *See* ITC Letter.

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to refillable stainless steel kegs from Mexico pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: October 4, 2019.

Jeffery I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by the order are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) Vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

[FR Doc. 2019–22279 Filed 10–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils 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.

DATES: Applicable October 10, 2019.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of certain cased pencils (pencils) from the People's Republic of China (China) for the period of review (POR) December 1, 2017 through November 30, 2018. We preliminarily determine that Fila Dixon Stationery (Kunshan) Co., Ltd. (Kunshan Dixon) is not eligible for a separate rate and, therefore, remains part of the China-wide entity. Additionally, we are rescinding the review with respect to six companies. If these preliminary results are adopted in the final results, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping (AD) duties on all appropriate entries of subject merchandise. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this administrative review on March 14, 2019.[1] For a complete description of the events of this review, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and 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 Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise subject to the order includes certain cased pencils from China. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9609.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written product description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' All requests for review have been timely withdrawn except with respect to Kunshan Dixon. Therefore, we are rescinding the administrative review with respect to Shandong Rongxin Import & Export Co., Ltd., Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. (collectively, the Wah Yuen Companies), Tianjin Tonghe Stationery Co. Ltd., Ningbo Homey Union Co., Ltd., and Orient International Shanghai Foreign Trade Co., Ltd.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Kunshan Dixon did not respond to Commerce's AD questionnaire and, therefore, has not demonstrated its eligibility for a separate rate. Accordingly, we are preliminarily treating Kunshan Dixon as part of the China-wide entity.

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[3] 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 this review, the entity is not under review and the entity's current rate, *i.e.,* 114.90 percent,[4] is not subject to change.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Disclosure

Normally, Commerce will disclose the calculations used in its analysis to parties in this review within five days of the public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary results, in accordance with 19 CFR 351.224(b). However, in this case, because Commerce did not calculate a weighted-average dumping margin for any companies in this review, or the China-wide entity, there are no calculations to disclose.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of these preliminary results, unless the Secretary alters the time limit.[5] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after case briefs are filed.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, AD duties on all appropriate entries covered by this review.[7] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. If Commerce continues to find Kunshan Dixon to be part of the China-wide entity in the final

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019). Because Commerce inadvertently initiated an administrative review on Beijing Fila Dixon Stationery Co., Ltd. (aka Beijing Dixon Ticonderoga Stationery Co.) (Beijing Dixon) for which the order was revoked, Commerce published a correction initiation notice rescinding the administrative review of Beijing Dixon. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200, 12206 n.9 (April 1, 2019).

[2] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Certain Cased Pencils from the People's Republic of China; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *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).

[4] *See Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2014–2015,* 81 FR 83201 (November 21, 2016), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 24675 (May 30, 2017), and accompanying Issues and Decision Memorandum.

[5] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.212(b).

results, Commerce will instruct CBP to liquidate POR entries of subject merchandise from this firm at the China-wide rate of 114.90 percent. With respect to entries from companies for which Commerce is rescinding the review, 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).

Cash Deposit Requirements

The following cash deposit requirements for estimated AD duties, when imposed, will apply to all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For any company that is granted a separate rate, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that are not under review in this segment but that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (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 (*i.e.,* 114.90 percent);[8] and (4) 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 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 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 these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of Review
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2019–22132 Filed 10–9–19; 8:45 am]

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[8] *See Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 24675 (May 30, 2017).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Silicon Metal From the Russian Federation: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on silicon metal from the Russian Federation (Russia) would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail are indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2003, Commerce issued an AD order on silicon metal from Russia.[1] On July 2, 2014, Commerce published the notice of continuation of the *Order* pursuant to the second sunset review.[2] On June 4, 2019, Commerce published the notice of initiation of the third sunset review of the *Order.*[3]

On June 7, 2019, Commerce received notice of intent to participate from Globe Metallurgical Inc. (Globe), within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] On July 3, 2019, Commerce received adequate substantive responses from Globe within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[5] Globe, a domestic producer of the subject merchandise, claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act).[6] We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The product covered by this *Order* is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by the *Order* also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The *Order* covers all silicon metal meeting the above specification, regardless of tariff classification.

Analysis of Comments Received

All issues raised for the final results of this sunset review are listed in the appendix to this notice and addressed in the Issues and Decision

[1] *See Antidumping Duty Order: Silicon Metal from Russia,* 68 FR 14578 (March 26, 2003) (*Antidumping Duty Order*), amended by *Silicon Metal From the Russian Federation; Notice of Amended Final Determination Pursuant to Court Decision,* 71 FR 8277 (February 16, 2006) (*Amended Final Determination*).

[2] *See Silicon Metal from the Russian Federation: Continuation of Antidumping Duty Order,* 79 FR 37718 (July 2, 2014).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 25741 (June 4, 2019).

[4] *See* Globe's Letter, ''Silicon Metal from Russia; Third Sunset Review; Notice of Intent to Participate,'' dated June 7, 2019.

[5] *See* Globe's Letter, ''Silicon Metal from Russia; Third Sunset Review; Substantive Response of Globe Specialty Metals, Inc. to the Notice of Initiation,'' dated July 3, 2019 (Globe's Substantive Response).

[6] *Id.*

Memorandum.[7] The issues discussed in the Issues and Decision Memorandum include the likelihood of the continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* on silicon metal from the Russian Federation would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 87.08 percent.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or 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.

Notification to Interested Parties

We are issuing and publishing the final results of this expedited sunset review in accordance with sections 751(c), 752(c), and 777(i) of the Act, and 19 CFR 351.218.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Silicon Metal from the Russian Federation,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Dated: October 2, 2019.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations, Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. History of the Order
III. Discussion of the Issues
IV. Final Results of Review
V. Recommendation

[FR Doc. 2019–22213 Filed 10–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Climate Observing Systems Council (COSC) for the Ocean Observing and Monitoring Division

AGENCY: Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of an in person meeting of the Climate Observing Systems Council (COSC) for the Ocean Observing and Monitoring Division on November 15, 2019. This meeting will focus on strategic direction for the office and new potential research ideas.

DATES: The meeting will be held on Friday, November 15, 2019, from 9:00 a.m. to 2:00 p.m. EST. These times and the agenda topics described below are subject to change.

ADDRESSES: The meeting will be held at 1315 East-West Hwy., Room 2500, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Emily Smith, Program Manager, Ocean Observing and Monitoring Division, 1315 East-West Highway, Silver Spring, MD 20910; Phone 301–427–2463; Email *Emily.a.smith@noaa.gov* or visit the website *https://cpo.noaa.gov/Meet-the-Divisions/Ocean-Observing-and-Monitoring/COSC.*

SUPPLEMENTARY INFORMATION: The meeting will be open to public participation with a 15-minute public comment period on November 15, 2019, from 2:45 p.m. to 3:00 p.m. The COSC expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Program Manager by November 8, 2019 to provide sufficient time for Committee review. Written comments received after November 8, 2019 will be distributed to the COSC, but may not be reviewed prior to the meeting date. Please send your name as it appears on driver's license and the organization/company affiliation you represent to Emily Smith. This information must be received by November 8, 2019.

Status: This meeting will be open to public participation. Individuals interested in attending should email Emily Smith at *Emily.A.Smith@noaa.gov.* Seating at the meeting will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will focus on strategic planning for the office. The latest version of the agenda will be posted at *https://cpo.noaa.gov/Meet-the-Divisions/Ocean-Observing-and-Monitoring/COSC.*

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Smith, at 301–427–2463; email: *Emily.a.smith@noaa.gov* by November 8, 2019.

Dated: October 4, 2019.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–22226 Filed 10–9–19; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2019–HQ–0011]

Proposed Collection; Comment Request

AGENCY: Secretary of the Air Force, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Secretary of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the

proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to AFMC/AFLCMC/HIBD Attn: Jason Krahmer, Capt, USAF, 201 East Moore Drive, Bldg. 856 Rm. 208, MAFB-Gunter Annex, Alabama, 36114–3005, Telephone number (334) 416–6050.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Automated Civil Engineer System (ACES) Electronic Records; Form Number DD2875; OMB Control Number 0701–XXXX.

Needs and Uses: Information is required for five categories of respondents (ACES Unit Account Manager, ACES User, Civil Engineer (CE) Personnel supporting facility maintenance, warfighters, and Facility Managers). For ACES Unit Account Managers, PII data is required to establish roles for individuals to manage their unit's accounts. For ACES Users, PII data is required to establish accounts. For CE Personnel, PII data is required to identify CE Personnel for assignments to cost centers for the purpose of work order labor reporting and the calculations of shop rates. For warfighters, PII data is critical to ensure all warfighters are prepared for deployment. ACES is the authoritative source for Chemical, Biological, Radiological, Nuclear (CBRN) and Combat Arms training. For Facilities Managers, PII data is required for work orders and after hour emergencies.

Affected Public: Individuals and households.

Annual Burden Hours: 192.8.

Number of Respondents: 3,856.

Responses per Respondent: 1.

Annual Responses: 3,856.

Average Burden per Response: 3 minutes.

Frequency: On Occasion.

Dated: October 7, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22228 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0027]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of Army United States Military Academy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Directorate of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: Jay Satterwhite, Associate Director of Admissions-Support, 606 Thayer Road, USMA, NY 10996–1797 or call the Department of Army Reports clearance officer at (703) 428–6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMA Pre-Candidate Procedures, OMB Control Number 0702–0060.

Needs and Uses: USMA candidates provide personal background information which allows the USMA Admissions Committee to make subjective judgments on non-academic experiences. Data is also used by USMA's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or Households.

Annual Burden Hours: 31,250.

Number of Respondents: 75,000.

Responses per Respondent: 1.

Annual Responses: 75,000.

Average Burden per Response: 25 minutes.

Frequency: On occasion.

Title 10, U.S.C. 4336 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy strives to motivate outstanding potential

candidates to apply for admission. Once candidates are identified, USMA Admissions collects information necessary to nurture them through successful completion of the application process.

Dated: October 7, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22230 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0028]

Proposed Collection; Comment Request

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

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Corps of Engineers, Directorate of Civil Works, Office of Planning and Policy, ATTN: Douglas Gorecki, 441 G Street, Washington, DC 20314, or call 202–761–5450.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: U.S. Army Corps of Engineers, Instrument for Hurricane Evacuation Behavioral Survey; Generic Collection for OMB Control Number 0710–0019.

Needs and Uses: The primary purpose of collections to be conducted under this clearance is to provide data which will be used in conjunction with other information to derive numerical values of certain evacuation behaviors which in turn will be used in transportation modeling of evacuation clearance times, along with shelter planning and public outreach. In general all collections under this clearance will be designed based upon accepted statistical practices and sampling methodologies, will gather consistent and valid data that are representative of the target population, address non-response bias issues, and achieve response rates needed to obtain statistically useful results.

Affected Public: Residents, property owners, businesses, nongovernmental organizations, Local Governments.

Annual Burden Hours: 1,500.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents are residents living in coastal areas where public officials may call for an evacuation when a hurricane threatens. The sample population queried in this generic collection is typically identified using available hurricane risk data, including data on areas at risk from hurricane storm surge flooding, previous hurricane evacuation studies or hurricane response plans, established hurricane evacuation zones, and in coordination with State and Local governments within the study area who are responsible for hurricane emergency management and evacuation decision making.

Dated: October 7, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22218 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0115]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness (Military Personnel Policy) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy), ATTN: MAJ Justin DeVantier, 4000 Defense Pentagon, Washington, DC 20301–4000 or call at (703) 695–5527.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Reference; DD Form 370; OMB Control Number 0704–0167.

Needs and Uses: The information collection requirement is necessary to obtain personal reference data, in order to request a waiver, on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry into the Armed Forces of the United States. The DD Form 370 is used to obtain references information evaluating the character, work habits, and attitudes of an applicant from a person of authority or standing within the community.

Affected Public: Business or other for profit; Not-for-profit institutions; Individuals or Households; State, Local, or Tribal government.

Annual Burden Hours: 1,083.

Number of Respondents: 6,500.

Responses per Respondent: 1.

Annual Responses: 6,500.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

This information is collected to provide Armed Services with specific background information on an applicant. History of criminal activity, arrests, or confinement is disqualifying for military service. An applicant, with such a disqualifier, is required to submit references from community leaders who will attest to his or her character, attitudes or work habits. The DD Form 370 is the method of information collection which requests an evaluation and reference from a specific individual, within the community, who has the knowledge of the applicant's habits, behavior, personality, and character. The information will be used to determine suitability of the applicant for military service and the issuance of a waiver for acceptance.

Dated: October 4, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22110 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0117]

Proposed Collection; Comment Request

AGENCY: Defense Acquisition University, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Acquisition University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Information Management Control Officer (Chris Johnson), Office of the Chief Information Officer, Defense Acquisition University, 9820 Belvoir Road, Ft. Belvoir, VA or call (703) 805–4854.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Acquisition University, Data Services Management; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to permit an individual to register for access to a DAU training, knowledge sharing and collaboration systems. The information is used to evaluate the individual's eligibility for access to DAU training, knowledge sharing and collaboration systems and to notify the individual of approval or disapproval of the request. It also provides administrative and academic capabilities and functions related to student registrations, account requests, courses attempted and completed, graduation notifications to DoD training systems.

Affected Public: Individuals or Households.

Annual Burden Hours: 833.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: October 4, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22127 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0118]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to 4800 Mark Center Dr. Alexandria, VA 22311, the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy)/Accession Policy, Attn.: Major Arturo Roque, or call (703) 695–5527.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Verification of Birth; DD Form 372; OMB Control Number 0704–0006.

Needs and Uses: Title 10, U.S.C. 505, 532, 3253, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local, or Tribal Government.

Annual Burden Hours: 7,000.

Number of Respondents: 140,000.

Responses per Respondent: 1.

Annual Responses: 140,000.

Average Burden per Response: 3 mins.

Frequency: On Occasion.

Dated: October 7, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22223 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0116]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency (J62C), 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221, Attn: Greg Riley, or call 571–767–3996.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Contingency and Expeditionary Services (JCXS); OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to maintain the safety of contractors and U.S. Armed Forces while ensuring that the U.S. Government is not doing business with entities at odds with American interests. JCXS contains two modules, the Joint Contingency Contracting System (JCCS), which evaluates vendors for possible approval or acceptance to do business with and have access to U.S. military installations around the world, and the Civilian Arming Authorization Management System (CAAMS), which provides a standardized and automated process for the submission, review, approval, and compliance management of the contractor arming process. JCXS is the DoD's agile, responsive, and global provider of Joint expeditionary acquisition business solutions that fulfill mission-critical requirements while supporting interagency collaboration—to include, but not limited to, contracting, finance, spend analysis, contract close-out, staffing, strategic sourcing, and reporting.

Affected Public: Business or other for-profit, individuals or households.

Annual Burden Hours: 2,750.

Number of Respondents: 5,500.

Responses per Respondent: 1.

Annual Responses: 5,500.

Average Burden per Response: 30 minutes.

Frequency: As required.

Dated: October 4, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22120 Filed 10–9–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–41–000]

PennEast Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on October 4, 2019, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), PennEast Pipeline Company, LLC, filed a petition for declaratory order (petition) and for expedited action requesting that the Commission issue an order interpreting the Natural Gas Act's eminent domain authority in Section 7(h), and concluding that: (1) Under NGA Section 7(h), a certificate holder's authority to ''condemn the necessary right-of-way to construct, operate, and maintain a [natural gas] pipeline'' and the ''necessary land or other property, in addition to right-of-way, for the location of compressor stations [and other associated equipment],'' applies to property in which a state holds an interest; (2) in NGA Section 7(h), Congress delegated the federal government's eminent domain authority to certificate holders; and (3) in delegating the federal government's eminent domain authority in NGA Section 7(h), Congress necessarily delegated to certificate holders the federal government's exemption from claims of state sovereign immunity, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: In light of the petitioner's request for expedited treatment, and the significance of the issues presented, the comment due date is 5:00 p.m. Eastern Time on October 18, 2019.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22182 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

	Project Nos.
Northbrook Wisconsin, LLC	2536–093
City of Norway, Michigan	2720–067
City of Crystal Falls, Michigan	11402–076
Wisconsin Electric Power Company	2486–087

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Proceeding:* Extension of License Terms.

b. *Project Nos.:* P–2536–093, P–2720–067, P–11402–076, and P–2486–087.

c. *Dates Filed:* June 13, 2019 and July 16, 2019.

d. *Licensees:* Northbrook Wisconsin, LLC (P–2536–093), City of Norway, Michigan (P–2720–067), City of Crystal Falls, Michigan (P–11402–076), and Wisconsin Electric Power Company (P–2486–087).

e. *Names and Locations of the Projects:* The Little Quinnesec Falls (P–2536) and Sturgeon Falls (P–2720) hydroelectric projects located on the Menominee River, in Dickinson County, Michigan and Marinette County, Wisconsin. The Crystal Falls Hydroelectric Project No. 11402 located on the Paint River, in Iron County, Michigan and the Pine Hydroelectric Project No. 2486 located on the Pine River, in Florence County, Wisconsin.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensees Contact Information:* (P–2536–093) Mr. Michael Scarzello, Regulatory Director, Eagle Creek Renewable Energy, 116 State Street, P.O. Box 167, Neshkoro, WI 54960, (973) 998–8403, *michael.scarzello@eaglecreekre.com;* (P–2720–067) Mr. Ray Anderson, City Manager, 915 Main Street, P.O. Box 99, Norway, MI 49870, (906) 563–9961, Ext. 205; (P–11402–076) Mr. David Graff, Electric Department Supervisor, City of Crystal Falls Electrical Department, 401 Superior Avenue, Crystal Falls, MI 49920, (906) 284–3394; (P–2486–087) Mr. Mike Grisar, Principal Environmental Consultant, WEC Business Services LLC, 231 West Michigan Street, Milwaukee, WI 53203, (414) 221–5426, *mike.grisar@wecenergygroup.com.*

h. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end

of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number, for example, ''P–2536–093''.

Note that you can file comments, motions to intervene, and protects in response to all of the projects identified in the notice together (*i.e.,* one response for all projects) or you can respond to each project individually, or do a combination of both.

j. *Description of Proceeding:* Northbrook Wisconsin, LLC, the City of Norway, Michigan, and the City of Crystal Falls, Wisconsin on June 13, 2019 and the Wisconsin Electric Power Company on July 16, 2019, filed applications to extend the license terms for four projects located on the Menominee River and two of its tributaries, the Paint and Pine rivers. The four projects include the Little Quinnesec Falls Project No. 2536 licensed to Northbrook Wisconsin, LLC, the Sturgeon Falls Project No. 2720 licensed to the City of Norway, Michigan, the Crystal Falls Project No. 11402 licensed to the City of Crystal Falls, Wisconsin, and the Pine Project No. 2486 licensed to Wisconsin Electric Power Company.

The licensees request that the license terms for the four projects be extended to July 31, 2040 to align the license expiration dates with nine other project located on the upper Menominee River basin. Currently, the 40-year license for the Little Quinnesec Falls Project expires on April 30, 2037 and the 30-year licenses for the Crystal Falls, Pine, and Sturgeon Falls projects correspondingly expire on September 30, 2025, November 30, 2025, and December 31, 2034. The licensees state that aligning the license expiration dates of the projects would allow for a comprehensive study and analysis of the upper Menominee River basin projects, expedite the consultation process for all parties, and maximize the consideration of cumulative and environmental impacts in the related proceedings at relicensing.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (for example, P–2536–093) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant(s) and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the requests to extend the license terms. Agencies may obtain copies of the applications directly from the applicants. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to these applications must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22175 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–516–000]

Columbia Gulf Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on September 30, 2019, Columbia Gulf Transmission, LLC (Columbia Gulf), 700 Louisiana Street, Suite 700, Houston, Texas 77002, filed in the above referenced docket a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act and its blanket certificates issued in Docket No. CP83–496–000 and Docket No. CP82–406–000 for authorization to abandon approximately 6.8 miles of its 16-inch mainline, East Cameron 23 Field Line, in Cameron Parish, Louisiana. Columbia Gulf estimates the cost of the project to be $6.9 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Brooke McCallum, Analyst, Project Determinations & Regulatory Administration, Columbia Gulf Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002 at (832) 320–5829 or *brooke_mccallum@tcenergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed

activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22176 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–5–000.
Applicants: 83WI 8me, LLC, Blue Canyon Windpower LLC, Burgess Biopower LLC, Dempsey Ridge Wind Farm, LLC, EcoGrove Wind, LLC, Flat Water Wind Farm, LLC, Lily Solar, LLC, Lily Solar Lessee, LLC, Persimmon Creek Wind Farm 1, LLC, Red Hills Wind Project, L.L.C., Roth Rock Wind Farm, LLC, Tatanka Wind Power, LLC, TPW Petersburg, LLC, X-elio Energy SC York, LLC, Brookfield Renewable Power Ltd., Longview Power, LLC, Nevada Solar One, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of 83WI 8me, LLC, et al.
Filed Date: 10/4/19.
Accession Number: 20191004–5047.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: EC20–6–000.
Applicants: Tenaska Pennsylvania Partners, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Tenaska Pennsylvania Partners, LLC.
Filed Date: 10/4/19.
Accession Number: 20191004–5084.
Comments Due: 5 p.m. ET 10/25/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–2–000.
Applicants: IP Athos, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of IP Athos, LLC.
Filed Date: 10/4/19.
Accession Number: 20191004–5022.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: EG20–3–000.
Applicants: IP Athos II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of IP Athos II, LLC.
Filed Date: 10/4/19.
Accession Number: 20191004–5026.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: EG20–4–000.
Applicants: KeyCon Operating, LLC, Keystone Operating, LLC, Conemaugh Operating, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of KeyCon Operating, LLC, et. al.
Filed Date: 10/4/19.
Accession Number: 20191004–5088.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: EG20–5–000.
Applicants: KeyCon Operating, LLC, Keystone Operating, LLC, Conemaugh Operating, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of KeyCon Operating, LLC, et. al.
Filed Date: 10/4/19.
Accession Number: 20191004–5088.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: EG20–6–000.
Applicants: KeyCon Operating, LLC, Keystone Operating, LLC, Conemaugh Operating, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of KeyCon Operating, LLC, et. al.
Filed Date: 10/4/19.
Accession Number: 20191004–5088.
Comments Due: 5 p.m. ET 10/25/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–015; ER16–1250–007; ER11–2112–009; ER10–2828–005; ER16–2285–003; ER10–3002–005; ER10–3004–006; ER10–3010–005; ER12–96–007; ER10–3031–005.
Applicants: Atlantic Renewable Projects II LLC, Avangrid Renewables, LLC, Blue Creek Wind Farm LLC, Casselman Windpower LLC, Desert Wind Farm LLC, Locust Ridge Wind Farm, LLC, Locust Ridge II, LLC, Providence Heights Wind, LLC, South Chestnut LLC, Streator-Cayuga Ridge Wind Power LLC.
Description: Notice of Change in Status of the Avangrid MBR Sellers.
Filed Date: 10/3/19.
Accession Number: 20191003–5204.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER16–1887–001.
Applicants: Apple Energy LLC.
Description: Notice of Non-Material Change in Status of Apple Energy LLC.
Filed Date: 10/3/19.
Accession Number: 20191003–5207.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER19–2647–001.
Applicants: Florida Power & Light Company.
Description: Tariff Amendment: Amendment to FPL Revised OATT to Reflect the Dissolution of the FRCC as NERC RE to be effective 9/1/2019.
Filed Date: 10/4/19.
Accession Number: 20191004–5146.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER19–2707–001.
Applicants: Poseidon Wind, LLC.

Description: Tariff Amendment: Errata to Application for Market-Based Rate Authorization to be effective 10/29/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5173.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–36–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–03_PJM–MISO JOA Enhancements to Coordinated System Planning Process to be effective 12/3/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5172.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–37–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NMPC & Invenergy Wind re: Engineering & Procurement Agreement SA 2477 to be effective 8/12/2019.
Filed Date: 10/4/19.
Accession Number: 20191004–5045.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER20–38–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Service Agreement for Wholesale Distibution Service, SA No. 1086, P&G Cogen2 to be effective 10/7/2019.
Filed Date: 10/4/19.
Accession Number: 20191004–5113.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER20–39–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement with City of Pasadena, Rate Schedule FERC No. 524 to be effective 10/7/2019.
Filed Date: 10/4/19.
Accession Number: 20191004–5122.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER20–40–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Basin Electric Power Cooperative Contract Services Agreement Amendment to be effective 12/3/2019.
Filed Date: 10/4/19.
Accession Number: 20191004–5123.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER20–41–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–04_Attachment X revisions related to Site Control/Milestones to be effective 12/4/2019.
Filed Date: 10/4/19.
Accession Number: 20191004–5143.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER20–42–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–04_Short Term Reserves filing to be effective 12/31/9998.
Filed Date: 10/4/19.
Accession Number: 20191004–5144.
Comments Due: 5 p.m. ET 10/25/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22181 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1594–001.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing AGT 2019 OFO Penalty Disbursement Report—Updated to be effective N/A.
Filed Date: 10/03/19.
Accession Number: 20191003–5156.
Comment Date: 5:00 p.m. ET 10/10/19.

Docket Numbers: RP20–1–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: 2019 LNG Fuel Tracker Filing to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5005.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–10–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement—Macquarie to be effective 10/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5019.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–11–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: 2019 Fuel Tracker Filing to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5027.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–12–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2019 Salt Cove Meters to be effective 10/31/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5099.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–13–000.
Applicants: Mississippi Hub, LLC.
Description: Annual Penalty Disbursement Report of Mississippi Hub, LLC under RP19–13.
Filed Date: 10/1/19.
Accession Number: 20191001–5101.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–14–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: § 4(d) Rate Filing: TRA—November 2019 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5117.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–15–000.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: § 4(d) Rate Filing: TRA—November 2019 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5118.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–16–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Semi-Annual Fuel and Losses Retention Adjustment—Winter 2019 Rate to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5119.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–17–000.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: § 4(d) Rate Filing: Out-Of-Cycle Electric Power Cost (EPC) to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5126.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–18–000.
Applicants: WBI Energy Transmission, Inc.
Description: Annual Penalty Credit Revenue Report of WBI Energy Transmission, Inc. under RP20–18.
Filed Date: 10/1/19.
Accession Number: 20191001–5142.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–19–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Update Summary of Non-Conforming Agreements to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5149.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–2–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR WISE NC and NR Agreements to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5006.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–20–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: EPCR Semi-Annual Adjustment—Fall 2019 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5150.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–21–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (#215883–FTWIC Castleton Commodities) to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5155.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–22–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR Transporter's Use Backhaul Revision to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5157.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–23–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Tariff Cancellation: Stingray Filing to Cancel Fourth Revised Volume No. 1 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5162.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–24–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Transporter Use Gas Annual Adjustment—Fall 2019 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5167.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–25–000.
Applicants: Tuscarora Gas Transmission Company.
Description: § 4(d) Rate Filing: Fuel Mechanism Modifications to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5177.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–26–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Update Non-Conforming Agreements AF0022, AF0025, and AF0063 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5179.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–27–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Compliance filing Baseline Fifth Revised Volume No. 1 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5193.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–28–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (Atmos) to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5215.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–29–000.
Applicants: Cimarron River Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Tracker 2019—Winter Season Rates to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5216.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–3–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO International Paper NC Amendment to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5007.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–30–000.
Applicants: Dominion Energy Questar Pipeline, LLC.
Description: § 4(d) Rate Filing: Revisions to Rate Schedule NNT (No-Notice Transporation Service) to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5231.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–31–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Auto PAL Tariff Changes to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5235.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–32–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Corpus Christi Liquefaction, LLC SP309057 Neg-Non Conf Amendment to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5276.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–33–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: PNGTS PXP Phase II Agreements to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5280.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–34–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20191001 Negotiated Rate Filing to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5281.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–35–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20191001 Negotiated Rate to be effective 10/2/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5283.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–36–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming Service Agreements—Cascade, Intermountain & Puget to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5285.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–37–000.

Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Wisconsin Gas & Wisconsin Electric to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5287.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–4–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates NJR contracts 511100 & 511101 to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5008.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–5–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Kaiser NEG Name Changes Cleanup to be effective 10/31/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5009.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–6–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Oct 2019 Cleanup to be effective 10/31/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5010.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–7–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: APL 2019 Fuel Filing to be effective 11/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5012.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–8–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Oct 2019 to be effective 10/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5015.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–9–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—10/1/2019 to be effective 10/1/2019.
Filed Date: 10/1/19.
Accession Number: 20191001–5018.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–38–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100219 GT&C—Operational Flow Order Tariff Revisions to be effective 11/1/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5009.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–39–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 51554 to Exelon 51616) to be effective 10/1/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5073.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–40–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—MC Gloabal to CIMA 8959637 eff 10–3–19 to be effective 10/3/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5157.
Comments Due: 5 p.m. ET 10/15/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22177 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM07–16–000; RM01–5–000]

Filing Via the Internet, Electronic Tariff Filings; Notice of eRegistration Recertification Process

Pursuant to the Federal Information Security Management Act,[1] and instructions and guidance provided by Office of Management and Budget (OMB) Circular A–130[2] and National Institute of Standards and Technology (NIST) Special Publication 800–53 with regard to Account Management,[3] the Commission will initiate an annual recertification of all eRegistered user email addresses. eRegistered user accounts whose email addresses cannot be validated will be deactivated. Deactivated user accounts will not be able to transact business with the Federal Energy Regulatory Commission without reactivating their account including submitting filings in a docket or receiving notices/updates from any docketed matter. Information on the eRegistration recertification process is available at *http://www.ferc.gov/docs-filing/eregistration.asp*.

Take notice that the Commission will initiate the eRegistration recertification process on November 4, 2019. eRegistered users will receive notification by email of the need to recertify and will have thirty days from the notice before their accounts are deactivated.

For more information, contact Timothy Booker, Office of the Executive Director at (202) 502–8845 or send an email to *FERCOnline@ferc.gov*.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22179 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP19–1523–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Technical Conference

Take notice that a technical conference will be held on Wednesday, October 30, 2019 at 10:00 a.m. (Eastern Daylight Time), in a room to be designated, at the offices of the Federal Energy Regulatory Commission (Commission), 888 First Street NE, Washington DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding should be prepared to discuss all issues raised by the filing and set for technical conference by the Commission in its September 30, 2019

[1] Public Law (Pub. L.) 107–347.

[2] OMB Circular A–130, Section 8b(3), *Securing Agency Information Systems.*

[3] NIST Special Publication 800–53, *Security and Privacy Controls for Federal Information Systems and Organizations.*

order.[1] All interested persons are permitted to attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference please contact Catherine Liow at 202–502–6459 or *Catherine.Liow@ferc.gov.*

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22180 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order

	Docket Nos.
Solar Iguana LLC	EL20–3–000
SPP Fund III, LLC	
SPP P–IV Master Lessee, LLC	
Solar Iguana LLC	QF19–1651–001
SPP Fund III, LLC	QF17–877–003
SPP P–IV Master Lessee, LLC	QF11–462–006

Take notice that on October 3, 2019, pursuant to Rule 207 of the Commission's (Commission) Rules of Practice and Procedure,[1] Solar Iguana LLC, SPP Fund III, LLC and SPP P–IV Master Lessee, LLC (Petitioners) filed a petition for declaratory order (petition) requesting that the Commission grant partial waivers of the filing requirement in section 292.203(a)(3) of the Commission's regulations (QF Filing Requirement)[2] for the time periods beginning when certain of their facilities commenced operation and ending with the certification of such facilities as QFs and a refund report, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 4, 2019.

Dated: October 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22178 Filed 10–9–19; 8:45 am]

BILLING CODE 6717–01–P

[1] *Panhandle Eastern Pipe Line Co., LP,* 168 FERC 61,208, at P 26 (2019).

[1] 18 CFR 385.207 (2019).

[2] 18 CFR 292.203(a)(3) (2019).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2019–0575; FRL–10001–08–OGC]

Notice of Disclosure Under a Protective Order, In re: Gold King Mine Release, Case No. l:18–md–02824–WJ (D.N.M.)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of disclosure of potential confidential business information (CBI) in litigation. In accordance with 40 CFR 2.209(d), this notice is being provided to inform affected businesses that, via the U.S. Department of Justice, EPA may disclose confidential business information or information claimed to be confidential business information (collectively referred to as ''CBI'') to the parties and the court in *In re: Gold King Mine Release that occurred on August 5, 2015, in San Juan County, Colorado,* Case No. l:18–md–02824 (D.N.M.), to the extent required to comply with the discovery obligations of the United States in the litigation.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Berg, Office of General Counsel, Solid Waste and Emergency Response Law Office (2366A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 564–0905; *berg.elizabethg@epa.gov.*

SUPPLEMENTARY INFORMATION:

Additional Information About Notice of Disclosure Under Court Order

The court in this matter has entered a Protective Order Regarding Confidential Information (entered Dec. 7, 2018, as amended Sept. 30, 2019), under which the parties are required to follow specified procedures in the parties production of documents containing ''a trade secret or other confidential research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26(c)(I)(G).'' This type of information includes CBI as described in 40 CFR part 2, subpart B.

Examples of information in EPA's possession that may contain CBI covered by the Protective Order and this Notice are:

(1) Documents received from businesses under contract with EPA to perform work in connection with the Gold King Mine release that occurred on August 5, 2015 (the Release), including the contractors listed below and any subcontractor or temporary firm that performed work in connection with the Release:

a. Environmental Restoration, LLC
b. Harrison Western Construction Corporation
c. Harrison Western Corporation
d. Weston Solutions, Inc.

(2) Documents obtained from Potentially Responsible Parties (PRPs) associated with the Release.

(3) Documents created by EPA that contain CBI associated with a contractor, PRP, or other business.

The Protective Order requires that the producing party designate and label any

documents containing CBI, and bars public disclosure of any designated CBI by any party to the action except in accordance with the order. With limited exceptions, parties must destroy or return CBI received in discovery within 90 days of the end of the litigation.

Dated: October 2, 2019.

John Michaud,

Associate General Counsel.

[FR Doc. 2019–22209 Filed 10–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0437; FRL–10001–00–OAR]

Proposed Information Collection Request; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)'' (EPA ICR No. 0116.12, OMB Control No. 2060–0060) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 30, 2020. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 9, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2013–0437, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under section 206(a) of the Clean Air Act (42 U.S.C. 7521), on-highway engine and vehicle manufacturers may not legally introduce their products into US commerce unless EPA has certified that their production complies with applicable emission standards. Per section 207(a), original vehicle manufacturers must warrant that vehicles are free from defects in materials and workmanship that would cause the vehicle not to comply with emission regulations during its useful life. Section 207(a) directs EPA to provide certification to those manufacturers or builders of automotive aftermarket parts that demonstrate that the installation and use of their products will not cause failure of the engine or vehicle to comply with emission standards. An aftermarket part is any part offered for sale for installation in or on a motor vehicle after such vehicle has left the vehicle manufacturer's production line (40 CFR 85.2113(b)). Participation in the aftermarket certification program is voluntary. Aftermarket part manufacturers or builders (manufacturers) electing to participate conduct emission and durability testing as described in 40 CFR part 85, subpart V, and submit data about their products and testing procedures. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in CFR title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2).

Form numbers: None.

Respondents/affected entities: Manufacturers or builders of automotive aftermarket parts.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 1 (total).

Frequency of response: On occasion.

Total estimated burden: 547 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $19,063 (per year), which includes $1,955 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: October 2, 2019.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2019–22208 Filed 10–9–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 12, 2019.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *First Community Bankshares, Inc., Bluefield, Virginia;* to acquire Highlands Bankshares, Inc., and thereby indirectly acquire Highlands Union Bank, both of Abingdon, Virginia.

Board of Governors of the Federal Reserve System, October 4, 2019.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–22154 Filed 10–9–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1788]

Intravascular Catheters, Wires, and Delivery Systems With Lubricious Coatings—Labeling Considerations; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings-Labeling Considerations.'' This guidance addresses labeling considerations for devices containing lubricious coatings used in the vasculature. The purpose of this guidance is to provide recommendations for information to be included in the device labeling, as submitted in premarket applications (PMAs) or premarket notification submissions (510(k)s) for Class III and Class II devices, to enhance the consistency of information across these product areas as well as to promote the safe use of these devices in the clinical setting.

DATES: The announcement of the guidance is published in the **Federal Register** on October 10, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1788 for ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for

information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Leigh Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2656, Silver Spring, MD 20993–0002, 301–796–5613.

SUPPLEMENTARY INFORMATION:

I. Background

Hydrophilic and/or hydrophobic coated devices have been used for more than 20 years in minimally invasive diagnostic and therapeutic cerebrovascular, cardiovascular and peripheral vascular procedures. Although these devices may offer patient benefits, evidence indicates that the coating may separate from intravascular devices in some circumstances. FDA has received and analyzed information concerning serious adverse events associated with hydrophilic and/or hydrophobic coatings separating (*e.g.,* peeling, flaking, shedding, delaminating, sloughing off) from intravascular medical devices.

FDA has not concluded that any specific manufacturer or brand of these devices is associated with higher risks than others. The cause of coating separation is multifactorial, and can be associated with factors including device design, device manufacturing, and use. Current FDA analysis suggests that use-related issues may be mitigated through proper device selection, preparation, and other labeling considerations that are addressed within this guidance.

This guidance addresses labeling considerations for devices containing lubricious coatings used in the vasculature. The purpose of this guidance is to provide recommendations for information to be included in the device labeling, as submitted in PMAs or premarket notification submissions (510(k)s) for Class III and Class II devices, to enhance the consistency of coating information across these product areas as well as to promote the safe use of these devices in the clinical setting.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of June 15, 2018 (83 FR 27996). FDA revised the guidance as appropriate in response to the comments.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on labeling considerations for intravascular catheters, wires, and delivery systems with lubricious coating. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16016 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
807, subpart E	Premarket Notification	0910–0120
814, subparts A through E	Premarket Approval	0910–0231
801	Medical Device Labeling Regulations	0910–0485

Dated: October 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22192 Filed 10–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1775]

Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' This guidance provides recommendations for the information and testing that should be included in premarket submissions for guidewires intended for use in the coronary vasculature, peripheral vasculature, and neurovasculature.

DATES: The announcement of the guidance is published in the **Federal Register** on October 10, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1775 for ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Nicole Goodsell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2309, Silver Spring, MD 20993–0002, 240–402–6600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and FDA staff entitled ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' This guidance updates and clarifies performance testing and labeling recommendations to support a premarket notification (510(k) submission) for guidewires intended for use in the coronary vasculature, peripheral vasculature, and neurovasculature. The recommendations reflect current review practices and are intended to promote consistency and facilitate efficient review of these submissions. This guidance is also intended to assist industry in designing and executing appropriate performance testing to support a premarket notification and provides recommendations for content and labeling to include in the submission. FDA considered comments received on the draft guidance that appeared in the **Federal Register** of June 15, 2018 (83 FR 27998). FDA revised the guidance as appropriate in response to the comments. This guidance supersedes ''Coronary and Cerebrovascular Guidewire Guidance,'' dated January 1995 (available at: *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080789.pdf*).

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on coronary, peripheral, and neurovascular guidewires performance tests and recommended labeling. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy

of ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16007 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
812	Investigational Device Exemption	0910–0078
''Requests for Feedback on Medical Device Submissions: The Q-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073

Dated: October 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22194 Filed 10–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4041]

Advancing the Development of Pediatric Therapeutics: Pediatric Clinical Trial Endpoints for Rare Diseases With a Focus on Pediatric Patient Perspectives; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Office of Pediatric Therapeutics, Food and Drug Administration (FDA), is announcing a public workshop entitled ''Advancing the Development of Pediatric Therapeutics (ADEPT 6): Pediatric Clinical Trial Endpoints for Rare Diseases with a Focus on Pediatric Patient Perspectives.'' The purpose of this workshop is to discuss pediatric patient-specific engagement in the development of clinical trial endpoints for rare diseases.

DATES: The public workshop will be held on November 12, 2019, from 8 a.m. to 4:30 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503–A), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Terrie L. Crescenzi, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8646, email: *terrie.crescenzi@fda.hhs.gov;* or Elizabeth Sanford, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8659, email: *elizabeth.sanford@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Patient engagement is critical in the development of patient-focused study endpoints that measure clinical benefit in clinical trials. Asking patients what aspects of their disease they consider important to measure is especially important for rare diseases, given the lack of established endpoints for many rare diseases, the small number of patients available for enrollment in trials, and the heterogeneity of disease manifestations (*e.g.,* between patients and over time). While there is increased emphasis on incorporating the patient voice in rare disease drug development activities, there is an increased need for pediatric patient-specific engagement efforts. Pediatric rare disease drug development would benefit from direct and early involvement of pediatric patients and their caregivers in determining the most relevant and clinically meaningful endpoints and outcome assessment tools for use in clinical trials.

II. Topics for Discussion at the Public Workshop

In this workshop, FDA will obtain the pediatric patient perspective on their disease/condition and what is most important to consider when designing rare disease trials. There will also be discussion regarding patients' thoughts on clinical endpoints that are currently being used in clinical trials, potential areas of innovation, and how to create processes that might include pediatric patients and their caregivers as collaborators in endpoint development in early stages of medical product development (*e.g.,* protocol design). The morning session will focus on identifying endpoints that capture important aspects of how pediatric patients feel and function. The afternoon session will focus on steps for development of clinical outcome assessment tools for use in pediatric patient populations and the potential role of child and youth friendly technology in endpoint assessments.

III. Participation in the Public Workshop

Registration: Persons interested in attending this public workshop must register online at: *https://www.eventbrite.com/e/adept-6-workshop-pediatric-clinical-trial-endpoints-for-rare-diseases-registration-67523118465* by November 5, 2019. For those without internet access, please contact Terrie Crescenzi or Elizabeth Sanford (see **FOR FURTHER INFORMATION CONTACT**) to register.

Registration is free and based on space availability, with priority given to early registrants. Onsite registration on the day of the meeting will be based on space availability. Registration information, the agenda, and additional background materials can be found at *http://wcms-internet.fda.gov/news-*

events/fda-meetings-conferences-and-workshops/advancing-development-pediatric-therapeutics-adept-6-pediatric-clinical-trial-endpoints-rare.

If you need special accommodations due to a disability, please contact Elizabeth Sanford (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance. Persons attending the meeting are advised that FDA is not responsible for providing access to electrical outlets.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast. Login URL: *https://collaboration.fda.gov/adept6/.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, FDA will post it at *http://wcms-internet.fda.gov/news-events/fda-meetings-conferences-and-workshops/advancing-development-pediatric-therapeutics-adept-6-pediatric-clinical-trial-endpoints-rare.*

Dated: October 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22187 Filed 10–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1428]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 12, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0827. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0827—Extension

The Drug Quality and Security Act added section 503B to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b) creating a category of entities called ''outsourcing facilities.'' Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that must meet all the requirements described in section 503B, including registering with FDA as an outsourcing facility and submitting regular reports identifying the drugs compounded by the outsourcing facility during the previous 6-month period. The first of these reports must be submitted upon initial registration as an outsourcing facility. Thereafter, semiannual product reports must be submitted, once during the month of June and once during the month of December, for as long as an establishment remains registered as an outsourcing facility.

In addition, drug products compounded in an outsourcing facility can qualify for exemptions from the FDA approval requirements in section 505 of the FD&C Act (21 U.S.C. 355) and the requirement to label products with adequate directions for use under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) if the requirements in section 503B are met.

To help respondents understand the statutory requirements, how we interpret them, and the associated information collection, we developed the guidance document entitled ''Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The guidance is available from our website at: *https://www.fda.gov/media/90173/download.* The guidance explains that, once an entity has elected to register as an outsourcing facility, it must submit reports identifying the drugs compounded by the outsourcing facility. The guidance also communicates who must report, the format of the report, the content to include in each report, when to report, how reports are submitted to FDA, and the consequences of outsourcing facilities' failure to submit reports.

In the **Federal Register** of July 17, 2019 (84 FR 34184), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We therefore estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Product reporting for compounding outsourcing facilities	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Initial product reports	75	1.01	76	2	152
Waiver request from electronic submission of initial product reports	1	1	1	1	1
June product reports	75	1.01	76	0.5	38
December product reports	75	1.01	76	0.5	38
Waiver request from electronic submission of product reports	1	1	1	1	1
Total					230

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current data for outsourcing facilities, we estimate that 75 outsourcing facilities will submit an initial report identifying all drugs compounded in the facility in the previous 6 months. For the purposes of this estimate, each product's structured product labeling (SPL) submission is considered a separate response, and therefore each facility's product report will include multiple responses. Taking into account that a particular product that is compounded into different strengths from different sources of active ingredient can be reported in a single SPL response, we estimate that each facility will average 76 products. Our estimate is based on current product reporting data.

We expect each product report will consist of multiple SPL responses per facility and estimate that preparing and submitting this information electronically may take up to 2 hours for each initial SPL response. We also estimate that the 75 registered outsourcing facilities will submit a report twice each year identifying all drugs compounded at the facility in the previous 6 months.

As stated above, we estimate on average 76 SPL responses per facility and that preparing and submitting this information electronically will take approximately 30 minutes per response. We have reduced our burden estimate for semiannual product submissions because outsourcing facilities can save each SPL response once initially created and submitted. For subsequent reports, an outsourcing facility may resubmit the same file(s) after changing the RootID and version number (both SPL metadata), effective date (to identify the reporting period), and the number of units produced, along with other data as appropriate, to appropriate values for the reporting period. Furthermore, if a product was not compounded during a particular reporting period, no SPL response needs be sent for that product during that reporting period.

We expect to receive no more than one waiver request, each, from the electronic submission process for initial product reports and semiannual reports, and that each waiver request will take 1 hour to prepare and submit.

Based on submissions we have received, we have reduced the number of responses significantly since our original estimate establishing the collection. This results in an overall reduction to the information collection by 36,072 hours.

Dated: October 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22189 Filed 10–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–0944]

Investigational In Vitro Diagnostics in Oncology Trials: Streamlined Submission Process for Study Risk Determination; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Investigational In Vitro Diagnostics in Oncology Trials: Streamlined Submission Process for Study Risk Determination.'' This guidance, developed by the Oncology Center of Excellence at FDA, describes an optional streamlined submission process to determine whether use of an investigational in vitro diagnostic in an oncology clinical trial is considered significant risk, nonsignificant risk, or exempt from investigational device exemption requirements. In the streamlined process, the sponsor submits all information about the oncology trial (including information about the investigational in vitro diagnostic) to the investigational new drug application (IND). As part of IND review, the Center for Biologics Evaluation and Research (CBER) works with the Center for Drug Evaluation and Research (CDER), or CDER or CBER works with the Center for Devices and Radiological Health (CDRH), as appropriate, to determine if the investigational in vitro diagnostic is significant risk, nonsignificant risk, or exempt.

DATES: The announcement of the guidance is published in the **Federal Register** on October 10, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–0944 for ''Investigational In Vitro Diagnostics in Oncology Trials: Streamlined Submission Process for Study Risk Determination.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication and Education, CDRH-Division of Industry and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4621, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Julie Schneider, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2208, Silver Spring, MD 20993, 240–402–4658; Yun-Fu Hu, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5676, Silver Spring, MD 20993–0002, 301–796–6170; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Investigational In Vitro Diagnostics in Oncology Trials: Streamlined Submission Process for Study Risk Determination.'' This guidance describes an optional streamlined submission process for determining whether use of an investigational in vitro diagnostic in an oncology clinical trial under an IND (an oncology codevelopment program) is significant risk, nonsignificant risk, or exempt from investigational device exemption requirements.

In the traditional submission process, many sponsors submitted a study risk determination Q-submission to the appropriate center (CDRH or CBER) and an IND to the appropriate center (CBER or CDER). In the streamlined process, all information regarding the oncology codevelopment program (including investigational in vitro diagnostic information) is initially submitted to the IND. CBER or CDER works with CDRH or CDER works with CBER, as appropriate, to determine whether the investigational in vitro diagnostic is significant risk, nonsignificant risk, or exempt. If the investigational in vitro diagnostic in the trial is determined to be significant risk in the streamlined process, the sponsor may need to submit an investigational device exemption to CDRH in addition to submitting an IND to CDER.

This guidance finalizes the draft guidance of the same name issued on April 16, 2018 (83 FR 16366). All public comments received on the draft guidance have been considered, and the guidance has been revised as appropriate along with a few editorial changes. Major changes from the draft to the final version included adding language to clarify that sponsors will receive significant risk determinations within the 30-day review period for the IND and to clarify that the streamlined submission process only applies to new INDs (not additional protocols added to an existing IND, or IND amendments) and adding the definition of *noninvasive* in 21 CFR 812.3(k) to the glossary.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Investigational In Vitro Diagnostics in Oncology Trials: Streamlined Submission Process for Study Risk Determination.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to currently approved collections of information. These collections of information are subject to review by the Office of

Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 809 have been approved under OMB control number 0910–0485. The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0755. The collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR 50.23 have been approved under OMB control number 0910–0586. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; and the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in the guidance document entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' (available at *https://www.fda.gov/media/114034/download*) have been approved under OMB control number 0910–0756.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*, or *https://www.regulations.gov.*

Dated: October 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22117 Filed 10–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Ryan White HIV/AIDS Program (RWHAP) Compilation of Best Practice Strategies and Interventions, OMB No. 0906–xxxx–NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than November 12, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: *Information Collection Request Title:* Ryan White HIV/AIDS Program (RWHAP) Compilation of Best Practice Strategies and Interventions, OMB No. 0906–xxxx–New

Abstract: HRSA's RWHAP funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people with HIV (PWH). Nearly two-thirds of clients (patients) live at or below 100 percent of the Federal poverty level and approximately three-quarters of RWHAP clients are racial/ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of safety net providers who deliver high quality direct health care and support services to over half a million people living with HIV (PLWH)—more than 50 percent of all people living with diagnosed HIV in the United States. HRSA is developing a comprehensive, web-based compilation of RWHAP recipient and subrecipient best practice strategies and interventions. When completed, the online recipient compilation will be housed on TargetHIV.org (HRSA's technical assistance site for recipients and subrecipients) and structured to allow programs to easily search and identify RWHAP best practice strategies and interventions for implementation. Recipients and subrecipients may voluntarily complete a submission form, also housed on TargetHIV.org, when they have a best practice strategy or intervention to share. Strategies and interventions that meet certain criteria will be incorporated into the online compilation.

The project team has developed a draft submission form and criteria for the types of strategies and interventions to be included in the compilation based on: (1) The quality and relevance of the approach to the RWHAP; (2) the level of feasibility, replicability, and sustainability; and (3) the quality of evidence that supports the approach's results.

Specifically, this information collection request involves three forms of data collection as described below.

1. *Pre-Submission Screening Form:* Through extensive outreach, the project team expects up to 70 recipients and subrecipients to express interest in submission. They will be asked four screening questions to determine whether they are eligible for inclusion in the compilation.

2. *Submission Form:* Recipients and subrecipients that screen eligible will then complete a submission form describing their strategy or intervention, including service delivery model, target population, expected or achieved outcomes, and resource requirements. The project team will score the submissions based on the established criteria.

3. *Site Visit Discussion Guide:* The project team will conduct up to 30 site visits to test the criteria and gather feedback on the submission form and compilation. The half-day site visits will involve individual or small group discussions with program staff involved in implementation (*e.g.,* program managers, direct service providers, and evaluators). The project team will then revise the submission form, criteria, and compilation template based on feedback.

A 60-day **Federal Register** Notice was published in the **Federal Register** on

June 19, 2019, vol. 84, No. 118; pp. 28561. There were no public comments.

Need and Proposed Use of the Information: The purpose of this data collection effort is for HRSA contractors to assess the review criteria being used to systematically identify and select RWHAP-funded best practice intervention strategies that demonstrate impact across the HIV care continuum for the online compilation.

Assessing the review criteria will allow HRSA to obtain important information from recipients and determine if the intervention strategies shared via the submission form are effective in improving outcomes across the HIV care continuum. Intervention strategies that meet the review criteria verified by HRSA contractors and approved by HRSA program staff through this data collection will be considered best practices and made available through the online compilation for consideration, adaptation, and replication by other HIV programs. In addition, the best practices will support peer exchange to resolve problems impacting HIV care and treatment and eliminating disparities in health outcomes.

Likely Respondents: RWHAP recipients and subrecipients that voluntarily submit a best practice strategy or intervention will participate in the data collection. The project team expects that up to 70 recipients and subrecipients will complete the screening form and 50 will screen eligible and complete the full submission form. For the site visits, the project team will strategically select 30 sites from the universe of submitted eligible initiatives, ensuring a range of scores and representativeness of factors such as Census region, proposed strategy/intervention outcome, priority population, and the type of agency or provider implementing the strategy or intervention.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Pre-Submission Screening Form	70	1	70	0.08	5.60
Submission Form	50	1	50	3.00	150.00
Site Visit Discussion Guide	120	1	120	0.75	*90.00
Program Manager Interview	30	1	30	1.50	45.00
Direct Service Provider Interview	60	1	60	0.50	30.00
Evaluator Interview	30	1	30	0.50	15.00
Total	**240		240		245.60

*For a total of 90 hours, each of the 30 site visits will include 1.5-hour interviews with a program manager (45 hours), up to two 0.5-hour interviews with direct service providers (30 hours), and an 0.5-hour interview with an evaluator (15 hours).'

**The total number of respondents is 240 as comprised by the number of respondents for the pre-submission screening form (70), the submission form (50), and the site visit discussion guide (120).

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–22162 Filed 10–9–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Public Comment Request; Hospital Campaign for Organ Donation Scorecard, OMB No. 0915–0373, Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than November 12, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Hospital Campaign for Organ Donation Scorecard OMB No. 0915–0373, Revision

Abstract: HRSA's Hospital Campaign for Organ Donation enlists healthcare organizations nationwide to increase the number of registered organ, eye, and tissue donors by hosting education and donor registration events in their facilities and communities. A scorecard identifies activities that participants can implement and assigns points to each activity. Participants that earn a certain number of points annually are recognized by HRSA and the campaign's national partners.

For this information collection request, the proposed change to the Scorecard is the addition of the 2020 date. HRSA also intends to create a new electronic version of the Scorecard for future campaigns that will ultimately reduce the level of burden for

participants. The electronic version will be designed to be user-friendly, will take less time to complete, and will provide HRSA with data throughout the campaign rather than once a year. Another benefit of an electronic scorecard is that it will eliminate the possibility of human error as information will no longer be manually entered into a database.

A 60-day notice was published in the **Federal Register** on July 2, 2019, Vol. 84, 127; pp. 31602–31603.

Need and Proposed Use of the Information: There is a substantial imbalance in the U.S. between the number of people whose lives depend on organ transplants (currently more than 113,000) and the annual number of organ donors (approximately 14,000 living and deceased). This imbalance results in about 7,300 waiting list deaths annually. In response to the need for increased donation, HRSA conducts public outreach initiatives to encourage the American public to sign up on state donor registries as future organ donors.

The Scorecard motivates and facilitates healthcare organizations' participation in the campaign, provides the basis for rewarding participants for their accomplishments, and enables HRSA to measure and evaluate campaign process and outcomes. The scorecard also enables HRSA to make data-based decisions and improvements for subsequent campaigns.

Likely Respondents: The likely respondents include the following: Hospital development and public relations staff of organ procurement and other donation organizations; hospital staff such as nurses or public relations/communications professionals; staff at physician's offices, health clinics, and emergency medical services; and volunteers that work with healthcare organizations on organ donation initiatives.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Activity Scorecard (online)	1,400	1	1,400	.25	350
Total	1,400		1,400		350

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–22163 Filed 10–9–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Nurse Corps Loan Repayment Program; Information Collection Request Title: Nurse Corps Loan Repayment Program, OMB No. 0915–0140—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than December 9, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Nurse Corps Loan Repayment Program OMB No. 0915–0140—Revision

Abstract: The Nurse Corps Loan Repayment Program (Nurse Corps LRP) assists in the recruitment and retention of professional Registered Nurses (RNs) by decreasing the financial barriers associated with pursuing a nursing education. RNs in this instance include advanced practice RNs (*e.g.,* nurse practitioners, certified registered nurse anesthetists, certified nurse-midwives,

and clinical nurse specialists) dedicated to working at eligible health care facilities with a critical shortage of nurses (*i.e.,* a Critical Shortage Facility) or working as nurse faculty in eligible, accredited schools of nursing. The Nurse Corps LRP provides loan repayment assistance to these nurses to repay a portion of their qualifying educational loans in exchange for full-time service at a public or private nonprofit Critical Shortage Facility (CSF) or in an eligible, accredited school of nursing.

Need and Proposed Use of the Information: This information collection is used by the Nurse Corps program to make award decisions about Nurse Corps LRP applicants and to monitor a participant's compliance with the program's service requirements. Individuals must submit an application in order to participate in the program. The application asks for personal, professional, educational, and financial information required to determine the applicant's eligibility to participate in the Nurse Corps LRP.

This revised information collection request includes a new form and updates to existing forms for the Nurse Corps LRP in order to expand the service options for awarded participants, promote the use of telehealth for delivering care throughout the nation especially in rural areas, and to reduce the application burden on respondents.

New Form #1—Applicants will be asked to submit a Disadvantaged Background Form. This new form asks the applicant's site Point of Contact to certify whether the applicant is from a disadvantaged background. The form provides eligibility criteria for the determination.

Updated Form #1—The Participant Semi-Annual Employment Verification Form will be updated to include additional information about the participant's service including information about telehealth services and whether they work at multiple CSF sites. Telehealth helps expand the reach of providers especially in rural areas where medical service sites are more remote. The information collected will assist Program with determining the impact and utilization of telehealth services in various health care settings which will be used to inform our telehealth policies. Enabling multiple CSF site service will also allow greater flexibility for providers who rotate or split time between multiple sites which benefits both the participants and the underserved communities—especially in our Federally Qualified Health Centers which support many of our Nurse Corps Nurse Practitioners.

Updated Form #2—The Nurse Corps LRP application will include questions for applicants to provide information regarding telehealth services, multiple CSF sites, and verification of base salary to determine the debt to salary ratio used to rank applicants for award consideration. The application will also be updated to identify applicants eligible for Nurse Corps LRP psychiatric nurse practitioner funding.

Likely Respondents: Professional RNs or advanced practice RNs who are interested in participating in the Nurse Corps LRP and official representatives at their service sites.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours: The estimates of reporting burden for Applications are as follows;

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Nurse Corps LRP Application *	7,100	1	7,100	2.00	14,200
Authorization to Release Information Form **	7,100	1	7,100	.10	710
Employment Verification Form **	7,100	1	7,100	.10	710
Disadvantaged Background Form	450	1	450	.20	90
Confirmation of Interest Form	500	1	500	.20	100
Total for Applicants	22,250		22,250		15,810

* The burden hours associated with this instrument account for both new and continuation applications. Additional (uploaded) supporting documentation is included as part of this instrument are reflected in the burden hours.

** The same respondents are completing these instruments.

The estimates of reporting for Participants are as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Participant Semi-Annual In Service Verification Form	500	2	1,000	.50	500
Nurse Corps CSF Verification Form	500	1	500	.10	50
Nurse Corps Nurse Faculty Employment Verification Form	450	1	450	.20	90
Total for Participants	1,450		1,950		640

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Total for Applicants and Participants	23,700		24,200		16,450 *

* The total burden hour estimate is a combination of burden hours for both applicants and participants. This revision adds an additional form (the Disadvantaged Background Form).

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–22166 Filed 10–9–19; 8:45 am]

BILLING CODE 4165–15–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: AIDS and Related Research Integrated Review Group; HIV Coinfections and HIV Associated Cancers Study Section.

Date: November 4–5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301–451–5953, *tuoj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immuno-Oncology Research.

Date: November 4–5, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: November 6–7, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Warwick Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery, and Nanotechnology.

Date: November 6–7, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Premier at Tyson's Corner, 8661 Leesburg Pike, Vienna, VA 22182.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eukaryotic Parasites and Vectors.

Date: November 6–7, 2019.

Time: 10:00 a.m. to 8:00 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: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892,(301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dermatology, Rheumatology and Inflammation.

Date: November 6, 2019.

Time: 10:30 a.m. to 5:30 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: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Mechanisms and Consequences of Sleep Disparities in the U.S.

Date: November 6, 2019.

Time: 11:00 a.m. to 4:00 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: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Commercialization Readiness Pilot.

Date: November 6, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.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: October 3, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22114 Filed 10–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute, October 24, 2019, 9:00 a.m. to October 24, 2019, 4:30 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, TE406, Rockville, MD 20850, which was published in the **Federal Register** on February 11, 2019, 84 FR 3215.

This meeting notice is amended to change the start time of the meeting from 9:00 a.m. to 8:45 a.m. on October 24, 2019. The meeting location has also been changed to National Cancer Institute, Advanced Technology Research Facility (ATRF), Conference Room E–1600, 8560 Progress Drive, Frederick, MD 21701. The meeting is open to the public.

Dated: October 3, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22115 Filed 10–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be held as a teleconference call only and is open to the public to dial-in for participation. Individuals who plan to dial-in to the meeting and need special assistance or other reasonable accommodations in order to do so, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: October 21, 2019.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: Teleconference meeting of the Advisory Council to the NIH Director.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Telephone Conference Call), 800–988–9736, Access Code: 7783167.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892 301–496–4272, *Woodgs@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 4, 2019.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22116 Filed 10–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Boards (PRBs) for the Department of Homeland Security (DHS). The purpose of the PRBs is to review and make recommendations concerning performance appraisals, ratings, performance awards, pay adjustments, and other appropriate personnel actions for incumbents of SES, Senior Level (SL), and Scientific and Professional (ST) positions of the Department.

DATES: This Notice is effective as of October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Stephen McDermid, Office of the Chief Human Capital Officer, *stephen.mcdermid@hq.dhs.gov,* or by telephone (202) 357–8461.

SUPPLEMENTARY INFORMATION: Each Federal agency is required to establish one or more performance review boards to make recommendations, as necessary, regarding the performance of senior executives within the agency (5 U.S. Code § 4314(c) and 5 CFR 430.311). This notice announces the appointment of the members of the PRB for DHS. The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, performance awards, and pay adjustments, and other appropriate personnel actions for incumbents of SES, SL, and ST positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

List of Names (Alphabetical Order)

Albence, Matthew T.
Alfonso-Royals, Angelica M.
Allen, Matthew C.
Alles, Randolph D.
Anderson, Rose J.
Anderson, Sandra D.
Annan, Niccomedo S.
Archambeault, Gregory J.
Arratia, Juan
Arvelo, Ivan J.
Asher, Nathalie R.
Auletta, Laura
Austin, Meredith L.
Awni, Muhammad H.
Bailey, Angela
Baker, Jeremy D.
Baker, Paul E.
Baran, Kathy A.
Baroukh, Nader
Barrera, Staci A.
Barrett, Lawrence R.
Barsa, John
Beagles, James M.
Bean, Bridget E.
Beckman, Paul G.
Bench, Bradford A.
Benner, Derek N.
Berg, Peter B.
Berger, Katrina W.
Bester-Markowitz, Margot
Bhagowalia, Sanjeev
Bible, Daniel A.
Blessey, Caroline
Blume, Mark A.
Blumenthal, Jennifer Sultan
Bobb, Christina
Bobich, Jeffrey M.
Borgen, Michael R.
Borkowski, Mark S.
Bottom, David
Bowes, Lee F.
Boyd, John
Boyer, Stephen A.
Bright, Andrea J.
Brown, A. Scott
Browne, Rene E.
Bruce, Melissa J.

Brundage, William
Bryan, C. Michelle
Bryan, William N.
Bryson, Tony R.
Brzozowski, Christa M.
Bucholtz, Kathleen L.
Bunker, Michael D.
Burns, Robert P.
Busch, Philip
Bush, William B.
Butt, Mark
Cagen, Steven W.
Caggiano, Marshall L.
Cahill, Donna L.
Caine, Jeffrey
Calkins, Aaron L.
Cameron, Michael K.
Campagnolo, Donna P.
Caneva, Duane
Cantor, Jonathan R.
Canty, Rachel E.
Cappello, Elizabeth A.
Carpio, Philip F.
Carraway, Melvin J.
Castro, Raul M.
Chaleki, Thomas D.
Cheatle, Kimberly A.
Cheng, Wen-Ting
Ciccone, Christine
Clark, Kenneth N.
Cleary Stannard, Jennifer S.
Clift, William
Cline, Richard K.
Collins, James L.
Conklin, Jeffery A.
Contreras, Patrick D.
Cormier, Tracy J.
Correa, Soraya
Cotter, Daniel
Coultas, Tonya D.
Courey, Marc B.
Cowan, Robert M.
Cox, Adam
Cox, Debra S.
Crandall, Kristine R.
Cribbs, Carol
Cronen, Christopher M.
Crumpacker, Jim H.
Cupp, Mary E.
Curda, Susan M.
Dainton, Albert J.
D'Ambrosio, Michael R.
Davidson, Andrew J.
Davidson, Michael J.
Davis, Diana L.
Davis, Michael J.
Dawson, Inga I.
Dawson, Mark B.
Decker, Thomas R.
Dedvukaj, Mirash
Delaney, Laura A.
Delgado, Jose L.
Dembling, Ross W.
DeNayer, Larry C.
Denton, David L.
DeStefano, Ernest
DiFalco, Frank J.
Dinh, Uyen
DiPietro, Joseph R.
Dolan, Edward
Dolan, Mark E.
Dornburg, Erica M.
Dorow, Brian
Dossie, Susie L.
Dougherty, Michael
Dougherty, Thomas E.
Dugan, Moises S.
Dunbar, Susan C.
Duong, Anh N.
Duquette, Amanda K.
Ederheimer, Joshua A.
Edlow, Joseph B.
Edwards, B. Roland
Emrich, Matthew D.
Erichs, Alysa D.
Evetts, Mark V.
Falk, Scott K.
Fallon, William T.
Farmer, Robert A.
Feeley, Thomas E.
Feere, Jon D.
Felker, John M.
Fenton, Jennifer M.
Ferrara, William A.
Filipponi, Karen B.
Fischer, John W.
Fishman, George
Fitzhugh, Peter C.
Fitzmaurice, Stacey D.
Fletcher, Kelly
Flores Lund, Simona L.
Flory, Gillian
Folden, Shane M.
Francis, Steve K.
Frazier, Denise M.
Frazier, Sterling T.
Fujimura, Paul N.
Gabbrielli, Tina
Gallihugh II, Ronald B.
Gantt, Kenneth D.
Gersten, David
Gibbons, James M.
Gibbs, Michael D.
Gladwell, Angela R.
Glawe, David J.
Grable, Samuel D.
Gramlick, Carl S.
Grazzini, Christopher
Gregorius, James R.
Groom, Molly M.
Guzman, Nicole G.
Hall, Christopher J.
Hall, Daniel F.
Hampton, Stephanie L.
Hanna, Matthew L.
Harris, Joseph
Harris, Melvin
Harris, Steven E.
Hatch, Peter
Havranek, John F.
Hayden, William
Heinz, Todd W.
Hentz, Andre
Hess, David A.
Hewitt, Ronald T.
Hickey, Gary
Higgins, Jennifer B.
Highsmith, AnnMarie
Hill, John
Hochman, Kathleen T.
Hoefer, Michael D.
Holtermann, Keith
Holzer, James
Horton, Michael G.
Houser, David
Howard, Tammy
Howard Jr., Percy L.
Huffman, Benjamine C.
Humphries, Robert H.
Huron, Diana
Hutchison, Steven J.
Ileto, Carlene
Jackson, Arnold D.
Jacksta, Linda L.
James, Michele L.
Jansson, Scott W.
Jennings, David W.
Jeronimo, Jose M.
Johnson, James V.
Johnson, Jo Linda
Johnson, Tae D.
Joseph, James K.
Kaplan, Philip
Kaufman, Steven
Kelly, Kevin M.
Kendall, Sarah M.
Kerner, Francine
King, Matthew H.
King, Tatum S.
Kirchner, Julie
Klein, Matthew
Klopp, Jacalynne B.
Kohl, David M.
Kolbe, Kathryn
Kopel, Richard S.
Koumans, Marnix R.A.
Kramar, John
Kronisch, Matthew L.
Kruger, Mary
Kuepper, Andrew
Kuhn, Karen A.
Lafferty, John L.
LaJoye, Darby R.
Landfried, Philip A.
Lang, Thresa
Lanum, Scott F.
Laurance, Stephen A.
Lechleitner, Patrick J.
Leckey, Eric M.
Letowt, Philip J.
Lew, Kimberly D.
Lewis, Donald R.
Loiacono, Adam V.
Lucero, Enrique M.
Lundgren, Karen E.
Lynch, Jeffrey D.
Lynch, Steven M.
Lyon, Shonnie R.
Macias, Joseph
Magrino, Christopher
Maher, Joseph B.
Manaher, Colleen M.
Mapar, Jalal
Marcott, Stacy
Marin, David A.
Martin, Joseph F.
McCament, James W.
McComb, Richard
McDermott, Thomas
McDonald, Christina E.
McDonnell, James F.
McElhaney, William S.
McElwain, Patrick J.
McLane, JoAnn
Meckley, Tammy M.
Michael, Brian A.
Miles, Jere T.
Miles, John D.
Miller, Loren K.
Miller, Marlon V.
Mizelle, Chad
Mocny, Robert
Moman, C. Christopher
Moncarz, Benjamin D.
Moncayo, E. Erik
Moore, Mark J.
Moses, Patrick D.
Moss, Rita J.

Mulligan, George D.
Murphy, Brian J.
Murray, James M.
Muzyka, Carolyn L.
Nally, Kevin J.
Nelson, Mickey
Neufeld, Donald W.
Neumann, Elizabeth
Neumeister, James
Nevano, Gregory C.
Newsome III, Leonza
Nuebel Kovarik, Kathy
Nunan, Joanna M.
Ondocin, Michael A.
Owen, Todd C.
Padilla, Kenneth
Palmer, David J.
Paramore, Faron K.
Parker, Debra F.
Paschall, Robert D.
Patel, Kalpesh A.
Patterson, Leonard E.
Paul, Kshemendra
Perazzo, Stephen F.
Perez, Nelson
Perez, Robert E.
Perryman, Janet J.
Piccone, Colleen C.
Pietropaoli, Lori A.
Pineiro, Marlen
Podonsky, Glenn S.
Pohlman, Teresa R.
Porto, Victoria
Price, Corey A.
Prince, David A.
Prosnitz, Susan M.
Provost, Carla L.
Quinn, Cameron
Rabin, John L.
Raymond, John J.
Renaud, Daniel M.
Renaud, Tracy L.
Rexrode, Kathryn S.
Richardson, Gregory A.
Ries, Lora L.
Riordan, Denis C.
Robbins, Timothy S.
Robinson, Terri A.
Rodi III, Louis A.
Rodriguez, Waldemar
Roessler, John E.
Rogers, Debra A.
Roncone, Stephen A.
Rosenberg, Ronald M.
Rosenblum, Marc R.
Roth, Aaron E.
Roy, Donna M.
Ruppel, Joanna
Rynes, Joel C.
Sahakian, Diane V.
Salazar, Rebecca A.
Salazar, Ronald M.
Saltalamachea, Michael
Salvano-Dunn, Dana
Saunders, Ian C.
Scott, Kika M.
Selby, Cara M.
Sellers, Frederick E.
Sevier, Adrian
Seymour, Donna K.
Shah, Dimple
Shaw, David C.
Short, Tracy L.
Short, Victoria D.
Sibley, Matthew W.
Sloan, Terry G.
Smislova, Melissa
Smith, Brenda B.
Smith, Frederick B.
Smith, Stewart D.
Spero, James
Spradlin, Ryan L.
Staton, Jack P.
Stephens, Celisa M.
Stiefel, Nathaniel I.
Stough, Michael S.
Sulc, Brian
Sutherland, Dan W.
Swain, Donald R.
Swartz, Neal J.
Sykes, Gwendolyn
Taylor, Clothilda
Taylor, Robin M.
Teeple, Brian
Thompson, John E.
Thompson, Kirt
Tomney, Christopher J.
Travis, Matthew K.
Ulrich II, Dennis A.
Valverde, Michael
Van Houten, Ann
Velarde, Barbara Q.
Venture, Veronica
Villanueva, Raymond
Wade, David S.
Wagner, John P.
Wallen, Steven
Walters, Thomas J.
Walton, Kimberly H.
Ware, Bryan S.
Wasowicz, John A.
Watkins, Tracey
Watson, Andre R.
Whalen, Mary Kate
Wheaton, Kelly D.
Whittenburg, Cynthia F.
Wolf, Chad
Wong, Ricardo A.
Wong, Sharon M.
Wonnenberg, David
Wright, Christopher J.
Wuco, Frank
Yarwood, Susan A.
Young, Edward E.
Zangardi, John A.
Zuckowski, Laura B.

Dated: October 2, 2019.

Greg Ruocco,

Manager, Executive Resources Policy, Office of the Chief Human Capital Officer.

[FR Doc. 2019–22155 Filed 10–9–19; 8:45 am]

BILLING CODE 9112–FC–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0042]

Privacy Act of 1974; System of Records

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''DHS/U.S. Citizenship and Immigration Services (USCIS)-007 Benefits Information System.'' This system of records describes DHS/USCIS collection, maintenance, processing, and adjudication of naturalization, lawful permanent residence, and other immigrant and nonimmigrant immigration-related requests (hereinafter collectively referred to as ''immigration requests'') submitted to USCIS in accordance with U.S. immigration law. DHS/USCIS also uses the records contained in the Benefits Information System (BIS) to prevent individuals from fraudulently obtaining immigration and naturalization benefits and to deny immigration and naturalization requests submitted by individuals who pose national security or public safety threats. The BIS may also be used in support of employee performance and production reporting purposes, as well as track an employee or contractor's workload and efficiency in processing a particular immigration request, managing workloads, and providing statistical analyses to USCIS leadership.

DATES: Submit comments on or before November 12, 2019. This modified system will be effective upon publication. New or modified routine uses will be effective November 12, 2019.

ADDRESSES: You may submit comments, identified by docket number DHS–2019–0042 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2019–0042. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Donald K. Hawkins, (202) 272–8030, *uscis.privacycompliance@uscis.dhs.gov,* Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts

Avenue NW, Washington, DC 20529. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, *Privacy@hq.dhs.gov,* Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) proposes to modify and reissue a current DHS system of records titled, ''DHS/USCIS–007 Benefits Information System.''

DHS/USCIS oversees lawful immigration and non-immigration to the United States and is responsible for the administration of immigration, non-immigration, and naturalization adjudication functions and for establishing many immigration policies and priorities. In executing its mission, DHS/USCIS performs functions that include the intake, review, and adjudication of the following types of benefits:

(1) Family-Based;
(2) Employment-Based;
(3) Humanitarian-Based;
(4) Adoption-Based; and
(5) Citizenship and Naturalization-Based.

The BIS System of Records Notice (SORN) covers the processing of immigrant and nonimmigrant immigration-related requests.[1] The Secretary of Homeland Security also has the discretion to review and grant other types of immigration requests.[2] The BIS SORN is specific to USCIS's collection, use, maintenance, dissemination, and storage of immigration-related request information, including case processing and decisional data.[3] USCIS records case processing information, such as date the immigration related request was filed or received by USCIS, request status, location of record, other control number (when applicable), fee receipt data, status of USCIS appointments and interviews, date of issuance of a notice, and whether the request form was referred to the Fraud Detection and National Security Directorate for review. Decisional data such as an approval/denial code is also stored in BIS. Information within BIS may also be stored in an immigration file (such as an Alien File).[4]

DHS/USCIS is publishing this modified system of records notice to make several changes for transparency and to describe new initiatives. The purpose of this SORN has been expanded to track an employee or contractor's workload and efficiency in processing a particular benefit request, managing workloads, and providing statistical analyses to USCIS leadership.

The categories of individuals covered by this SORN has been expanded to include prospective accredited representatives seeking to be recognized by the Board of Immigration Appeals, as well as add a new category to cover the collection, maintenance, and use of obligors (surety) and their agents.

New categories of records have been added relating to immigration requestors, which includes country of residence; credit scores and reports; public benefit application, receipt, and certification for receipt information; publicly available social media information and other publicly available information, which may be collected during the course of the benefit adjudication process. New categories of records have been added relating to attorneys and current and/or prospective representatives, which includes USCIS Online Account Number, other identifying numbers (*e.g.,* Attorney Bar Number or equivalent), educational and training history, work history and qualifications, academic and professional achievements, and letters of recommendations. New categories of records have been added relating to bond obligors and their agents including name, identification number(s), contact information (including address, telephone number, email address), signature, and power of attorney. Biometric information and background check results have been removed from remove existing categories of records relating to immigration requestors, derivatives, and family members because they are covered under DHS/USCIS–018 Immigration Biometric and Background Check SORN.

DHS/USCIS–017 Refugee Case Processing and Security Screening Information SORN and DHS/USCIS–018 Immigration Biometric and Background Check SORN have been added as record source categories, and DHS/USCIS–002 Background Check Service SORN and DHS/USCIS–003 Biometric Storage System SORN have been removed as record source categories.

The routine use section of this SORN has been modified, including updating Routine Use E and adding Routine Use F to comply with requirements set forth by OMB Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' (Jan. 3, 2017); expanding Routine Use V to cover the sharing of information with the petitioning employers to aid in the approval or denial of request to become a permanent resident; updating Routine Use Z to replace Immigration Judge with Federal Judge; adding Routine Use BB for disclosure to government agencies for the purposes of testing new technology; adding Routine Use CC for disclosure to federal, state, local, and tribal public benefit granting agencies to ascertain whether public benefits have been issued to the benefit requestor; adding Routine Use DD for the disclosure to an individual or entity seeking to post or arrange bond; and adding Routine Use EE for the disclosure of petition outcomes to labor unions in instances in which USCIS approves or denies a petition submitted with a union consultation.

Finally, the retention schedules have been modified to reflect disposition schedule by form type and actions, and expand the retention of data in certain case management systems to up to 50 years.

Consistent with DHS's information sharing mission, information stored in DHS/USCIS–007 Benefits Information System may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCIS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Further, specifically, USCIS may share BIS information with DHS's U.S. Immigration and Customs Enforcement (ICE) Financial Operations—Burlington regarding fees charged during the various immigration requests processes

[1] This SORN covers all immigrant and nonimmigrant benefit requests, with the exception of requests for asylum, refugee, and intercountry adoption.

[2] For example, USCIS reviews applications for Deferred Action. Deferred Action is a discretionary determination to defer a deportation of an individual as an act of prosecutorial discretion. Deferred Action can be granted by USCIS or a federal immigration judge.

[3] The Immigration Biometric Background Check SORN covers the background check process, while the Benefits Information System SORN covers the storage of background check results. See 83 FR 36950 (July 31, 2018).

[4] The Alien File or A-File is the official record regarding the transactions of an individual as he or she passes through the U.S. immigration and inspection process. The Alien File contains information relating to immigration benefits processing, protection of national security, and administering and enforcing immigration and nationality laws and related statutes.

to ensure collection of debts. The primary mission of the ICE Financial Operations—Burlington is to collect debts resulting from an individual's participation in DHS benefits programs. As such, through DHS's ICE Financial Operations—Burlington office, BIS information may be shared with credit reporting agencies.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/USCIS–007 Benefits Information System System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)-007 Benefits Information System.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at the U.S. Citizenship and Immigration Services Headquarters in Washington, DC, and DHS/USCIS service centers and domestic and international field offices. Records are also maintained in DHS/USCIS information technology (IT) systems (*e.g.,* Computer Linked Application Information Management System (CLAIMS) 3, USCIS Electronic Immigration System (ELIS), Case and Activity Management for International Operations (CAMINO)).

SYSTEM MANAGER(S):

Chief, Immigration Records and Identity Services, Identity and Information Management Division (IIMD), *fieldrequests@uscis.dhs.gov,* U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. secs. 1103 and 1360), the regulations issued pursuant thereto; and Section 451 of the Homeland Security Act of 2002 (Pub. L. 107–296).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to permit USCIS's collection, use, maintenance, dissemination, and storage of paper and electronic immigration-related request information, including case processing and decisional data. These records assist in the processing of immigrant and nonimmigrant benefit requests and other immigration-related requests from the time when USCIS collects the information from the immigration-related requestor until the case receives a final decision in the relevant case management system.[5] This system of records enables DHS/USCIS to process benefit requests electronically, determine the status of pending benefit requests, account for and control the receipt and disposition of any fees and refunds collected, conduct searches pursuant to requests under the Freedom of Information Act (FOIA) and Privacy Act, and locate related physical and automated files to support DHS/USCIS responses to inquiries about these records. This system of records may also be used in support of monitoring employee performance and production reporting purposes, including tracking an employee or contractor's workload and efficiency in processing a particular benefit request, managing workloads, and providing statistical analyses to USCIS leadership.

DHS/USCIS maintains a replica of some or all of the data in application databases on DHS unclassified and classified networks to allow for analysis and vetting consistent with the above stated purposes and this published notice.

[5] This system of records does not cover requests for intercountry adoption, asylum, or refugee status.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include (1) individuals who have filed, for themselves or on the behalf of others (benefit requestors and beneficiaries and other immigration-related requestors), requests for immigration benefits and other requests under the Immigration and Nationality Act as amended, and/or who have submitted fee payments or received refunds from such requests; (2) current, former, and potential derivatives of requestors (family members); (3) sponsors (*e.g.,* employers, law enforcement officers, or other individuals); (4) attorneys; (5) prospective representatives seeking recognition from and current accredited representatives recognized by USCIS and/or by the Board of Immigration Appeals (Representatives); (6) interpreters; (7) individuals who assist in the preparation of the immigration-related request forms (Preparers); (8) individuals who make fee payments on behalf of the immigration-related requestor; (9) physicians who conduct immigration-related medical examinations; and (10) obligors (surety) and their agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about benefit requestors, beneficiaries, and family members may include:

- Full name;
- Alias(es);
- Physical, destination, and mailing addresses (including foreign and domestic);
- Unique Identifying Numbers (*e.g.,* Alien Number, USCIS Online Account Number, Social Security number (SSN), and Data Universal Numbering System (DUNS) Number);
- Date of birth and/or death;
- Nationality and/or Place of Birth (including city, region, and country of birth);
- Country or countries of citizenship;
- Country of Residence;
- Gender and/or sex;
- Marital status;
- Military status;
- Phone and fax numbers;
- Email address;
- Immigration status;
- Publicly available social media information and information from public-facing websites;
- Responses to questions on immigration benefit forms (*e.g.,* have you ever claimed to be a U.S. citizen; do you owe any federal, state, or local taxes)
- Government-issued identification (*e.g.,* passports, driver's license, national ID):

○ Document type;
○ Issuing country and/or organization;
○ Document number;
○ Issue Date;
○ Expiration date;
• Notices and communications, including:
○ Receipt notices;
○ Requests for Evidence;
○ Notices of Intent to Deny;
○ Proofs of benefit;
• Type of benefit requested;
• Signature (wet and digital);
• Immigration-related request fee payment information (*e.g.,* credit card number, *Pay.gov* Payment Tracking Number); and
• Audio-visual recordings, including interviews and naturalization ceremonies.

Benefit-specific eligibility information about benefit requestor, beneficiaries, and family members may include:
• Other unique identifying numbers (*e.g.,* Department of State (DOS)-Issued Personal Identification Number, ICE Student and Exchange Visitor Number, USCIS E-Verify Company Identification Number);
• Arrival/Departure Information;
• Immigration history (*e.g.,* citizenship/naturalization certificate number, apphrensions, removals, explanations);
• Familial relationships (*e.g.,* parent, spouse, sibling, child, other dependents);
• Relationship Practices (*e.g.,* polygamy, custody, guardianship);
• USCIS Receipt/Case Number;
• Personal background information (*e.g.,* involvement with national security threats; criminal offenses; Communist Party membership; participation in torture, genocide, killing, injuring, forced sexual contact, limiting or denying others religious beliefs, weapons distribution, or combat training; service in military or other armed groups, work in penal or detention systems);
• Records regarding organization membership or affiliation;
• Health information (*e.g.,* vaccinations, referrals, communicable diseases, physical or mental disorders or disabilities, prostitution, drug or alcohol abuse);
• Travel history;
• Education history;
• Employment history;
• Professional accreditation information;
• Financial information (*e.g.,* credit scores and reports, income, expenses, scholarships, savings, assets, property, financial support, supporter information, life insurance, debts, encumbrances, and tax records);
• Public benefit information (*e.g.,* applications and receipt, as well as certication of receipt of pubic benefits);
• Supporting documentation as necessary (*e.g.,* birth, marriage, and divorce certificates; licenses; academic diplomas; academic transcripts; appeals or motions to reopen or reconsider decisions; explanatory statements; deoxyribonucleic acid (DNA) results; and unsolicited information submitted voluntarily by the benefit requestor or family members in support of a benefit request);
• Physical description (*e.g.,* height, weight, eye color, hair color, race, ethnicity, identifying marks like tattoos or birthmarks);
• Description of relationships between benefit requestors, representatives, preparers, and family members;
• Information regarding the status of Department of Justice (DOJ), Executive Office of Immigration Review (EOIR) proceedings, if applicable; and
• Case processing information such as date benefit requests were filed or received by USCIS, benefit request status, location of record, other control number when applicable, and fee receipt data.

Information about Benefit Sponsors may include:
• Full name;
• Gender and/or sex;
• Physical and mailing addresses;
• Phone and fax numbers;
• Country of domicile;
• Date of birth;
• Place of birth;
• Citizenship information;
• SSN;
• A-Number;
• USCIS Online Account Number;
• Employment information;
• Financial information (*e.g.,* income, expenses, scholarships, savings, assets, property, financial support, supporter information, life insurance, debts, encumbrances, tax records);
• Position and relationship to an organization (*e.g.,* manager of a company seeking formal recognition by USCIS);
• Family relationships (*e.g.,* parent, spouse, sibling, natural, foster, and/or adopted child, other dependents); and
• Relationship practices (*e.g.,* polygamy, custody, guardianship).

Information about Attorneys and current and/or prospective Accredited Representatives include:
• Name;
• USCIS Online Account Number
• Other identifying numbers (*e.g.,* Attorney Bar Card Number or equivalent);
• Law firm/recognized organization;
• Physical and mailing addresses;
• Phone and fax numbers;
• Email address;
• Bar membership and Bar number;
• Accreditation date;
• Board of Immigration Appeals Representative Accreditation;
• Expiration date;
• Law Practice Restriction explanation;
• Educational and training history;
• Work history and qualifications;
• Academic and professional achievements;
• Letters of recommendation; and
• Signature.

Information about Preparers and Interpreters may include:
• Full name;
• Organization;
• Business State ID number;
• Employer Tax Identification Number;
• Physical and mailing addresses;
• Email address;
• Phone and fax numbers;
• Relationship to benefit requestor; and
• Signature.

Information about individuals who make fee payments on behalf of the immigration-related requestor includes:
• Name;
• Email address;
• Phone number;
• Mailing address; and
• Payment information.

Information about Physicians may include:
• Full name;
• Organization name;
• Physical and mailing addresses;
• Phone number;
• Fax number;
• Professional experience;
• License number;
• Other Physician Identifying Number(s);
• Licensing state and date of issuance;
• Type of degree/license (such as medical doctor, doctor of osteopathy, or clinical psychologist);
• Type of medical practice;
• Examination dates of the benefit requestor;
• Clinical methods used to diagnose benefit requestor;
• Email address; and
• Signature.

Information about obligor (surety) and its agents (co-obligor) may include:
• Name;
• Unique Identifying Number (*e.g.,* Taxpayer Identification Number (TIN), Employer Identification Number (EIN), SSN (in some cases, the obligor's TIN or EIN may be the individual's SSN, and DUNS Number));

- Address (Street, City, State and Zip Code);
- Telephone Number;
- Email Address;
- Power of Attorney (evidencing authority to act on behalf of the surety) and Power of Attorney number;
- Signature; and
- Information about bond (*e.g.,* receipt number and bond amount).

RECORD SOURCE CATEGORIES:

DHS/USCIS obtains records from the immigration requestor, his or her Representative, Physician, Preparer, Interpreter, or obligor and its agents. DHS/USCIS personnel may input information as they process a case, including information from internal and external sources to verify whether a requestor or family member is eligible for the immigration-related request. BIS also stores and uses information from the following USCIS, DHS, and other federal agency systems of records:

- DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, September 18, 2017 (82 FR 43556);
- DHS/USCIS–005 Inter-Country Adoptions, November 8, 2016 (81 FR 78614);
- DHS/USCIS–006 Fraud Detection and National Security Records (FDNS), August 8, 2012 (77 FR 47411);
- DHS/USCIS–010 Asylum Information and Pre-Screening System of Records, November 30, 2015 (80 FR 74781);
- DHS/USCIS–017 Refugee Case Processing and Security Screening Information System of Records, October 19, 2016 (81 FR 72075);
- DHS/USCIS–018 Immigration Biometric and Background Check Records System of Records, July 31, 2018 (83 FR 36950);
- DHS/CBP–011 U.S. Customs and Border Protection TECS, December 19, 2008 (73 FR 77778);
- DHS/ICE–001 Student and Exchange Visitor Information System, January 5, 2010 (75 FR 412);
- DHS/ICE–011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), October 19, 2016 (81 FR 72080);
- DHS/CBP–021 Arrival and Departure Information System (ADIS), November 18, 2015 (80 FR 72081);
- JUSTICE/EOIR–001 Records and Management Information System, January 25, 2007 (72 FR 3410);
- JUSTICE/FBI–002 The FBI Central Records System, January 25, 2007 (72 FR 3410);
- JUSTICE/FBI–009 Fingerprint Identification Records System (FIRS), January 25, 2007 (72 FR 3410);
- DOL/ETA–7 Employer Application and Attestation File for Permanent and Temporary Alien Workers, January 10, 2012 (77 FR 1728);
- STATE–05 Overseas Citizens Services Records, May 2, 2008 (73 FR 24343);
- STATE–26 Passport Records, July 6, 2011 (76 FR 34966);
- STATE–39 Visa Records, October 25, 2012 (77 FR 65245); and
- TREASURY/FMS–017 Collections Records, May 15, 2009 (74 FR 23006).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in this system of records contains information relating to individuals who received benefit requests for special protected classes and should not be disclosed pursuant to a routine use unless disclosure is otherwise permissible under the confidentiality statutes, regulations, or policies applicable to that information. For example, information relating to individuals who received benefit requests for protection under the Violence Against Women Act, Seasonal Agricultural Worker or Legalization claims, the Temporary Protected Status of an individual, and information relating to nonimmigrant visas protected under special confidentiality provisions should not be disclosed pursuant to a routine use unless disclosure is otherwise permissible under the confidentiality statutes, regulations, or policies applicable to that information. These confidentiality provisions do not prevent DHS from disclosing information to the DOJ and U.S. Attorneys Offices as part of an ongoing criminal or civil investigation.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To DOJ, including the U.S. Attorney's Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or proceeding or has an interest in such litigation or proceeding:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative

agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing applications for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

J. To the Department of State for the purpose of assisting in the processing of benefit requests under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

K. To appropriate federal, state, tribal, and local government law enforcement and regulatory agencies, foreign governments, and international organizations, as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates to elicit information required by DHS to carry out its functions and statutory mandates.

L. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual; issuance of a security clearance, license, contract, grant, or other benefit; or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit and when such disclosure is appropriate to the proper performance of the official duties of the person making the request.

M. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

N. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before DHS/USCIS or the DOJ Executive Office for Immigration Review.

O. To a federal, state, tribal, or local government agency to assist such agencies in collecting the repayment of loans, fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the U.S. Government, or to obtain information that may assist USCIS in collecting debts owed to the U.S. Government;

P. To a foreign government to assist such government in collecting the repayment of loans, fraudulently or erroneously secured benefits, grants, or other debts owed to it, provided that the foreign government in question:

1. Provides sufficient documentation to establish the validity of the stated purpose of its request; and

2. Provides similar information to the United States upon request.

Q. To a coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

R. Consistent with the requirements of the Immigration and Nationality Act, to the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), or to any state or local health authorities, to:

1. Provide proper medical oversight of DHS-designated civil surgeons who perform medical examinations of both arriving foreign nationals and of those requesting status as a lawful permanent resident; and

2. To ensure that all health issues potentially affecting public health and safety in the United States are being, or have been, adequately addressed.

S. To a federal, state, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.

T. To the Social Security Administration (SSA) for the purpose of issuing a Social Security number and card to an alien who has made a request for a Social Security number as part of the immigration process and in accordance with any related agreements in effect between the SSA, DHS, and the Department of State entered into pursuant to 20 CFR 422.103(b)(3); 422.103(c); and 422.106(a), or other relevant laws and regulations.

U. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes when the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

V. To an individual's prospective or current employer to the extent necessary to determine employment eligibility (*e.g.,* pursuant to the Form I–140, *Immigrant Petition for Alien Worker*) or, USCIS may share information with the petitioning employers to aid in the approval or denial of a request to become a permanent resident.

W. To a federal, state, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law or Executive Order.

X. To approved federal, state, and local government agencies that grant public benefits, licenses, grants, governmental credentials, or for any other statutorily authorized purpose when the immigration status of the benefit applicant is legally required and an approved Memorandum of Agreement or Computer Matching Agreement (CMA) is in place between DHS and the entity.

Y. To the Department of Labor for enforcement of labor certification violations and violations of U.S. labor laws.

Z. To the news media and the public during the course of naturalization ceremonies administered by USCIS or a Federal Judge. Pursuant to 8 CFR 337.2 individuals to be naturalized are generally required to appear in a public ceremony, unless an appearance is specifically excused.

AA. To the Department of Treasury to perform initial processing of benefit requests and to accept and resolve payment and any related issues.

BB. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, that relate to the purpose(s) stated in this SORN, for purposes of testing new technology.

CC. To federal, state, local, and tribal benefit granting agencies (*e.g.,* Social Security, housing, food, unemployment) to ascertain whether public benefits have been issued to the immigration requestor.

DD. To an individual or entity seeking to post or arrange, or who has already

posted or arranged, an immigration bond for an alien, to aid the individual or entity in (1) identifying the location of the alien; (2) posting the bond; (3) obtaining payments related to the bond; or (4) conducting other administrative or financial management activities related to the bond.

EE. To a consulting entity (*e.g.,* a labor organization or management organization) that provided an advisory opinion on a petition to USCIS seeking O or P nonimmigrant classification. USCIS may disclose the outcome of the petition to the consulting entity that provided an advisory opinion on the petition.

FF. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information; when disclosure is necessary to preserve confidence in the integrity of DHS; or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/USCIS stores records in this system electronically or on paper in secure facilities, such as in a locked drawer or behind a locked door. The records may also be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/USCIS may retrieve records by using any of the data elements listed above or a combination thereof. This may include, but is not limited to, name, date of birth, Alien Number, SSN, USCIS Online Account Number, and Receipt Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

USCIS receives and adjudicates immigration request forms. Each form type is governed by a respective retention schedule and each form type's retention period is dictated by USCIS's final action on the form (*e.g.,* approved, denied, abandoned, withdrawn, administratively closed, and rejected). Immigration request forms and supplemental documentation that constitute the official record of an individual's immigration history are stored in the individual's paper and/or electronic Alien File. The Alien File records are permanent, whether hard copy or electronic. DHS/USCIS is eligible to transfer Alien Files to the custody of NARA 100 years after the individual's date of birth.

USCIS uses multiple case management systems for the processing, adjudication, and management of paper and electronically filed immigration request forms. Each case management system retains records in accordance with NARA-approved retention schedules. Generally, information is retained between 25–50 years from the last completed action. The duration of the NARA-approved retention schedules allows USCIS to address any follow-up inquiries or requests related to the immigration request form, including inquiries related to law enforcement, public safety, national security, and to FOIA and Privacy Act matters. These retention periods allow USCIS to provide as much information as possible to an individual regarding his or her immigration history.

Electronic notices and communications associated with an immigration request, to include Approval or Denial letters, Requests for Evidence, Notices of Intent to Deny, Appeal/Motion Responses, etc., are retained for 13 years after the last completed action with respect to the benefit.

Records of electronic appointments with USCIS are maintained for 60 days after the date of the appointment.

Daily reports generated by associated information technology systems are maintained in accordance with the general records retention schedule that permits USCIS to destroy reports when no longer needed.

Records replicated on the unclassified and classified networks for analysis and vetting will follow the same retention schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing or electronically to the Chief Privacy Officer or USCIS's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provides a right of access, certain records may be available under the FOIA.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believe the Department would have information being requested;
- Identify which component(s) of the Department he or she believe may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying that individual's agreement for the first individual to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, see ''Record Access Procedures'' above. Any individual, regardless of immigration status, may file a request to access his or her information under the FOIA. Throughout the benefit determination process, and prior to USCIS making a determination to deny a benefit request, USCIS provides individuals with the opportunity to address and correct the information.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None. However, when this system receives a record from another system exempted under 5 U.S.C. 552a, DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

HISTORY:

81 FR 72069 (October 19, 2016); 73 FR 56596 (September 29, 2008).

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2019–22156 Filed 10–9–19; 8:45 am]

BILLING CODE 9111–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7022–N–01]

60-Day Notice of Proposed Information Collection: Opportunity Zone Grant Certification Form

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 9, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Alex Stowe, Advisor, Field Policy and Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *alexander.d.stowe@hud.gov* or telephone 202–402–5309. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Mr. Stowe.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Certification of Consistency With Opportunity Zone Initiative-Related Activity.

OMB Approval Number: 2501–.

Type of Request: New Collection.

Form Number: HUD–XXXX Certification for Opportunity Zone Preference Points.

Description of the need for the information and proposed use: This collection is a new collection regarding information for preference points in certain competitive federal grants and technical assistance applications. In accordance with Executive Order 13853, Establishing the White House Opportunity and Revitalization Council (''WHORC'' or ''Council''), signed by President Trump on December 12, 2018, the Department of Housing and Urban Development (HUD) has added preference points to grants in an effort to strategically target investment in communities designated as Opportunity Zones. To ensure that HUD's resources are being used to further the mission of the Executive Order and the WHORC Implementation Plan (published April 17, 2019), HUD has drafted the proposed certification form. This form will certify that valuable HUD resources are in fact being targeted to and expended in America's most economically distressed areas, including Opportunity Zones. Additionally, it will enable HUD to gather and analyze the most accurate data regarding the use of taxpayer funds; specifically, how they are being utilized by our grantee partners to support the President's mission of revitalizing distressed communities. The collection of this information will help to guide the Department through future grant awards and inform HUD's strategy to maximize non-profit and private sector investment.

Additionally, pending approval of this form on HUD's behalf, we anticipate that the following Agencies will also implement this form: Agriculture, Commerce, Education, Justice, Health and Human Services, Labor, Transportation, Interior, Commerce, Energy, Veterans Affairs, the Small Business Administration and the Environmental Protection Agency. Public and private investment in America's historically overlooked communities will be used to increase the supply of affordable housing to bolster economic development, support entrepreneurship, promote neighborhood safety, and expand employment and educational opportunities. For more information about the mission of the WHORC and to learn about the activities and vision of the federal agencies that comprise the Council, visit *https://www.hud.gov/sites/dfiles/Main/documents/WHORC-Implementation-Plan.pdf.*

Respondents *(i.e., affected public)*: HUD grant applicants applying for preference points for activities conducted within or benefiting designated Qualified Opportunity Zone census tracts.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Certification for OZ Preference Form	737	2.26	1,667	.2	333.4	14.02	$4,674.27
Total	737	2.26	1,667	.2	333.4	14.02	4,674.27

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 4, 2019.

Ben Demarzo,

Assistant Deputy Secretary, Office of Field Policy and Management.

[FR Doc. 2019–22135 Filed 10–9–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5630–N–13]

Rental Assistance Demonstration: Revised RAD Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Rental Assistance Demonstration (RAD) provides the opportunity to facilitate the conversion of assistance of public housing properties and other HUD-assisted properties to long-term, project-based Section 8 rental assistance. This **Federal Register** notice announces the posting of the fourth revision to the RAD notice (Revised RAD Notice Revision 4, PIH–2019–23 (HA)/H–2019–09, REV–4) and solicits public comment on changed eligibility and selection criteria. As provided by the RAD Statute, this notice addresses the requirement that RAD may proceed after publication of notice of its terms in the **Federal Register**. This notice summarizes the key changes made in the Revised RAD Notice. This notice also meets the RAD Statute requirement to publish waivers and alternative requirements at least 10 days before effect, while this does not prevent the demonstration, as modified, from proceeding immediately.

DATES: *Comment Due Date:* November 12, 2019.

Effective Dates: The Revised RAD Notice, PIH–2019–23 (HA)/H–2019–09, REV–4, other than those items listed as subject to notice and comment or new statutory or regulatory waivers or alternative requirements specified in this notice, is effective October 10, 2019.

The new statutory and regulatory waivers and alternative requirements are effective October 21, 2019.

The items listed as subject to notice and comment will be effective upon November 12, 2019. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

ADDRESSES: Interested persons are invited to submit comments electronically to *rad@hud.gov* no later than the comment due date.

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please direct requests for further information electronically to the email address *rad@hud.gov.* Written requests may also be directed to the following address: Office of Recapitalization, Office of Housing; Department of Housing and Urban Development; 451 7th Street SW, Room 2000; Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

Originally authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122–55, signed November 18, 2011) (2012 Appropriations Act), RAD allows for the conversion of assistance of public housing properties, Rent Supplement (Rent Supp), Rental Assistance (RAP), Moderate Rehabilitation (Mod Rehab), Mod Rehab Single Room Occupancy (SRO), and Section 202 Project Rental Assistance Contract (202 PRAC) programs (collectively, ''covered programs'') to long-term, renewable assistance under Section 8.[1] The most recent version of the RAD notice is PIH–2019–23 (HA)/H–2019–09, REV–4, located at *https://www.hud.gov/sites/documents/RAD_Notice_Rev3_Final.docx.*

II. Key Changes Made to RAD

The following highlights key changes to RAD that are included in the Revised RAD Notice:

First Component (Public Housing Conversions):

1. Extends all resident rights to households that will reside in non-RAD Project Based Voucher (PBV) units placed in a Covered Project so as to facilitate the standard protection or residents (see section 1.6);

2. Increases resident notice requirements to ensure adequate communication with residents throughout the conversion process (see Section 1.8);

3. Establishes a mechanism for public housing agencies (PHAs) to enter into partnerships in order to pool resources or capacity with each other so as to effectively convert properties through RAD (see Section 1.5.A.M);

4. Allows limited rent increases for public housing conversions to Project

[1] The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, signed January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, signed December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, signed December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, signed May 4, 2017), and the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, signed March 23, 2018). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to as the RAD Statute in this notice.

Based Rental Assistance (PBRA) contracts in certain scenarios, including in designated Opportunity Zones (see Section 1.7.A.5);

5. Modifies the requirements for portfolio awards so as to provide PHAs greater flexibility in staging the conversion of their properties (see Section 1.9.C);

6. Streamlines Capital Needs Assessment (CNA) requirements to eliminate the submission of the CNA Tool when certain conditions have been met (see Section 1.5.A);

7. Introduces a ''Concept Call'' so that PHAs can receive confirmation that project plans are sufficiently advanced to submit a Financing Plan (see Section 1.12.C);

8. Prohibits PHAs from entering debt into the Earned Income Verification ''Debts Owed'' module purely as a result of the End of Participations Form HUD–50058 that is required to be submitted into Public and Indian Housing Information Center (PIC) as part of the conversion (see Section 1.13.B);

9. Broadens the use of ''tiered'' environmental reviews so that streamlined submissions are needed for certain 24 CFR part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions (see Attachment 1A);

10. Establishes policy that RAD rents will be updated every two years and the updated rents will be applied to new awards issued after those established dates (see Attachment 1C);

11. Establishes a priority for ''Section 3'' employment and other economic opportunities for residents of public housing or Section 8 assisted housing (see Section 1.4.A.15).

Second Component (202 PRAC, Mod Rehab, Mod Rehab SRO, Rent Supp, RAP Conversions):

1. Implements the provision of the 2018 Consolidated Appropriations Act authorizing the conversion of 202 PRAC projects to Section 8 PBRA or PBV contracts;

2. Streamlines Capital Needs Assessment (CNA) requirements for Mod Rehab conversion to eliminate the submission of the CNA Tool when certain conditions have been met;

3. Broadens the use of ''tiered'' environmental reviews so that streamlined submissions are needed for certain Part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions;

4. Provides an ability for owners of converting SRO properties serving the homeless to establish a preference that facilitates permanent supportive housing;

5. Fully establishes resident right of return and the prohibition against re-screening for existing residents; and

6. Establishes a final date that any remaining RAP properties may make a submission of conversion under RAD.

7. Clarifies the requirements with respect to Section 8 PBRA/PBV and the Davis-Bacon Act of 1931 by stating that execution of a Section 8 PBRA or PBV contract through RAD that provides rental assistance to previously assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that will be newly assisted as a result of the conversion transaction (including, without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements. For more information, see section VI of this notice, below.

III. Changes Subject to Notice and Comment

The Revised RAD Notice makes changes to some of the selection and eligibility criteria for conversions of public housing under the First Component. Pursuant to the RAD Statute, these changes must be made available for public comment before they are effective. Please submit all comments to *rad@hud.gov.* As indicated above, the following changes will be effective on November 12, 2019. If HUD receives adverse comments that lead to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

The changes subject to notice and comment are:

1. Removing restrictions on certain HOPE VI properties that are under 10 years old; and

2. Eliminating the selection of applications based on previously established ''Priority Categories'' so that HUD reviews applications on a first-come, first serve basis. In the event that a waiting list forms, establishes the priority selection of applications for properties located in designated Opportunity Zones.

IV. New Waivers and Alternative Requirements

The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the **Federal Register** no later than 10 days before the effective date of such notice. HUD has previously published its waivers and alternative requirements for RAD, on July 26, 2012 (77 FR 43850), July 2, 2013 (78 FR 39759), June 26, 2015 (80 FR 36830), and January 19, 2017 (82 FR 6615).

So as to facilitate the uniform treatment of residents and units at a Covered Project, this notice subjects any non-RAD PBV units located in the Covered Project to certain waivers and alternative requirements applicable to RAD units, including:

1. *Site selection—Compliance with PBV Goals. Provision Affected:* Section 8(o)(13)(C)(ii) of the United States Housing Act of 1937 (the Act), 24 CFR 983.57(b)(1) and (c)(2). *Waiver:* HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity for the existing site.

2. *Phase-in of Tenant Rent Increases. Provision Affected:* Section 3(a)(1) of the Act, 24 CFR 983.3. *Alternative Requirement:* HUD is specifying alternative requirements to allow for the phase-in of tenant rent increases caused purely as a result of conversion.

3. *Resident Procedural Rights. Provision Affected:* 24 CFR 983.257, 24 CFR 982.555(b). *Alternative Requirement:* HUD is specifying alternative requirements to require that PHAs provide adequate written notice of termination of the lease and establish a grievance process.

4. *Earned Income Disregard (EID). Provision affected:* 24 CFR 5.617(b). *Waiver and Alternative Requirement:* HUD is waiving this provision and allowing all tenants who are employed and currently receiving EID at the time of conversion to continue to benefit from this exclusion from income as a resident in the PBV project. EID will apply to residents in a PBV project with assistance converted under RAD regardless of the resident's disability status.

5. *When Total Tenant Payment Exceeds Gross Rent. Provision affected:* 24 CFR 983.53(c), 24 CFR 983.258. *Waiver and Alternative Requirement:* HUD is waiving both of these provisions and requiring that the unit for current residents in the converting project be placed on and/or remain under the non-RAD PBV HAP Contract in the covered project when the family's TTP equals or exceeds the Gross Rent. Further, HUD is establishing the alternative requirement that until such time that the family's TTP falls below the gross rent, the rent to the owner for the unit will equal the

lesser of (a) the family's TTP, less the Utility Allowance, or (b) any applicable maximum rent under LIHTC regulations. During any period when the family's TTP falls below the gross rent, normal PBV rules shall apply.

6. *Under-Occupied Unit. Provision affected:* 24 CFR 983.260. *Waiver:* HUD is waiving this provision in order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project.

7. *Establishment of a Waiting List. Provision affected:* 24 CFR 983.251(c)(2). *Alternative Requirement:* HUD is specifying an alternative requirement in order to ensure that applicants on the PHA's community wide public housing waiting list have been offered placement on a Covered Project's site-based PBV waiting list.

In addition, this notice announces two other waivers and alternative requirements:

1. *Jobs Plus. Provision affected:* Jobs Plus provisions in the ''Public Housing Capital Fund'' of Consolidated Appropriations Act, 2014 (Pub. L. 113–76) or future appropriations acts. *Waiver and Alternative Requirement:* HUD is waiving the provision in the appropriation acts for FY14 and future years that limits Jobs Plus funds to provide grants to help public housing residents obtain employment and increase earnings. This waiver is necessary for the continued administration of the Jobs Plus grant at a target project after conversion. Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance unless significant relocation and/or change in building occupancy is planned. However, Jobs Plus target public housing projects must enroll public housing residents into the Jobs Plus rent incentive, JPEID, prior to conversion. Any resident of the Covered Project that had not enrolled prior to conversion is not eligible to enroll in JPEID but may utilize Jobs Plus services that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion.

2. *Relocation requirements under Section 18 of the Act. Provision affected:* Sections 18(a)(4) and 18(g) of the Act and 24 CFR 970.21. *Waiver and Alternative Requirement:* Where a PHA is combining the use of RAD and Section 18 at a project, HUD is waiving the relocation requirements governing Section 18 and applying the RAD relocation requirements to affected residents.

V. Revised RAD Notice Availability

The Revised RAD Notice (PIH–2019–23 (HA)/H–2019–09, REV–4) can be found on RAD's website, *www.hud.gov/RAD.*

VI. Impact on 2015 Davis-Bacon Notice

On March 9, 2015 at 80 FR 12511 (the ''March 9, 2015 Notice''), HUD published a notice in the **Federal Register** with details on how the Davis-Bacon requirements interact with the PBV program. The notice particularly addressed the applicability of Davis-Bacon requirements to projects selected as ''existing housing'' [2] under the PBV program, including PBV existing housing under the second component of RAD (sometimes referred to as ''RAD 2''), which was covered in section II.C.

HUD's General Counsel issued a legal opinion on August 13, 2019 (the ''2019 Opinion''), concluding that Davis-Bacon requirements are not triggered by the rehabilitation of previously assisted units occurring in connection with a conversion of assistance under the second component of RAD. The 2019 Opinion superseded a 2014 opinion (the ''2014 Opinion'') from the Office of General Counsel regarding the applicability of Davis-Bacon wage rates to PBV existing housing under RAD 2. The 2019 Opinion noted that the 2014 Opinion did not give proper consideration to statutory text and was a departure from longstanding HUD interpretation and practice. The 2019 Opinion concluded that rehabilitation of already-assisted units and associated common areas that occur in connection with PBV and PBRA provided under RAD 2 does not constitute ''development'' of a new Section 8 project that would trigger the application of Davis-Bacon requirements under section 12(a) of the United States Housing Act of 1937. Instead, RAD 2 transactions in which the assisted units remain the same as those under the prior form of project-based assistance constitute a mere extension of existing assistance. The 2019 Opinion also noted that to the extent that construction or rehabilitation is performed on nine or more units that will be newly assisted with PBVs or PBRA under RAD 2 (including through transfer of assistance), this work would constitute development of an expanded project that would trigger the application of Davis-Bacon to the same extent that it would apply to the non-RAD provision of PBVs or PBRA to projects that include units not assisted under a previous contract. Accordingly, section II.C. of the March 9, 2015 Notice is withdrawn. The guidance in the remainder of the March 9, 2015 Notice remains applicable to the rehabilitation of nine or more newly assisted existing units under RAD 2.

[2] Existing housing is defined in 24 CFR 983.3.

VII. Environmental Review

A Finding of No Significant Impact with respect to the environment has been completed in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel; Department of Housing and Urban Development; 451 7th Street SW, Room 10276; Washington, DC 20410– 0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Dated: October 4, 2019.

R. Hunter Kurtz,

Assistant Secretary for Public and Indian Housing.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–22134 Filed 10–9–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000 19X 6100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The RAC will hold a 2-day public meeting on November 13–14, 2019. The meeting will be held each day from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the 8th floor conference room at the BLM Arizona State Office located at One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427. The final agenda will be posted on the BLM Arizona RAC website at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/arizona.*

FOR FURTHER INFORMATION CONTACT: Dolores Garcia, Public Affairs Specialist, at the BLM, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427, telephone: 602–417–9241 or email: *dagarcia@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Garcia during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Garcia no later than 2 weeks before the start of the meeting.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Arizona.

Agenda items will include updates on BLM project work in compliance with Department of the Interior priorities and Secretary's Orders; resource management updates, including vegetation management and monitoring initiatives; Range Standards and Guidelines Training; District updates, and public comment. In addition to those BLM agenda items, the Recreation RAC will consider nine U.S. Forest Service fee proposals for the Kaibab and Coronado National Forests in Arizona. A RAC working group review of the proposals is planned for the afternoon of November 13, with a formal Recreation RAC session, planned for November 14, including a special public comment period related to the fee proposals at 2:00 p.m.

The public may address the RAC on BLM-related topics in person or submit a written statement on November 14, 2019, at around 3 p.m. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Written comments may also be sent to the BLM Arizona State Office at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Arizona RAC.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Raymond Suazo,

Arizona State Director.

[FR Doc. 2019–22217 Filed 10–9–19; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM004000 L54200000.FR0000 LVDIG18ZGKQ0 18X]

Notice of Application for a Recordable Disclaimer of Interest: Tarrant County, Texas

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of application.

SUMMARY: The Bureau of Land Management (BLM) received an application for a Recordable Disclaimer of Interest (Disclaimer of Interest) from Frances Corn Chandler, Howard Fielding Chandler, Alexander Marr Chandler, Lewis Matthews Chandler, Jere Jean Yeager, and Kathryn Louise Kronawitter, heirs of Virginia C. Yeager and Opal Keating, pursuant to the Federal Land Policy and Management Act of 1976, as amended, and BLM regulations, for certain mineral estate in Tarrant County, Texas. This notice is intended to inform the public of the pending application, give notice of the BLM's intention to grant the Disclaimer of Interest and provide a public comment period for the Disclaimer of Interest.

DATES: Comments on this action should be received by January 8, 2020.

ADDRESSES: Written comments must be sent to the Deputy State Director, Lands and Resources, BLM, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508. Comments, including names and street addresses of commenters, will be available for public review at the BLM New Mexico State Office, during regular business hours, Monday through Friday, except Federal holidays. Additional information pertaining to this application can be reviewed in case file TXNM138111 in the BLM Oklahoma Field Office, 201 Stephenson Parkway, Room 1200, Norman, OK 73072–2037.

FOR FURTHER INFORMATION CONTACT: John Ledbetter, Realty Specialist, BLM Oklahoma Field Office; telephone: 405–579–7172; email: *jledbetter@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose of this Disclaimer of Interest is to remove a cloud on the title of a mineral interest of a parcel of land situated in Tarrant County, Texas.

The BLM received an application for a Disclaimer of Interest from the heirs of Virginia C. Yeager and Opal Keating for the mineral estate of land lying near the U.S. Army, Corps of Engineers' (Corps) Benbrook Lake in Tarrant County, Texas. This is a subsequent application from these applicants and pertains to a second mineral interest lying adjacent to the mineral estate that was the subject of the applicants' initial Disclaimer of Interest. The mineral estate subject to the initial application is identified as Tract C–214 and a portion of Tract C–215 located within the John T. Gilliland Survey (A–610) and the William Hunter Survey (A–734). The resulting Disclaimer of Interest disclaimed any interest the United States may have had in Tract C–214 and a portion of Tract C–215. This Disclaimer of Interest, issued in 2016, was executed by the BLM based upon the opinions of the U.S. Attorney General, Corps, and the BLM acknowledging the minerals underlying the Hunter and Gilliland surveys were severed from the surface estate in 1922 via the mineral deed from J.W. Corn to Virginia C. Yeager and Opal Keating as recorded in Volume 745, Page 578, Tarrant County, Texas; and the mineral interest under the Hunter and Gilliland surveys was never acquired by the Corps.

The pending second application from the heirs of Yeager and Keating addresses the mineral estate under the Hunter and Gilliland surveys within Corps Tract B–115. Tract B–115 is located within seven separate surveys and has multiple, complex chains of title for the various parcels making up Tract B–115. The applicants' second application seeks a Disclaimer of Interest for the western portions of Tract B–115 that are within the Gilliland and Hunter surveys only. The applicants are

making no claim to the minerals in the eastern portion of Tract B–115 that are within the other five surveys. A review of the land status records and title records provided by the applicants indicate that the Corps purchased Tract B–115 in May 1950. As was the case in the initial Disclaimer of Interest, prior to the Corps' acquisition of Tract B–115, the mineral estate was transferred from J.W. Corn to his daughters, and the Corps did not acquire the mineral estate under Tract B–115. In order to remove the cloud on the title, the BLM intends to disclaim the land described as:

All that portion of Tract B–115, located within the John T. Gilliland Survey, A–610, and the William Hunter Survey, A–734 (minerals only).

Tract B–115, situated in the County of Tarrant, State of Texas, the Tract described is shown upon a portion the U.S. Army, Corps, Office of the Fort Worth District Engineer, Southwest Project Map, entitled ''REAL ESTATE BENBROOK LAKE,'' dated November 5, 1986, supplementing this Disclaimer of Interest. The area contains 73.12 acres as identified by the Corps documents listed above.

This Disclaimer of Interest does not address any surface interest that may still be vested with the United States of America.

The public is hereby notified that comments may be submitted to the Deputy State Director, Lands and Resources, at the address shown earlier within the comment period identified in this notice. Any adverse comments will be evaluated by the State Director who may modify or vacate this action and issue a final determination.

In the absence of any valid objection, this notice will become the final determination of the Department of the Interior and a Disclaimer of Interest may be issued 90 days from publication of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1864.2(a))

Melanie G. Barnes,

Deputy State Director, Land and Resources.

[FR Doc. 2019–22219 Filed 10–9–19; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB07000.L17110000.AL0000. LXSSH1060000.19X.HAG 19–0119]

Notice of Subcommittee Meeting for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Steens Mountain Advisory Council (SMAC) Public Lands Access Subcommittee will meet as indicated below.

DATES: The Public Lands Access Subcommittee of the SMAC will hold a public meeting on Monday, October 21, 2019, from 9:00 a.m. to 5:00 p.m. and Tuesday, October 22, 2019, from 8:30 a.m. to 2:30 p.m. at the BLM Burns District Office, in Hines, Oregon.

ADDRESSES: Bureau of Land Managment, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Tara Thissell, Public Affairs Specialist, 28910 Highway 20 West, Hines, Oregon 97738; 541–573–4519; *tthissell@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The SMAC was established August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act) (Pub. L. 106–399). The SMAC provides representative counsel and advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area (CMPA), recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on maintenance and improvement of the ecological and economic integrity of the area.

The SMAC's Public Lands Access Subcommittee was established in 2015 and serves to research, discuss, and evaluate any public access issue in the Steens Mountain CMPA. Issues could relate to parking, hiking, motorized or non-motorized use, public to private land inholding routes and methods of travel, private to public land access by way of easement or other agreement, or purchase or exchange of public and private land for improved access and contiguous landscape. The subcommittee reviews all aspects of any access issue, formulates suggestions for remedy, and proposes those solutions to the entire SMAC for further discussion and possible recommendation to the BLM.

The October 21 agenda includes a field tour around the east side of Steens Mountain. The subcommittee will visit and study several sites along the East Steens Road, including Pike Creek, Frog Springs, and the Alvord Desert, and the proposed Penland Road Equestrian Campgroud location. The October 22 agenda includes a review of the Steens Mountain Cooperative Management and Protection Act of 2000; a discussion on the Nature's Advocate, LLC, Environmental Assessment; an opportunity for subcommittee members to share information from their constituents and present research members have done between meetings; a discussion on a previously developed list of ''issues of interest'' for the SMAC; and an update from the SMAC's Designated Federal Official.

Any other matters that may reasonably come before the subcommittee may also be included.

The Monday, October 21, 2019, session will be held entirely in the field. The public is encouraged to attend and should meet at the Burns District Office parking lot just before 9:00 a.m. Please come prepared with your own transportation and amenities. High-clearance vehicles with quality tires and carpooling are recommended. There may be some light hiking. On Tuesday, October 22, 2019, the meeting will be held from 8:30 a.m. to 2:30 p.m. at the Burns District Office and is open to the public. A public comment period is available on Tuesday, October 22, at 11 a.m. Unless otherwise approved by the subcommittee chair, the public comment period will last no longer than 30 minutes, and each speaker may address the subcommittee for a maximum of 5 minutes. Sessions may end early if all business items are accomplished ahead of schedule or may be extended if discussions warrant more time.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your

personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Jeff Rose,

District Manager.

[FR Doc. 2019–22216 Filed 10–9–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028960; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Cochise College, Douglas, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Cochise College has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Cochise College. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Cochise College at the address in this notice by November 12, 2019.

ADDRESSES: Rebecca Orozco, Cochise College, 4190 West Highway 80, Douglas, AZ 85607, telephone (520) 515–3697, email *orozcor@cochise.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Cochise College, Douglas, AZ. The human remains and associated funerary objects were removed from archeological sites in Cochise County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Cochise College professional staff in consultation with representatives of the Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pascua Yaqui Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

From 1968 to 1969, human remains representing, at minimum, four individuals were removed from site AZ:FF:8:9 (Price Canyon Ranch), in Cochise County, AZ, as part of a Cochise College archeological field school. Burial #1–A consists of two fragmentary mandibular rami from a 3–5 year old child. Burial #1–B consists of post cranial remains of a 5–7 year old child. Burial #1–C consists of the charred fragments of the cranial vault, left mandibular Ml and fragments of the right illium, both humeri, both scapulae, the right clavicle and the right femur of a 7–9 year old child. Burial #1–D consists of the skeletal human remains of an adult male's mandible with much of the mandibular body missing. The human remains were analyzed by T.M.J. Mulinski and Dr. Walter Birkby from the Arizona State Museum, Human Identification Laboratory in 1971. No known individuals were identified. No associated funerary objects are present.

From 1969 to 1971, human remains representing, at minimum, three individuals were removed from site AZ:FF:7:2 (the San Bernardino site), in Cochise County, AZ, as part of a Cochise College archeological field school. Burial #1 is the incomplete skeleton of a male, 30–40 years old. Burial #2 is the flexed incomplete skeleton of a female, approximately 25 years old. Burial #3 is the flexed incomplete skeleton of a male, 20–35 years old. No known individuals were identified.

In 1970, human remains representing, at minimum, one individual were removed from site AZ:EE:12:1 in Cochise County, AZ, by an unknown individual. The burial contained the extended, incomplete skeletal remains of a female, 18–24 years old. This individual had previously been removed from a Preceramic site on state land in Cochise County leased to the S O Ranch. No known individual was identified.

In 1970, human remains representing, at minimum, one individual were removed from site AZ:CC:15:1, Chiricahua Cave in the Colorado National Forest in Cochise County, AZ. The human remains were found by weekend explorers. In 1970, portions of a human skull and mandible, plus other bones, were given to Cochise College. No known individual was identified.

Sometime before 1970, human remains representing, at minimum one individual were removed from an unknown location in Cochise County, AZ. The human remains—a small amount of calcined human bones—were enclosed in a burial urn. A local rancher found this pot (tentatively identified as Pantano Red on Brown) on the surface, just east of the Mule Mountains in the Sulphur Springs Valley, and donated it to Cochise College in 1970. No known individual was identified. The one associated funerary object is the burial urn.

Sometime before 1970, human remains representing, at minimum, one

individual were removed from an unknown location in Cochise County, AZ. The human remains, labeled ''Kambitch Bones,'' appear to have been given to Cochise College in 1970 from a ranch located northeast of Douglas, AZ. No known individual was identified. No associated funerary objects are present.

Sometime before 1980, human remains representing, at minimum, one individual were removed from an unknown location near the San Pedro River in Cochise County, AZ, by local residents. In 1980, the calcinated human remains and the plain brownware burial urn containing them were donated to Cochise College. No known individual was identified. The one associated funerary object is the burial urn.

Between 1982 to 1987, human remains representing, at minimum, one individual were removed from site AZ:FF:7:10 (Boss Ranch site), in Cochise County, AZ, as part of a Cochise College archeological field school. The burial was located under the floor of Room 7 in the Northwest Corner structure. The burial contained a flexed, incomplete skeleton lying on the left side. The individual is probably male, 15–18 years old. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location, most probably within Cochise County, AZ. No information has been found on this set of human remains. No known individual was identified. No associated funerary objects are present.

Determinations Made by Cochise College

Officials of Cochise College have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological investigations carried out by other entities in the region.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 14 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Rebecca Orozco, Cochise College, 4190 West Highway 80, Douglas, AZ 85607, telephone (520) 515–3697, email *orozcor@cochise.edu,* by November 12, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Cochise College is responsible for notifying The Tribes that this notice has been published.

Dated: September 20, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22167 Filed 10–9–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028958; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Carnegie Museum of Natural History, Pittsburgh, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Carnegie Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organizations not identified in this notice that wish to request transfer of control of these remains and associated funerary objects should submit a written request to the Carnegie Museum of Natural History. If no additional requestors come forward, transfer of control of human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Carnegie Museum of Natural History at the address in this notice by November 12, 2019.

ADDRESSES: Amy Covell-Murthy, Carnegie Museum of Natural History, 5800 Baum Boulevard, Pittsburgh, PA 15206, telephone (412) 665–2606, email *CovellA@CarnegieMNH.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Carnegie Museum of Natural History, Pittsburgh, PA. The human remains and associated funerary objects were removed from McKees Rocks Mound (36AL0006), Allegheny County, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Carnegie Museum of Natural History's professional staff in consultation with representatives of the Seneca Nation of Indians (previously listed as the Seneca Nation of New York).

History and Description of the Remains

In 1896, human remains representing, at minimum, 41 individuals were removed from McKees Rocks Mound in Allegheny County, PA. This initial excavation of the site was conducted by Frank H. Gerrodette, Director of Carnegie Museum, and Western Pennsylvania Historical Society member Thomas Harper. The mound, identified

as comprising three distinct layers, included, at minimum, 33 distinct burials, midden by-products (lithic, pottery, and faunal materials), and approximately three hearth features. All the human remains and artifacts have remained in the possession of the Carnegie Museum of Natural History Anthropology Collection since their removal from the mound. No known individuals were identified. The sex and age of all the individuals has not been definitively determined (male and female human remains are present). At least one infant is among the human remains. Incomplete skeletal remains including burnt and unburnt bones, and cremated remains. The 914 associated funerary objects are 191 pottery sherds, 205 lithic artifacts, 39 animal bones and animal bone tools, 412 beads, 55 unworked shells, one copper bear claw, and 11 charred plant remains.

The mound is estimated to have been occupied by four distinct groups, first in the Early Woodland period, and again in the Middle and Late Woodlands. Some evidence of occupation by a panhandle archaic group prior to the mound's construction exists. The mound's initial construction was most likely carried out by a Late Adena group. Later it was utilized by groups related to the New York Hopewell and the Monongahela. Based on the historic occupation of Western Pennsylvania by the Seneca and recent stable isotope analysis work of bioarcheologists at California University of Pennsylvania, the human remains and associated funerary objects in this notice are Seneca.

Determinations Made by the Carnegie Museum of Natural History

Officials of the Carnegie Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 41 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 914 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Seneca Nation of Indians (previously listed as the Seneca Nation of New York).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Amy Covell, Carnegie Museum of Natural History, 5800 Baum Boulevard, Pittsburgh, PA 15206, telephone (412) 665–2606, email *CovellA@CarnegieMNH.org,* by November 12, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Seneca Nation of Indians (previously listed as the Seneca Nation of New York) may proceed.

The Carnegie Museum of Natural History is responsible for notifying the Seneca Nation of Indians (previously listed as the Seneca Nation of New York) that this notice has been published.

Dated: September 20, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22168 Filed 10–9–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028906; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arkansas Archeological Survey (ARAS) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the ARAS. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the ARAS at the address in this notice by November 12, 2019.

ADDRESSES: Dr. George Sabo, Arkansas Archeological Survey, 2475 N Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3556, email *gsabo@uark.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Arkansas Archeological Survey, Fayetteville, AR. Private individuals removed the human remains and associated funerary objects from Clark and Hot Spring Counties, AR, in the 1930s and 1940s. These collections were acquired by the Joint Educational Consortium of Henderson State University and Ouachita Baptist University in 1977, and were transferred to the Arkansas Archeological Survey in 2017.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by ARAS professional staff in consultation with representatives of the Caddo Nation of Oklahoma. These human remains were inventoried and documented by physical anthropologists at the University of Arkansas.

History and Description of the Remains

In 1937, human remains representing, at minimum, one individual were recovered from the Freeman site (3CL40) in Clark County, AR. The individual is a sub-adult 2–4 years old. No known individuals were identified. The 35 associated funerary objects are 32 shell beads, one Hodges Engraved bottle, one Hodges Engraved carinated bowl, and one Karnack-Incised jar. Diagnostic artifacts found at the Freeman site (3CL40) indicate that these human remains were probably buried

during the Deceiper Phase (A.D. 1650–1700).

In 1941, human remains representing, at minimum, one individual were recovered from the Gross Mound site (3CL62) in Clark County, AR. The individual is an adult male. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Gross Mound site (3CL62) indicate that these human remains were probably buried during the Deceiper Phase (A.D. 1650–1700).

Between 1938–1943, human remains representing, at minimum, two individuals were recovered from the Stanford site (3CL81) in Clark County, AR. The individuals are one adult male and one adult female. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Stanford site (3CL81) indicate that these human remains were probably buried during the Mid-Ouachita, Social Hill, or Deceiper Phases (A.D. 1400–1700).

Between 1943–1944, human remains representing, at minimum, six individuals were recovered from the Richardson site (3CL83) in Clark County, AR. The individuals are one adult male and five adults of indeterminate sex. No known individuals were identified. The 11 associated funerary objects are one effigy seed jar, one incised jar, two Foster Trailed-Incised jars, two Sandford Punctated bowls, one punctated beaker, one Hodges Engraved bottle, one engraved carinated bowl, and two earspools. Diagnostic artifacts found at the Richardson site (3CL83) indicate that these human remains were probably buried during the Social Hill and Deceiper Phases (A.D. 1500–1700).

In 1944, human remains representing, at minimum, one individual were recovered from the Coleman Terril site (3CL84) in Clark County, AR. The individual is an adult of indeterminate sex. No known individuals were identified. The two associated funerary objects are an East Incised bowl and a Smithport Plain bottle. Diagnostic artifacts found at the Coleman Terril site (3CL84) indicate that these human remains were probably buried during the East Phase (A.D. 1100–1400).

Between 1940–1941, human remains representing, at minimum, 11 individuals were recovered from the Lower Meador site (3HS19) in Hot Spring County, AR. The individuals are four adults of indeterminate sex, five adult males, one adult female, and one sub-adult 4–8 years old. No known individuals were identified. The 59 associated funerary objects are 22 shell beads, two Hodges Engraved bottles, one Bailey Engraved bottle, one Foster/Keno Trailed-Incised bowl, three plain bowls, one plain jar, three incised jars, four projectile points (Gary, Bassett, Maud, and Scallorn or Womble), five bone tools, two Foster Trailed-Incised jars, three Keno Trailed bottles, one Foster/Caney jar, one unmodified shell, two Military Road Incised jars, one ceramic pipe, one Sandford Punctated bowl, one incised and brushed jar, three plain bottles, one Hodges Engraved bowl, and one celt. Diagnostic artifacts found at the Lower Meador site (3HS19) in Hot Spring County indicate that these human remains were probably buried during the Mid-Ouachita, Social Hill, and Deceiper Phases (A.D. 1500–1700).

Between 1940–1943, human remains representing, at minimum, one individual were recovered from the Meadow Grove site (3HS33) in Hot Spring County, AR. The individual is an adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Meadow Grove site (3HS33) indicate that these human remains were probably buried during the Mid-Ouachita, Social Hill, or Deceiper Phases (A.D. 1500–1700).

In the 1930s to 1940s, human remains representing, at minimum, one individual were recovered from the Clyde Hodges site (3HS99) in Hot Spring County, AR. The individual is an adult of indeterminate sex. No known individuals were identified. The two associated funerary objects are two quartz crystals. Diagnostic artifacts found at the Clyde Hodges site (3HS99) indicate that these human remains were probably buried during the Caddo Period (A.D. 900–1750).

In the 1930s to 1940s, human remains representing, at minimum, one individual were recovered from the Cook's East site (3HS106) in Hot Spring County, AR. The individual is an adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Cook's East site (3HS106) indicate that these human remains were probably buried during the Caddo Period (A.D. 900–1700 A.D.).

In the 1930s to 1940s, human remains representing, at minimum, six individuals were recovered from the Barkman Salt Works site (3HS110) in Hot Spring County, AR. The individuals are one probable adult male, two probable adult females, and three adults of unknown sex. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found at the Barkman Salt Works site (3HS110) indicate that these human remains were probably buried during the Caddo Period (A.D. 900–1700).

In 1941, human remains representing, at minimum, one individual were recovered from an unknown site in Hot Spring County, AR. The individual is an adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present. Diagnostic artifacts found in Hot Spring County indicate that these human remains were probably buried during the Caddo Period (A.D. 900–1700).

In the 1930s to 1940s, human remains representing, at minimum, two individuals were recovered from an unknown location in southwest AR. The individuals are two adults of indeterminate sex. No known individuals were identified. The one associated funerary object is a Military Road Incised jar. Diagnostic artifacts found in southwest Arkansas indicate that these human remains were probably buried during the Mid-Ouachita Phase (A.D. 1400–1500).

In the 1930s to 1940s, human remains representing, at minimum, two individuals were recovered from an unknown location in southwest AR. The individuals are one sub-adult and one adult, both of indeterminate sex. No known individuals were identified. The one associated funerary object is a Hardman Engraved bowl. Diagnostic artifacts found in southwest Arkansas indicate that these human remains were probably buried during the Social Hill Phase (A.D. 1500–1600).

In the 1930s to 1940s, human remains representing, at minimum, one individual were recovered from an unknown location in southwest AR. The individual is an adult of indeterminate sex. No known individuals were identified. The one associated funerary object is a grog tempered bowl. Diagnostic artifacts found in southwest Arkansas indicate that these human remains were probably buried during the East Phase (A.D. 1100–1400).

In the 1930s to 1940s, human remains representing, at minimum, 14 individuals were recovered from unknown locations in southwest AR. The individuals are one sub-adult of indeterminate sex, two adult males, three adult females, and eight adults of indeterminate sex. No associated funerary objects are present. Diagnostic artifacts found in southwest Arkansas indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In the 1930s to 1940s, human remains representing, at minimum, one

individual were recovered from the White Farm in southwest AR. The individual is an adult male of indeterminate sex. No associated funerary objects are present. Diagnostic artifacts found in southwest Arkansas indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

This notice includes a variety of terms commonly used in discussions of Arkansas archeology and the historical trajectories that gave rise to specific Native American communities identified in the historical record. Based on the archeological context for these sites and current expert opinion, the earlier groups who occupied the sites listed in this notice are culturally affiliated with the Caddo Nation of Oklahoma.

Determinations Made by the Arkansas Archeological Survey

Officials of the Arkansas Archeological Survey have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 52 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 112 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Caddo Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. George Sabo, Arkansas Archeological Survey, 2475 N Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3556, email *gsabo@uark.edu,* by November 12, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Caddo Nation of Oklahoma may proceed.

The Arkansas Archeological Survey is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: September 13, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22169 Filed 10–9–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Final)]

Fresh Tomatoes From Mexico; Suspension of Anti-Dumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that the final phase of its antidumping investigation of fresh tomatoes from Mexico is suspended. The subject investigation was resumed on May 7, 2019, to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fresh tomatoes from Mexico preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less than fair value (''LTFV'') (84 FR 27805, June 14, 2019). On September 24, 2019, Commerce published notice in the **Federal Register** of the suspension of its antidumping investigation on fresh tomatoes from Mexico (84 FR 49987). The basis for the suspension is an agreement between Commerce and representatives of Mexican producers/exporters accounting for substantially all fresh tomatoes imported from Mexico into the United States.

DATES: September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson (202–205–2542), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On April 1, 1996, the Commission instituted a preliminary antidumping investigation in response to a petition filed by the Florida Tomato Growers Exchange, Orlando, FL; Florida Fruit and Vegetable Association, Orlando, FL; Florida Farm Bureau Federation, Gainesville, FL; South Carolina Tomato Association, Inc., Charleston, SC; Gadsden County Tomato Growers Association, Inc., Quincy, FL; Accomack County Farm Bureau, Accomack, VA; Florida Tomato Exchange, Orlando, FL; Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, Tallahassee, FL; and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers (61 FR 15968, April 10, 1996). On May 16, 1996, the Commission notified Commerce of its affirmative preliminary injury determination (61 FR 28891, June 6, 1996). On October 28, 1996, Commerce preliminarily determined that imports of fresh tomatoes from Mexico were being sold at LTFV in the United States (61 FR 56608, November 1, 1996). Also on October 28, 1996, Commerce and certain growers/exporters of fresh tomatoes from Mexico signed a final suspension agreement (61 FR 56618, November 1, 1996). Accordingly, effective November 1, 1996, the Commission suspended its antidumping investigation (61 FR 58217, November 13, 1996).

On October 1, 2001, Commerce initiated and the Commission instituted their first five-year reviews to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would likely lead to a continuation or recurrence of material injury (66 FR 49926, 66 FR 49975). On July 30, 2002, Commerce terminated the suspension agreement and its first review and resumed its antidumping investigation (67 FR 50858, August 6, 2002). Accordingly, the Commission terminated its first review on July 30, 2002 (67 FR 53361, August 15, 2002) and resumed its antidumping investigation (67 FR 56854, September 5, 2002). On December 16, 2002, Commerce and the Commission suspended their resumed antidumping investigations when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico (67 FR 77044; 67 FR 78815, December 26, 2002).

On November 1, 2007, Commerce initiated and the Commission instituted their second five-year reviews of the suspended investigation (72 FR 61861,

72 FR 61905). Commerce terminated the suspension agreement and its second review and resumed its antidumping investigation, effective January 18, 2008 (73 FR 2887, January 16, 2008). The Commission consequently terminated its second review of the suspended investigation and resumed its antidumping investigation, effective January 18, 2008 (73 FR 5869, January 31, 2008). The antidumping investigation was suspended effective January 22, 2008, when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico (73 FR 4831, January 28, 2008; 73 FR 7762, February 11, 2008).

On December 3, 2012, Commerce initiated and the Commission instituted their third five-year reviews of the suspended investigation (77 FR 71684, 77 FR 71629). On March 1, 2013, Commerce terminated the suspension agreement and its third review and resumed its antidumping investigation (78 FR 14771, March 7, 2013). On March 4, 2013, the Commission terminated its third review and resumed its antidumping investigation (78 FR 16529, March 15, 2013). Also on March 4, 2013, Commerce signed a new suspension agreement with certain grower/exporters of fresh tomatoes from Mexico and suspended its antidumping investigation (78 FR 14967, March 8, 2013). Effective March 4, 2013, the Commission suspended its antidumping investigation (78 FR 16529, March 15, 2013).

On February 1, 2018, Commerce initiated and the Commission instituted their fourth five-year reviews of the suspended investigation (83 FR 4641, 83 FR 4676). On May 7, 2019, Commerce terminated the suspension agreement and resumed its antidumping investigation (84 FR 20858, May 13, 2019). Effective May 7, 2019, the Commission terminated its fourth review (84 FR 21360, May 14, 2019) and resumed its antidumping investigation (84 FR 27805, June 14, 2019). On September 24, 2019, Commerce published notice in the **Federal Register** suspending its antidumping investigation on the basis of an agreement between Commerce and signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico that eliminates completely the injurious effects of exports of the subject merchandise to the United States (84 FR 49987). Accordingly, the Commission now provides notice of the suspension of its antidumping investigation.

Authority: This investigation is being suspended under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(b)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: October 7, 2019.

Jessica Mullan,

Attorney Advisor.

[FR Doc. 2019–22214 Filed 10–9–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1111]

Certain Portable Gaming Console Systems With Attachable Handheld Controllers and Components Thereof; Notice of a Commission Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the conclusion of the presiding administrative law judge's (''ALJ'') initial determination (''ID'') that no violation of section 337 has occurred. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 4, 2018, the Commission instituted this investigation based on a complaint and supplements thereto filed on behalf of Gamevice, Inc. of Simi Valley, California (''Gamevice''). 83 FR 19821 (May 4, 2018). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable gaming console systems with attachable handheld controllers and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 9,855,498 (''the '498 patent'') and 9,808,713 (''the '713 patent''). The Commission's notice of investigation named Nintendo Co., Ltd., of Kyoto, Japan and Nintendo of America, Inc., of Redmond, Washington as respondents (collectively, ''Nintendo''). *Id.* The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On February 14, 2019, the ALJ issued an ID in this investigation, finding no violation of section 337 by Nintendo. Specifically, the ID grants a motion for summary determination that Nintendo does not infringe claims 1, 10, 16, and 17 of the '713 patent and claims 1 and 16 of the '498 patent, that claim 10 of the '713 patent is invalid, and that the technical prong of the domestic industry has not been met for claim 10 of the '713 patent. Order No. 21 was predicated upon the ALJ's earlier issued *Markman* order, Order No. 20, setting forth claim constructions of disputed terms, including ''retention member,'' ''pair of modules,'' and ''fastening mechanism[s].'' Gamevice petitioned for review of Order No. 21. Nintendo contingently petitioned for review of the claim term ''retention member'' and additional claim constructions not at issue in Order No. 21. The parties responded to the respective petitions.

On April 25, 2019, the Commission determined to review Order No. 21 in the entirety. The Commission also determined to review the three claim constructions, discussed in Order No. 20, on which Order No. 21 is based. Notice, Commission Determination to Review Order No. 21 in its Entirety; Request for Briefing (April 25, 2019). The Commission also asked the parties to brief two issues on review. *Id.* On May 6, 2019, the parties submitted their opening response to the Commission's notice of review. On May 13, 2019, the parties submitted their responsive submissions.

After considering Order Nos. 20 and 21, the parties' written submissions, and the record in this investigation, the Commission has determined that the terms ''fastening mechanism[s],'' ''a pair of modules,'' and ''retention member'' are subject to means-plus-function

treatment on modified grounds. The Commission affirms Order No. 21's findings on non-infringement, invalidity of the '713 patent, and Gamevice's failure to establish that its products practice the '713 patent to satisfy the domestic industry requirement. Accordingly, the Commission finds that no violation of section 337 has occurred. The investigation is terminated. The Commission's reasoning in support of its determinations is set forth in its concurrently issued opinion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22172 Filed 10–9–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0040]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Application for an Amended Federal Firearms License—ATF Form 5300.38

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection, Application for an Amended Federal Firearms License—ATF Form 5300.38 is being revised due to a reduction in the number of respondents, responses and public burden hours, since the last renewal in 2016.

DATES: Comments are encouraged and will be accepted for 60 days until December 9, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Tracey Robertson, either by mail at Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405, by email at *Tracey.Robertson@atf.gov,* or by telephone at 304–616–4647.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for an Amended Federal Firearms License.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5300.38.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: The Gun Control Act requires that each person applying for a Federal Firearms License (FFL) change of address must certify compliance with the provisions of the law for the new address. The Application for an Amended Federal Firearms License—ATF F 5300.38, is used by existing Federal Firearms licensees to change the business address of the license and certify compliance. Licensees are required to notify ATF of the intent to move any business premises no later than 30 days prior to the intended move.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,000 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5,000 hours, which is equal to 10,000 (# of respondents) * .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* The adjustments associated with this information collection include a reduction in the number of submissions by 8,000. Consequently, the hourly burden has reduced by 4,000 hours, while the cost burden decreased by $1,730.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 7, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–22161 Filed 10–9–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–00046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 9, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Michael Knapp, Firearms Industry Programs Branch either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Fipb-informationcollection@atf.gov,* or by telephone at 202–648–7190.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): Extension without change of a currently approved collection.

2. *The Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other (if applicable): Federal Government.

Abstract: The letter is used by a law enforcement officer to purchase firearms to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the firearm is to be used in the official duties of the officer and that he/she has not been convicted of a misdemeanor crime of domestic violence.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50,000 respondents will utilize the letter template associated with this information collection. It will take approximately 8 minutes to complete a response to this IC.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,667 of hours, which is equal to 50,000 (# of respondents) * 1 (# of responses per respondent) * .133333 (8 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 7, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–22160 Filed 10–9–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before December 9, 2019.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, *ebsa.opr@dol.gov,* (202) 693–8410, FAX (202) 219–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Benefit Plan Claims Procedure Under the Employee Retirement Income Security Act.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0053.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 5,808,427.

Responses: 311,790,227.

Estimated Total Burden Hours: 516,227.

Estimated Total Burden Cost (Operating and Maintenance): $814,449,932.

Description: ERISA Section 503 and accompanying regulations at 29 CFR 2560.503–1 require employee benefit plans to establish procedures for resolving benefit claims under the plan, including initial claims and appeal of denied claims. The regulation requires specific information to be disclosed at different stages of the claims process. It also requires claims denial notices to be provided within specific time-frames and to include specific information. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0053. The current approval is scheduled to expire on February 29, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Mental Health Parity and Addiction Equity Act of 2008 Notices.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0138.

Affected Public: Individuals or Households, Businesses or other for-profits, Not-for-profit institutions.

Respondents: 1,217,876.

Responses: 1,217,876.

Estimated Total Burden Hours: 27,207.

Estimated Total Burden Cost (Operating and Maintenance): $3,477,577.

Description: The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008, as sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Pub. L. 110–343). MHPAEA amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), and the Internal Revenue Code of 1986 (the Code). In 1996, Congress enacted MHPEA, which required parity in aggregate lifetime and annual dollar limits for mental health benefits and medical and surgical benefits. Those mental health parity provisions were codified in section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code. The changes made by MHPAEA are codified in these same sections and consist of new requirements as well as amendments to several of the existing mental health parity provisions applicable to group health plans and health insurance coverage offered in connection with a group health plan.

MHPAEA and the interim final regulations do not apply to small employers who have between two and 50 employees. The changes made by MHPAEA are generally effective for plan years beginning after October 3, 2009. MHPAEA and the final regulations, codified at 29 CFR 2590.712(d), require plan administrators to disclose the criteria for medical necessity determinations with respect to mental health and substance use disorder benefits. These third-party disclosures are information collection requests for purposes of the Paperwork Reduction Act. In response to provisions of the Cures Act which requires the Departments of Labor (DOL), Health and Human Services, and the Treasury (collectively, the Departments), to provide a model form that participants, enrollees, or their authorized representatives could use to request information from their health plan or issuer regarding non-quantitative treatment limitations (NQTLs) that may affect their Mental Health (MH)/Substance Use Disorder (SUD) benefits, or to obtain documentation after an adverse benefit determination involving MH/SUD benefits to support an appeal. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0138. The current approval is scheduled to expire on March 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 1992–6: Sale of Individual Life Insurance or Annuity Contracts by a Plan.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0063.

Affected Public: Businesses or other for-profits.

Respondents: 10,877.

Responses: 10,877.

Estimated Total Burden Hours: 2,175.

Estimated Total Burden Cost (Operating and Maintenance): $5,656.

Description: This class exemption exempts from the prohibited transaction provisions of ERISA, the sale of individual or annuity contracts by a plan to participants, relatives of participants, employers, any of whose employees are covered by the plan, other employee benefit plans, owner-employees, or shareholder-employees, for the cash surrender value of the contracts, provided certain conditions set forth in the exemption are met.

The Department has included in the class exemption a basic disclosure requirement. Pension plans are required to inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder-employee. If the participant elects not to purchase the contract, the relative, the employer, another plan, the owner-employees, or the shareholder-employees may purchase the contract from the plan upon the receipt by the plan of written consent of the participant. The disclosure requirement of the class exemption does not apply if the contract is sold to the plan participant. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0063. The current approval is scheduled to expire on May 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Loans to Plan Participants and Beneficiaries Who Are Parties in Interest with Respect to the Plan Regulation.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0076.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 2,556.

Responses: 2,556.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): $1,023,678.

Description: Section 406(a)(1)(B) of ERISA prohibits the lending of money or other extensions of credit between a plan and a party in interest. A statutory exemption is provided in ERISA section 408(b)(1), which exempts plan loans made to participants and beneficiaries from the prohibited transaction provisions of sections 406(a), (b)(1), and (b)(2) of ERISA if the loans: (A) Are made available to all participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees; (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured.

The Department's regulation at 29 CFR 2550.408b–1(d) prescribes eight specific provisions that must be included in the plan documents, including: (1) An explicit authorization for the plan fiduciary responsible for investing plan assets to establish such a loan program; (2) the identity of the person or position authorized to administer the program; (3) a procedure for applying for loans; (4) the basis on which loans will be approved or denied; (5) limitations (if any) on the types and

amounts of loans offered; (6) the procedure for determining a reasonable rate of interest; (7) types of collateral that may secure a participant loan; and (8) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0076. The current approval is scheduled to expire on May 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 1985–68 to Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0094.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 69.

Responses: 325.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: This class exemption describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's business activity and thus be exempt from the prohibited transaction restrictions, provided that the conditions of the exemption are met. The class exemption covers sales as well as contributions of customer notes by an employer to its plan. The customer notes must have been accepted by the employer in its primary business activity as the seller of tangible personal property that is being financed by the notes, so that the exemption does not apply to notes of an employer's affiliate. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0094. The current approval is scheduled to expire on May 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice to Employees of Coverage Options under Fair Labor Standards Act Section 18B.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0149.

Affected Public: State, Local, and Tribal Governments.

Respondents: 7,521,900.

Responses: 29,165,840.

Estimated Total Burden Hours: 117,149.

Estimated Total Burden Cost (Operating and Maintenance): $4,709,408.

Description: Section 18B of the Fair Labor Standards Act (FLSA), as added by section 1512 of the Affordable Care Act, generally provides that, in accordance with regulations promulgated by the Secretary of Labor, an applicable employer must provide each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), a written notice: (1) Informing the employee of the existence of Exchanges including a description of the services provided by the Exchanges, and the manner in which the employee may contact Exchanges to request assistance; (2) If the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code (the Code) if the employee purchases a qualified health plan through an Exchange; and (3) If the employee purchases a qualified health plan through an Exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes. The model notice is being provided by the Department to facilitate compliance with FLSA section 18B. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0149. The current approval is scheduled to expire on May 31, 2020.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0132.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 276,222.

Responses: 36,249,796.

Estimated Total Burden Hours: 191,640.

Estimated Total Burden Cost (Operating and Maintenance): $9,959,269.

Description: The regulation offers guidance on the types of investment vehicles that plans may choose as their ''qualified default investment alternative'' (QDIA). A QDIA must either be managed by an investment manager, plan trustee, plan sponsor or a committee comprised primarily of employees of the plan sponsor that is a named fiduciary, or be an investment company registered under the Investment Company Act of 1940. The regulation also outlines two types of information collections. First, it implements the statutory requirement that plans provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires plans to pass any pertinent materials they receive from a QDIA to those participants and beneficiaries with assets invested in the QDIA as well to provide certain information on request. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0132. The current approval is scheduled to expire on June 30, 2020.

Dated: October 4, 2019.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2019–22126 Filed 10–9–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment And Training Administration

Agency Information Collection Activities; Comment Request; Workforce Information Grants to States (WIGS)

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's), Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Workforce Information Grants to States (WIGS).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by December 9, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Donald Haughton by telephone at 202–693–2784, TTY 877–889–5627, (these are not toll-free numbers) or by email at *Haughton.Donald.W@dol.gov*.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW, Room C–4510, Washington DC, 20210; by email: *Haughton.Donald.W@dol.gov*; or by Fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Donald Haughton by telephone at 202–693–2784 (this is not a toll-free number) or by email at *Haughton.Donald.W@dol.gov*.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

WIOA Section 308 requires the Secretary of Labor to oversee the development, maintenance, and continuous improvement of a nationwide Workforce and Labor Market Information System (workforce information) system; and to evaluate the performance of the system and recommend needed improvements, taking into consideration customer consultation results, with particular attention given to improvements needed at the state, regional and local levels. The WIGS information collection ensures the Secretary of Labor meets WIOA requirements, and the states complete grant deliverables such as state economic analyses or special workforce information/economic studies, and the annual performance report.

The ETA makes use of the information collected from WIGS grantees primarily to serve four customer groups: (1) The public (including job seekers and employers); (2) labor market intermediaries who help individuals find a job or make career decisions (such as employment and school counselors, case managers at American Job Centers, and community-based organizations); (3) policymakers and employment and economic program planners and operators; and (4) miscellaneous other customers, including researchers, commercial data providers, and the news media. The Workforce Innovation and Opportunity Act (WIOA) Section 308 (29 U.S.C. 491–2), and 20 Code of Federal Regulations (CFR) parts 651 and 652 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Workforce Information Grants to States (WIGS), OMB control number 1205–0417.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Workforce Information Grants to States (WIGS).

Form: N/A.

OMB Control Number: 1205–0417.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 54.

Frequency: Once.

Total Estimated Annual Responses: 162.

Estimated Average Time per Response: 578 hours.

Estimated Total Annual Burden Hours: 31,228 hours.

Total Estimated Annual Other Cost Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A)).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–22186 Filed 10–9–19; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–061)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, October 29, 2019, 8:30 a.m.–5:00 p.m., Eastern Time.

ADDRESSES: NASA Kennedy Space Center, Headquarters Building, Conference Room 6440, Kennedy Space Center, Florida 32899.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4710, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–844–467–6272 and enter the numeric participant passcode 102421 followed

by the # sign. The WebEx link is *https://nasaenterprise.webex.com,* the meeting number is 904 215 718, and the password is n@cTIE1019. Note: If dialing in, please ''mute'' your telephone. The agenda for the meeting includes the following topics:

—NASA Kennedy Space Center Overview

—Space Technology Mission Directorate Update and Discussion

—Lunar Surface Innovation Initiative Update

—Office of the Chief Technologist Update

—Synthetic Biology/Center for the Utilization of Biological Engineering in Space (CUBES) Update

—Nuclear Thermal Propulsion Update

—Early Career Initiative Overview

Attendees will be requested to sign a register and to comply with NASA Kennedy Space Center security requirements, including the presentation of a valid picture ID to NASA Security before access to NASA Kennedy Space Center. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 15 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting. Information should be sent to Ms. Anyah Dembling via email at *anyah.dembling@NASA.gov.* It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–22227 Filed 10–9–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to renew an information collection under the Paperwork Reduction Act. The information collection includes NA Form 16016, Limited Facility Report, which we use to review the facility, environment, and staffing capabilities of non-NARA organizations that wish to borrow a National Archives traveling exhibit. We invite you to comment on this information collection.

DATES: We must receive written comments on or before December 9, 2019.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, fax them to 301.837.7409, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301.837.1694 or fax at 301.837.7409 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for us to properly perform our functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collection:

Title: Limited Facility Report.

OMB number: 3095–0073.

Agency form number: NA Form 16016.

Type of review: Regular.

Affected public: Not-for-profit institutions.

Estimated annual number of respondents: 75.

Estimated time per response: 60 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: NARA administers the National Archives Traveling Exhibits Services (NATES), in accordance with 44 U.S.C. 2108–9, to present exhibitions of our holdings and to enter into agreements under 44 U.S.C. 2305 for the support of such exhibitions.

We use NA Form 16016, Limited Facility Report, to serve as an application and to identify a venue's facility and environmental conditions. We provide the form, requirements for exhibition security, and regulations, to applicants. We need the information contained on this form to determine whether the proposed facility meets the criteria under NARA Directive 1612, Exhibition Loans and Traveling Exhibitions, for display of NARA's holdings.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2019–22229 Filed 10–9–19; 8:45 a.m.]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0001; NARA–2020–004]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by November 25, 2019.

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

must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

• *Federal eRulemaking Portal: http://www.regulations.gov.*

• *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. You may request additional information about the disposition process through the contact information listed above.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Commerce, Bureau of the Census, 2020 Decennial Census (DAA–0029–2019–0004).

2. Department of Commerce, National Oceanic and Atmospheric Administration, Center Weather Service Unit Files (DAA–0370–2019–0002).

3. Department of Commerce, U.S. Patent and Trademark Office, Office of the Ombudsman Inquiries and Resolutions (DAA–0241–2019–0002).

4. Department of Defense, National Security Agency, Collaboration and Social Media Records (DAA–0457–2018–0001).

5. Department of Health and Human Services, Health Resources and Services Administration, HRSA Integrated Resource Management System (DAA–0512–2019–0002).

6. Department of Transportation, Federal Highway Administration, Roadside Hardware and Acceptance Records (DAA–0406–2019–0004).

7. Securities and Exchange Commission, Agency-wide, Tips, Complaints, and Referrals (TCR) Files (DAA–0266–2018–0009).

8. Securities and Exchange Commission, Office of Inspector General, Office of Inspector General Records (DAA–0266–2018–0002).

9. Social Security Administration, Agency-wide, Railroad Retirement Board Microfilm from 1937–1959 (DAA–0047–2019–0009).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2019–22199 Filed 10–9–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice; request for comments.

SUMMARY: The National Endowment for the Humanities (NEH) is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, NEH is requesting comments from all interested individuals and organizations on this proposed collection.

DATES: Please submit comments by December 9, 2019.

ADDRESSES: Submit comments to Judith Adkins, Program Officer, Division of Research Programs, National Endowment for the Humanities: 400 Seventh Street SW, Washington, DC 20506, or *jadkins@neh.gov.*

FOR FURTHER INFORMATION CONTACT: Judith Adkins, Program Officer, Division of Research Programs, National Endowment for the Humanities: 400 Seventh Street SW, Washington, DC 20506, or *jadkins@neh.gov.*

SUPPLEMENTARY INFORMATION:

Overview of This Information Collection

Type of Information Collection: New collection.

Title of Information Collection: History, The Past, and Public Culture Survey.

Abstract: This information collection request is pursuant to a cooperative agreement between NEH and the American Historical Association (AHA). The purpose of the survey is to understand how the public perceives, and engages with, history and the work of historians. NEH, AHA, and the many educational and cultural institutions they support will use the information gathered in the proposed survey to create responsive and effective history and other humanities programming to better serve the American people. Most immediately, NEH will use findings from the survey to inform programming for ''A More Perfect Union,'' the agency's special initiative advancing civic education and commemorating the nation's 250th anniversary in 2026.

NEH and AHA are developing the survey in collaboration with an advisory board, regional history experts, and Fairleigh Dickinson University Poll (FDUP), a market research and public interest survey center. In April of 2020, FDUP will administer this internet survey to adults in the United States. Survey questions will concern respondents' perceptions of history and its significance, their understanding of the work of historians, and their consumption of history in various forms and via a variety of media and experiences. The survey will be voluntary and will collect both qualitative and quantitative information. FDUP will ensure optimal polling methodology and manage the logistics of the data collection. This survey will not collect any personally identifiable information (PII).

Affected Public: Survey respondents will be comprised of adult individuals in the United States.

Frequency of Information Collection: Once.

Estimated Number of Respondents: 1,500.

Estimated Average Time per Response: 25 minutes.

Estimated Total Burden Hours: 625 hours.

Request for Comments

NEH will make comments submitted in response to this notice, including names and addresses where provided, a matter of public record. NEH will summarize the contents and include them in the request for OMB approval. We are requesting comments on all aspects of this clearance request, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 7, 2019.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2019–22188 Filed 10–9–19; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding this information collection are best assured of having their full effect if received by November 12, 2019.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Antarctic Conservation Act Application Permit Form.

OMB Number: 3145–0034.

Type of Request: Intent to seek approval to renew an information collection.

Overview of this Information Collection: The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird).

Use of the Information: The purpose of the regulations (45 CFR 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the

ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at 45 minutes per response; this computes to approximately 19 hours annually.

Dated: October 7, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–22203 Filed 10–9–19; 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 November 12, 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

1. *Applicant:* Lee Welhouse, 1225 West Dayton Street, Madison, Wisconsin, USA 53706—Permit application No. 2020–014.

Activity for Which Permit Is Requested—Enter Antarctic Specially Protected Area (ASPA). The applicant would enter ASPA 106, Cape Hallett, to perform maintenance and updates on an already installed automatic weather station and to retrieve data collected from the station. The permit holder and agents would approach the area by small fixed-wing aircraft and enter the ASPA on foot. The permit holder would adhere to all guidance in the ASPA management plan.

Location—ASPA 106, Cape Hallett, Northern Victoria Land, Ross Sea.

Dates of Permitted Activities—November 10–30, 2019.

2. *Applicant:* Patricia Ward, Nutopia Ltd., Kirkman House, 12–14 Whitfield Street, London, W1T 2RF, UK—Permit application No. 2020–015.

Activity for Which Permit Is Requested—Harmful Interference. The applicant and agents propose to film emperor penguins (*Aptenodytes forsteri*) underwater and on the sea ice, using handheld cameras, pole-mounted cameras, and cameras attached to remotely piloted aircraft systems (RPAS). The resulting footage and photography would be used to create media products including a multi-part series for television. The applicant and agents would access the filming area via helicopter and approach the penguins on foot or while diving. Divers would not approach penguins, but penguins are expected to come within five meters of divers. On the sea ice and when operating the RPAS, the applicant and agents would maintain distance from penguins that would avoid or minimize disturbance. The results of this work are expected to be useful for outreach and education about Antarctica and the scientific research conducted there.

Location—McMurdo Sound, Ross, Sea, Antarctica.

Dates of Permitted Activities—November 13–December 15, 2019.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–22193 Filed 10–9–19; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Regular Board of Directors Meeting

TIME AND DATE: 2:00 p.m., Tuesday, October 15, 2019.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO

Agenda

I. Call to Order
II. Approval of Minutes
III. Executive Session: Report From CEO
IV. Discussion Item National NeighborWorks Association
V. Action Item LIFT 7.0 (2020)
VI. Action Item Western Region—Lease Renewal
VII. Action Item Auditor Rotation Policy
VIII. Discussion Item Non-Core Funds
IX. Discussion Item Audit Committee Report
X. Discussion Item Governance Working Group Report
XI. Discussion Item Health Insurance Delegation of Authority
XII. Discussion Item FY2020 Corporate Goals
XIII. Management Program Background and Updates
XIV. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

Rutledge Simmons,

EVP & General Counsel/Corporate Secretary

[FR Doc. 2019–22301 Filed 10–8–19; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0074]

Information Collection: NRC Form 850, Request for Contractor Assignment(s)

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public

comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 850, ''Request for Contractor Assignment(s).''

DATES: Submit comments by December 9, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0074. Address questions about NRC docket IDs in *Regulations.gov* to Anne Frost; telephone: 301–287–9232; email: *Anne.Frost@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0074 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0074. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0074 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and NRC Form 850 are available in ADAMS under Accession Nos. ML19170A201 and ML19213A236.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0074 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 850, ''Request for Contractor Assignment(s)''.

2. *OMB approval number:* 3150–0218.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* NRC Form 850.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* NRC contractors, subcontractors and other individuals who are not NRC employees.

7. *The estimated number of annual responses:* 500.

8. *The estimated number of annual respondents:* 500.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 85.

10. *Abstract:* Part 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance,'' establishes requirements that individuals requiring an access authorization and/or employment clearance must have an investigation of their background. NRC Form 850 will be used by the NRC to obtain information on NRC contractors, subcontractors, and other individuals who are not NRC employees and require access to NRC buildings, IT systems, sensitive information, sensitive unclassified information, or classified information.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 7th day of October, 2019.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–22224 Filed 10–9–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–2 and CP2020–2; MC2020–3 and CP2020–3; MC2020–4 and CP2020–4]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 15, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–2 and CP2020–2; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 119 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 15, 2019.

2. *Docket No(s).:* MC2020–3 and CP2020–3; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 120 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 15, 2019.

3. *Docket No(s).:* MC2020–4 and CP2020–4; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 121 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 15, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–22211 Filed 10–9–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

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:* October 10, 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 October 4, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 120 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–3, CP2020–3.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–22129 Filed 10–9–19; 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:* October 10, 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 October 4, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 119 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2020–2, CP2020–2.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–22128 Filed 10–9–19; 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:* October 10, 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 October 4, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 121 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–4, CP2020–4.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–22125 Filed 10–9–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87224; File No. SR–CBOE–2019–081]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Minor Updates and Consolidate Various Exchange Rules in Connection Generally With Options Trading on the Exchange, Including Those Regarding Trading Halts and the Plan To Address Extraordinary Market Volatility, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 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 October 1, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to make minor updates and consolidate various Exchange Rules in connection generally with options trading on the Exchange, including those regarding trading halts and the Plan to Address Extraordinary Market Volatility (the ''Plan''), and move those Rules from the currently effective Rulebook (''current Rulebook'') to the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to consolidate various rules in connection generally with trading on the Exchange into sections of proposed Chapter 5 (Options Trading) in the shell Rulebook. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Exchange notes that it has already submitted (or will submit) other rule filings that update, consolidate, and move many of the current Exchange Rules to Chapter 5 of the shell Rulebook. This proposed rule change now seeks to update, consolidate, and move the remaining Exchange Rules (and subsequently delete these rules from the current Rulebook) intended to be housed under Chapter 5 of the shell Rulebook upon migration. The proposed rule change moves and, where applicable, consolidates the following:

Proposed rule for shell rulebook	Current rule(s)
5.10 Give Up of Clearing TPH	6.21 Give Up of Clearing TPH.
5.11 Binding Transactions:	
5.11(a) (General)	6.48(a) Contract Made on Acceptance of Bid or Offer.
5.11(a) (Erroneous Report)	6.52 Price Binding Despite Erroneous Report.
5.11(b) (Comparison)	6.66 Comparison Does Not Create Contract.
5.12 Transactions Off the Exchange	6.49 Transactions Off the Exchange (including its Interpretations and Policies).
5.20 Trading Halts	6.3 Trading Halts. 21.12 (halts for Government securities options). 22.12 (halts for binary options). 23.8 (halts for interest rate options). 24.7 (halts for index options). 28.10 (halts for Corporate Debt Securities options). 29.13 (halts for Credit Options).
5.21 Equity Market Plan to Address Extraordinary Market Volatility	6.3A Equity Market Plan to Address Extraordinary Market Volatility.
5.22 Market-wide Trading Halts due to Extraordinary Market Volatility	6.3B Market-wide Trading Halts due to Extraordinary Market Volatility. 22.12 (halts for binary options). 24.7 (halts for index options). 29.13 (halts for Credit Options).
5.23 Unusual Market and Emergency Conditions	6.6 Unusual Market Conditions. 6.17 Authority to Take Action Under Emergency Conditions.
5.59 Firm Disseminated Market Quotes	8.51 Firm Disseminated Market Quotes.
5.85 Order and Quote Allocation, Priority, and Execution:	
5.85(g) (Stock-Option Orders and Security Future Option Orders)	6.48(b)–(d) Contract Made on Acceptance of Bid or Offer.
5.85(h) (Cabinet Orders)	5.12 (in current shell Rulebook) Cabinet Orders.

The proposed rule change to the rules indicated in the table above does not make any substantive changes to the rules. The proposed rule change makes only non-substantive changes to the rules in the table above to simplify rule language, update the rule text to read in plain English, update headings, update references to terms or other rule text that will be implemented upon migration (*e.g.,* in proposed Rule 5.21(b)), reformat the paragraph lettering and/or numbering, and update cross-references to rules not yet in the shell Rulebook but that will be in the shell Rulebook and implemented upon migration. The paragraphs below provide a description of the more detailed, non-substantive changes made.

In particular, regarding proposed Rule 5.20, the proposed rule change moves: Current Rule 24.7, in part, to proposed Rule 5.20(a)(3), as well as incorporates current Rule 24.7.03 into proposed Rule 5.20(a)(3) and current Rule 24.7.01 into proposed Rule 5.20(a)(6); current Rule 23.8 to proposed Rule 5.20(a)(7)(A); current Rule 21.12 to proposed Rule 5.20(a)(7)(B); current Rule 29.13 to proposed Rule 5.20(a)(7)(C); and current Rule 28.10 to proposed Rule 5.20(a)(7)(D). The proposed rule change also updates proposed 5.20(a) and (b) (current 6.3(a) and (b)) to eliminate the distinction between who may declare a halt for two days and for more than two days, and who may resume trading. As proposed under 5.20(a), two Floor Officials and a senior executive officer may halt trading for any number of days and, under proposed Rule 5.20(b), may resume trading. This is the same manner in which current Rule 24.7 (halts for index options) governs trading halts and resumptions.[5] The proposed rule change incorporates reference to Rule 5.31(g), which is currently in the shell Rulebook and governs the opening process following a trading halt, into proposed Rule 5.20(b) (current Rule 6.3(b)). This does not alter the post-halt opening process but merely adds clarity by incorporating the appropriate cross-reference. The proposed rule change also moves the remainder of current Rule 24.7, which governs trading halts in connection with index options, to proposed Rule 5.20(d) and (e), and removes current Rule 24.7.02 as it is redundant of the resumption provision already provided for in current Rule 6.3 (proposed Rule 5.20(b)) and the determination of the Exchange to reopen using a different method already provided for in Rule 5.31(h), currently in the shell Rulebook. The proposed rule also deletes references to ''suspension'', as this is the same as a halt.[6]

The Exchange again notes that the proposed changes do not make any substantive changes to the current rules, but instead consolidate the rules in connection with trading halts into one, concise rule governing trading halts. The Exchange also notes that the proposed rule removes language throughout the current rules where it states that Rules 6.3 and/or 6.3B are applicable to binary options, index options, and credit options, as this is redundant of the rules referenced which currently govern all such securities and options on securities. The proposed rule combines Rule 6.3.01 and .04 into proposed Rule 5.20(c). It removes current Rule 6.3.02 because it is redundant of the reasons already enumerated in current Rule 6.3(a) (proposed Rule 5.20(a). Rule 6.3.02 states that generally, in the case of an option on a security, trading will be halted when a regulatory halt in the underlying security has occurred in the primary market for that security. The

[5] The proposed rule change also incorporates into proposed Rule 5.20(a) the rule language from current Rule 27.4(a) that trading may be halted ''to protect investors'' (in addition to the language that trading may be halted in the interests of a fair and orderly market).

[6] *See* Securities Exchange Act Release No. 39292 (November 3, 1997), 62 FR 60738 (November 12, 1997) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Trading Halts and Suspensions) (SR–CBOE–97–35).

Exchange notes that during a Regulatory Halt an underlying security has halted trading across the industry, and during a non-Regulatory Halt the primary exchange has experienced a technical issue but the underlying security continues to trade on other equities platforms. Proposed Rule 5.20(a)(1) provides that in the case of an option on a security trading in the underlying security has been halted in the one or more of the markets trading the underlying security, thereby covering a Regulatory Halt that may occur across all markets, but not necessarily halting trading when a halt occurs only in the primary market. Accordingly, when the primary market halts trading for non-regulatory matters and the security continues to trade on other equity exchanges, Cboe Options may continue to trade options on that security.

The proposed rule change also removes current Rule 22.12 as it states only that current Rules 6.3, 6.3B and 24.7 shall be applicable to binary options, which is redundant of the cross-referenced rules themselves (as proposed). Indeed, proposed Rule 5.20 (current Rule 6.3) incorporates the applicability of current Rules 27.7 [sic] and 6.3 (proposed subparagraphs (a)(1) through (a)(6)) via proposed subparagraph (a)(8), and proposed Rule 5.22(e) makes it explicit that proposed Rule 5.22 (current Rule 6.3B) applies to binary options (as well as Credit Options and index options). The proposed rule change removes the term market-if-touched order from current Rule 6.6 (proposed Rule 5.23) as this order is no longer available on the Exchange pursuant to Rule 5.6, which governs order types, order instructions, and times-in-force and is currently in the shell Rulebook. The proposed rule change also removes current Rule 6.5 which states that no regular Trading Permit Holder shall bid, offer, purchase or write (sell) on the Exchange any security other than an option contract that is currently open for trading in accordance with the provisions of current Chapter 5 (shell Chapter 4). This rule is redundant of the provisions of current Chapter 5, which provide that an option contract will not be listed or open for trading if it does not meet the required listing criteria under the relevant rules of current Chapter 5. This, in turn, would result in a Trading Permit Holder's inability to transact at all on such an option contract.

The Exchange notes that proposed Rule 5.22 merely moves the Interpretation and Policy section to current Rule 6.3B to the body of the proposed rule. As stated above, proposed Rule 5.22(e) states that Rule 5.22 applies to binary options (provided for in current Rule 22.12), Credit Options (provided for in current Rule 29.13), and index options (provided for in current Rule 24.7). It also deletes current Rule 6.3C (which expired on February 4, 2014 in accordance with Rule 6.3C.03) regarding individual stock trading pauses due to extraordinary market volatility and Rule 6.3.03 also regarding trading pauses (as it was implemented in connection with the, now expired, Rule 6.3C ''Pause Pilot''),[7] because current Rule 6.3B (proposed Rule 5.22) already governs trading halts in both stock and stock options.

Additionally, proposed Rule 5.59 makes minor, non-substantive changes to current Rule 8.51. The proposed changes update the current Rule 8.51 definitions by removing language that references optional classes on the Cboe Hybrid System, as all classes currently trade on the System. The Exchange notes that the classes trading on the System are made available to the floor (*i.e.,* made available to the trading crowd), and an interest that trades on the floor is systemized according to Exchange Rules through approved systems. It also removes from the current Rule 8.51 definition, language references Interpretation and Policy .01, as this Interpretation and Policy has been previously removed, and this language was inadvertently maintained in the rules. The proposed change moves footnote 1 and 2 to the body of proposed Rule 5.59, and updates references to SEC Rules.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to consolidate and update the Exchange's rules in anticipation of the technology migration on October 7, 2019. The proposed rule change does not make any substantive changes to the Exchange Rules or Exchange functionality. The Exchange believes that the non-substantive changes to update terms and references, simplify rule language, make the rule provisions plain English, consolidate and reorganize rules and rule paragraphs and/or Interpretations and Policies, and remove rules that are redundant or have since expired and are no longer applicable to trading on the Exchange will foster cooperation and coordination with those facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system by simplifying the Exchange Rules and Rulebook as a whole, and making them easier to understand. The Exchange also believes that simplifying the Exchange Rules will protect investors by resulting in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the

[7] *See* Securities Exchange Act Release No. 62272 (June 10, 2010), 75 FR 34509 (June 17, 2010) Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Individual Equity Options Overlying Stocks Subject to Trading Pauses Due to Extraordinary Market Volatility) (SR–CBOE–2010–055); Securities Exchange Act Release No. 64434 (May 6, 2011) 76 FR 27687 (May 12, 2011) (Notice of Proposed Rule Change Related to the Individual Trading Pause Pilot and CBSX Market-Maker Quoting Obligations) (SR–CBOE–2011–049); *and* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving Proposed Rule Changes Relating To Expanding the Pilot Rule for Trading Pauses Due to Extraordinary Market Volatility to All NMS Stocks) (SR–CBOE–2011–049). *See also* Securities Exchange Act Release No. 82646 (February 7, 2018), 83 FR 6294 (February 13, 2018) (SR–CBOE–2018–010). The Exchange notes that SR–CBOE–2018–010 had been implemented to delete Exchange Rules that no longer applied to the Exchange and, at the time, should have deleted current 6.3.03 (what was then 6.3.06) as it was no longer applicable to the Exchange, however, it inadvertently left this provision under Rule 6.3.

[8] The proposed Rule change updates references to SEC Rules in proposed Rule 5.12, as well.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

context of a technology migration of the Cboe Affiliated Exchanges, and not as a competitive filing. As stated, the proposed changes to the rules are consistent with the shell Rulebook that will be in place come October 7, 2019 and provide clear, consistent rules for all market participants upon the completion of migration. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it does not in any way substantively alter the current rules of the Exchange. It merely intends to provide simplified, consolidated rules upon migration. Likewise, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition because the proposed rules are substantively the same as the Exchange's current rules, which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative prior to the Exchange's proposed system migration on October 7, 2019, in order to permit the Exchange to provide a complete Rulebook upon the completion of the migration. According to the Exchange, the proposed rule change simplifies, reorganizes, and updates its rule text and does not substantively alter any of its rules. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues and makes only non-substantive changes to the rules. Therefore, the Commission designates the proposed rule change to be operative on upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–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–CBOE–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–CBOE–2019–081 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22138 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87231; File No. SR–GEMX–2019–14]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Rulebook and By-Laws

October 4, 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 23, 2019, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange's board (''Board'') and Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.[3]

Rules 200–203

Chapter 2 of the Exchange's Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200–203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange's inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.[4] Accordingly, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's Limited Liability Company Agreement (''LLC Agreement'') and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer and President of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.[5] With the changes in SR–GEMX–2017–37 and SR–GEMX–2018–24, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members.[6] In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, instead of their rulebooks, pertaining to committees composed solely of Directors and committees not composed solely of Directors.[7] The Exchange further seeks to delete Rules 202 and 203 given that similar provisions governing committee procedures and general duties and powers are now set forth in Section 9(g) of the LLC Agreement and in By-Law Article III and Article VI.

By-Law Article I

Currently, the definition of ''Non-Industry Director'' in the Exchange By-Laws refers to, among other individuals, an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.[8] Because only Nasdaq currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates.* The Exchange believes that the proposed changes will bring greater clarity to the Exchange's rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange's Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director[9] under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (*i.e.,* ''an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange'') would still fall under (iii) an individual who would not be an Industry Director.[10] With the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references herein and in the Exhibit 5 to ''the Company'' mean the Exchange. Company is defined in the By-Laws to mean Nasdaq GEMX, LLC.

[4] *See* Securities Exchange Act Release No. 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR–GEMX–2017–37) (establishing, among other changes, a Board and committee structure substantially similar to The Nasdaq Stock Market LLC's structure); and Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR–GEMX–2018–24) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange's board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (''BX''), The Nasdaq Stock Market LLC (''Nasdaq''), and Nasdaq PHLX LLC (''Phlx'').

[5] For example, the Exchange's former Business Conduct Committee (''BCC'') was established by the Chief Executive Officer and President pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR–GEMX–2018–24. *See* Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR–GEMX–2018–24).

[6] *See* By-Law Article III, Sections 4–6. In addition, the provisions governing the Exchange Review Council are specified in By-Law, Article VI.

[7] *See* BX By-Law Article IV, Sections 4.12–4.14 and Article VII; Nasdaq By-Law Article III, Sections 4–6 and Article VI; and Phlx By-Law Article V.

[8] In addition, the term ''Non-Industry Director'' encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. *See* By-Law Article I, Section (w).

[9] The term ''Public Director'' means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. *See* By-Law Article I, Section (z).

[10] The term ''Industry Director'' means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')), who (i) is or has served in the prior three years as an officer, director, or employee

changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a ''Non-Industry member'' of a committee.[11]

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[12] As set forth in Article I, Section (z), a ''Public Director'' is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. ''Issuer representative'' is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as ''an officer, director, or employee or an issuer of securities listed on the national securities exchange operated by the Exchange.'' [13] The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.[14] Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a ''Public member'' of a committee.[15]

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors.[16] Accordingly, current Board qualification requirements such as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.[17]

By-Law Article III, Section 2(a)

The Exchange proposes to amend By-Law Article III, Section 2(a) to revise the qualifications for any position on the Board required to be representative of issuers. As discussed above, Article III, Section 2(a) requires that the Board be composed of at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[18] The Exchange adopted this provision when it conformed its By-Laws to those of Nasdaq as part of its effort to harmonize corporate governance processes with its affiliated exchanges.[19] As noted above, unlike Nasdaq, the Exchange does not currently operate an equities listing market and therefore believes it is more appropriate to align its Board composition requirements on this point with the By-Laws of BX and Phlx, which both currently require only one Director representative of issuers and investors, regardless of Board size.[20] The Exchange's proposal would also change the Board composition requirement to more closely track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be ''representative of issuers and investors.''

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the Regulatory Oversight Committee (''ROC'') be comprised of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Nasdaq Rule 5605. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of *at least* three members, as is currently set forth in the ROC Charter.[21] All members of the ROC will continue to be Public Directors and ''independent directors'' as defined in Nasdaq Rule

of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* By-Law Article I, Section (m).

[11] *See* By-Law Article I, Section (x).

[12] *See* By-Law Article III, Section 2(a).

[13] *See* By-Law Article I, Section (w). As discussed above, the Exchange will amend this provision to refer to ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates.''

[14] This is consistent with the longstanding best practice of the Exchange's ultimate parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered ''independent directors'' as defined in Nasdaq Rule 5605. *See* By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

[15] *See* By-Law Article I, Section (aa).

[16] The term ''Member Representative Director'' means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. *See* By-Law Article I, Section (r). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the ''rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . .''

[17] *See* By-Law Article III, Section 2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. *See* LLC Agreement Section 9(a).

[18] By-Law Article III, Section 2(a) also requires that the number of Non-Industry Directors (which includes Public Directors and issuer representatives) shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Furthermore, Section 9(a) of the LLC Agreement requires that at least 20% of the Directors be Member Representative Directors. These Board qualifications are not being amended.

[19] *See* Securities Exchange Act Release No. 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR–GEMX–2017–37).

[20] *See* BX By-Law Article IV, Section 4.3; and Phlx By-Law Article III, Section 3–2(a). Similar to the Exchange, BX and Phlx do not currently operate equities listing markets.

[21] The ROC Charter is available at: *http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25.*

5605. Lastly, the Exchange also proposes to make technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,[23] in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be 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.

Rules 200–203

As discussed above, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange's current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.[24] Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.[25] Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be ''representative of issuers and investors.'' The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board composition to reflect a balance among Non-Industry Directors (including Public Directors and Director representatives of issuers and investors), Industry Directors, and Member Representative Directors (with the latter continuing to constitute 20% of the Board).[26] Accordingly, the Exchange believes that the changes to the Board qualifications proposed herein will more accurately reflect current Exchange operations while continuing to meet the statutory requirements under Section 6(b)(3) of the Act. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's Board qualifications on this point into greater conformity with those of BX and Phlx, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.[27]

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and ''independent directors'' as defined in Nasdaq Rule 5605 will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name will bring greater clarity to the Exchange's rules, which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, 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.

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

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

[24] *See supra* note 14.

[25] *See supra* notes 16 and 17, with accompanying text.

[26] *See supra* note 18.

[27] *See supra* note 20.

19(b)(3)(A) of the Act[28] and subparagraph (f)(6) of Rule 19b–4 thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[31] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its Rulebook and By-Laws, which would eliminate obsolete provisions in the Exchange's Rulebook and better align provisions in the Exchange's By-Laws with those in the By-Laws of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2019–14 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–2019–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2019–14 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22141 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87237; File No. SR–CBOE–2019–093]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Automated Improvement Mechanism and Solicitation Auction Mechanism for Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 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 October 4, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the Exchange's Rules regarding the automated improvement mechanism (''AIM'') and solicitation auction mechanism (''SAM'') for flexible exchange options (''FLEX Options'') (''FLEX AIM'' and ''FLEX SAM,'' respectively) and moves those Rules from the currently effective Rulebook (''current Rulebook'') to the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The proposed rule change amends current Rules 24A.5A and 24A.5B regarding the FLEX AIM Auction and the FLEX SAM Auction, respectively. The proposed changes reflect recent amendments to general FLEX trading rules as well as recent amendments to the non-FLEX AIM and SAM Auctions.[5] The proposed rule change amends and moves the following provisions regarding the terms of FLEX AIM and SAM Auctions from the current Rulebook to the shell Rulebook. In addition to the substantive changes described below, the proposed rule change makes additional nonsubstantive changes to these Rules, including to make the rule text plain English, simplify the rule provisions, update cross-references and paragraph numbering and lettering, reorganize certain provisions, and eliminate redundant provisions.

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed substantive changes
FLEX AIM Auction			
A FLEX Trader may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (''Agency Order'') against principal or solicited order(s) (except for the account of any FLEX Market-Maker[6] with an appointment in the applicable FLEX Option class on the Exchange (an ''Initiating Order'') provided it submits the Agency Order for electronic execution into a FLEX AIM Auction.	Rule 24A.5A, introductory paragraph and Interpretations and Policies .04 and .05.	Rule 5.73, introductory paragraph.	The proposed rule change clarifies that an Initiating Order may consist of one or more solicited orders, as further discussed below. The proposed rule change also specifies in the introductory paragraph that both simple and complex orders may be submitted into a FLEX AIM Auction, as the auction will apply to both simple and complex orders in a substantially similar manner, as further discussed below. The proposed rule change deletes a price requirement related to the best bid or offer (''BBO''),[7] because there will no longer be an electronic book (and thus no BBO) for FLEX Options.[8] Because the Exchange does not currently have an electronic book for FLEX Option classes, and thus there are no resting orders to potentially execute at the conclusion of a FLEX AIM Auction, deletion of this provision will have no impact on how FLEX AIM Auctions operate.
An Agency Order must be in a FLEX Option class the Exchange designates as eligible for FLEX AIM Auctions.	Rule 24A.5A(a)(1).	Rule 5.73(a)(1) ..	None.
The Agency Order and Initiating Order must each be a FLEX Order that complies with Rule 5.72(b) in a permissible FLEX Option series that complies with Rule 4.21.	N/A	Rule 5.73(a)(2) ..	This requirement is not explicitly stated in the current Rules; however, it is consistent with current functionality, and the proposed rule change merely states this in the Rules. For a FLEX AIM Auction to occur, the orders submitted would need to be in a series eligible for FLEX trading, and thus include all the terms necessary to comprise a FLEX Option series.[9]
The Initiating FLEX Trader must mark an Agency Order for FLEX AIM Auction processing.	Rule ..... 24A.5A(b)(1)(i) ...	Rule ..... 5.73(a)(3)	None.
There is no minimum size for Agency Orders. The Initiating Order must be for the same size as the Agency Order.	Rule 24A.5A(a)(1) and (2) and Interpretation and Policy .03.	Rule 5.73(a)(4) ..	The proposed rule change deletes the provision from current subparagraph (a)(1) that permits the Exchange to designate eligibility size parameters for FLEX AIM Auctions. The Exchange has not designated any such eligibility size parameters, and intends to continue to have no minimum size requirements for Agency Orders, so the Exchange no longer needs this flexibility. The proposed rule change clarifies in the Rules that the Initiating Order must be for the same size as the Agency Order, which is implied by the current Rules.[10]

[5] *See* SR–CBOE–2019–045 (proposed changes to the Exchange's non-FLEX AIM Auction); SR–CBOE–2019–051 (proposed changes to the Exchange's non-FLEX complex AIM Auctions); SR–CBOE–2019–063 (proposed changes to the Exchange's non-FLEX SAM Auction); SR–CBOE–2019–064 (proposed changes to the Exchange's non-FLEX C–SAM Auction); and SR–CBOE–2019–084 (proposed changes to the Exchange's FLEX trading rules).

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed substantive changes
The price of the Agency Order and Initiating Order must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Rule 5.4(c)(4)[11] of the shell Rulebook). The price must be in the same format (*i.e.,* price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Initiating Order are complex orders, the price must be a net price [12] for the complex strategy.	Rule 24A.5A(b)(1)(vii) and Interpretation and Policy .05.	Rule 5.73(a)(5)	The current rule state the minimum increment for responses and the Initiating TPH's submission is determined by the Exchange but may not be smaller than $0.01 or .01%, and premiums are rounded to the nearest minimum increment. This is consistent with the minimum increment available for all FLEX Trading, so the proposed rule change merely references Rule 5.4(c)(4) in the shell Rulebook, which describes the permissible minimum increments for FLEX Option series, rather than repeats those increments. Additionally, while current rules permit bids and offers (including the price submitting into a FLEX AIM Auction) to be in a different format than the exercise price of a FLEX Option series, the current functionality does not permit this. Rule 5.3(e)(3) in the shell Rulebook makes it clear that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price.[13] There is no substantive change to the permissible minimum increments for orders submitted to a FLEX AIM Auction. The proposed rule change maintains the rule provision that complex Agency and Initiating Orders must include a net price. See the discussion below regarding the application of FLEX AIM to complex orders, including proposed changes to current Rule 24A.5A, Interpretation and Policy .05.
An Initiating FLEX Trader may only submit an Agency Order to a FLEX AIM Auction after trading in FLEX Options is open pursuant to Rule 5.71[14].	N/A	Rule 5.73(a)(6)	This is consistent with current functionality, as executions cannot occur prior to the opening of trading. The proposed rule change clarifies this in the Rule.
The System rejects or cancels both an Agency Order and Initiating Order submitted to a FLEX AIM Auction that do not meet the conditions in proposed paragraph (a).	N/A	Rule 5.73(a)	This is consistent with current functionality and the concept of eligibility requirements, and the proposed rule change explicitly states this in the Rule.
The Initiating Order must stop the entire Agency Order at a price in the same format (*i.e.,* price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Initiating Order are complex orders, the price must be a net price for the complex strategy.	Rule 24A.5A(b)(1)(vii) and Interpretation and Policy .05.	Rule 5.73(b)	The proposed rule change references Rule 5.4 in the shell Rulebook, which describes the permissible minimum increments for FLEX Option series, rather than repeats those increments. There is no substantive change to the permissible minimum increments for orders submitted to a FLEX AIM Auction.
The Initiating FLEX Trader must specify (1) a single price at which it seeks to execute the Agency Order against the Initiating Order (a ''single-price submission''), including whether it elects to have last priority in allocation (as described in proposed subparagraph (e)(4)); or (2) an initial stop price and instruction to automatically match the price and size of all FLEX AIM responses (''auto-match'') at each price, up to a designated limit price, better than the price at which the balance of the Agency Order can be fully executed (the ''final auction price'').	Rule 24A.5A(a)(2) and (b)(1)(i).	Rule 5.73(b)(1) and (2).	The proposed rule change deletes the provision that the Agency Order will be stopped at the better of the BBO or the Agency Order's limit price if designated as auto-match, and instead will have an initial stop price, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.[15]
The System rejects or cancels both an Agency Order and Initiating Order submitted to a FLEX AIM Auction that do not meet the conditions in proposed paragraph (b).	N/A	Rule 5.73(b)	This is consistent with current functionality and the concept of eligibility requirements, and the proposed rule change explicitly states this in the Rule.
One or more FLEX AIM Auctions in the same FLEX Option series or complex strategy, as applicable, may occur at the same time.	Rule 24A.5A(b) and Interpretation and Policy .05.	Rule 5.73(c)(1)	The proposed rule change permits concurrent FLEX AIM Auctions, which the current rule prohibits, as further discussed below. The proposed rule change also deletes the provision that says unrelated FLEX Orders may not be submitted to the electronic book for the duration of a FLEX AIM Auction, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.
The System initiates the FLEX AIM Auction process by sending a FLEX AIM Auction notification message detailing the side, size, Auction ID, the length of the FLEX AIM Auction period, and FLEX option series or complex strategy, as applicable, of the Agency Order to all FLEX Traders that elect to receive FLEX AIM Auction notification messages. FLEX AIM Auction notification messages are not disseminated to OPRA.	Rule 24A.5A(b)(1)(ii) and (vi).	Rule 5.73(c)(2)	The current rule states the auction message (currently called a request for responses (''RFR'')) details the size and side of the order, which message is set to all FLEX Traders that have elected to receive RFRs upon receipt of a properly designated Agency Order for FLEX AIM processing. Other than changes to terminology and other nonsubstantive changes, the proposed rule change adds that this message will also include the Auction ID and options series or complex strategy, as applicable, of the Agency Order. This is consistent with the current RFR that is disseminated, and the proposed rule change merely adds details to the rule. The proposed rule change to add that the FLEX AIM Auction notification message includes the length of the FLEX AIM Auction period relates to the proposed change below that the Initiating FLEX Trader, rather than the Exchange, will designate the length of the FLEX AIM Auction period (and therefore FLEX Traders will know how long they have to respond to a FLEX AIM Auction). The proposed rule change also adds that AIM Auction notification messages are not included in the disseminated OPRA, which is also consistent with current functionality.[16]
The ''FLEX AIM Auction period'' is a period of time designated by the Initiating FLEX Trader, which may be no less than three seconds and no more than five minutes. The designated length of the FLEX AIM Auction period may not be longer than the amount of time remaining until the market close.	Rule 24A.5A(b)(1)(iii)	Rule 5.73(c)(3)	The proposed rule change adds a maximum time to the range for the FLEX AIM Auction period (the minimum potential auction period remains three seconds), which proposed maximum time is consistent with current Exchange authority under the current Rules. Additionally, this corresponds to the same permissible time range as that for electronic FLEX Auctions pursuant to Rule 5.72(c) in the shell Rulebook, and permits the Initiating FLEX Trader to designate the length of the FLEX AIM Auction when submitting the Agency Order rather than have the Exchange establish a length for all FLEX AIM Auctions. It also ensures that a FLEX AIM Auction will conclude prior to the close of trading to prevent executions after the market close. This is consistent with the standard FLEX electronic auction, which permits FLEX Traders to designate the length of that auction (and permits it to be from three seconds to five minutes). This provides consistency among electronic FLEX auctions. Additionally, it provides FLEX Traders with flexibility regarding the duration of the exposure time, which it may want to be longer than three seconds due to the terms of the FLEX Option series being auctioned.[17]
An Initiating FLEX Trader may not modify or cancel an Agency Order or Initiating Order after submission to a FLEX AIM Auction.	Rule 24A.5A(b)	Rule 5.73(c)(4)	The proposed rule change makes only nonsubstantive changes to this provision, as well as clarifies that the prohibition on the Initiating FLEX Trader from modifying or cancelling an order after submission to a FLEX AIM Auction applies to both the Agency Order and the Initiating Order (the current rules only references the Agency Order; however, they are submitted as a pair, and thus not being able to modify or cancel the Agency Order means that the Initiating FLEX Trader is not able to modify or cancel the Initiating Order either).
Any FLEX Trader may submit responses to a FLEX AIM Auction that are properly marked specifying price, size, side, and the Auction ID for the FLEX AIM Auction to which the FLEX Trader is submitting the response. A FLEX AIM response may only participate in the FLEX AIM Auction with the Auction ID specified in the response.	Rule 24A.5A(b)(1)(iv) and (v).	Rule 5.73(c)(5)	The current rule specifies that responses must include prices and sizes; the proposed rule change adds responses must also specify side and an Auction ID, which is consistent with current functionality and merely adds details to the rule. The proposed rule change adds that a FLEX AIM response may only participate in the AIM Auction with the Auction ID specified in the response. This is consistent with current functionality. The Exchange proposes to include this language given the above proposal that permits concurrent FLEX AIM Auctions. The proposed rule change deletes the provision that caps the price of a FLEX AIM response at the opposite side of the BBO, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed substantive changes
The minimum price increment for FLEX AIM responses is the same as the one the Exchange determines for a class pursuant to subparagraph (a)(4) above, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series. A response to a FLEX AIM Auction of a complex Agency Order must have a net price. The System rejects a FLEX AIM response that is not in the applicable minimum increment or format.	Rule 24A.5A(b)(1)(vii) and Interpretation and Policy .05.	Rule 5.73(c)(5)(A).	The proposed rule change adds that the System rejects a FLEX AIM response that is not in the applicable minimum increment or format, which is consistent with current functionality and merely adds detail to the rule. See the discussion below regarding the application of FLEX AIM to complex orders, including proposed changes to current Rule 24A.5A, Interpretation and Policy .05.
A FLEX Trader may submit multiple FLEX AIM responses at the same or multiple prices to a FLEX AIM Auction. For purposes of a FLEX AIM Auction, the System aggregates all of a FLEX Trader's FLEX AIM responses for the same EFID at the same price. The System caps the size of a FLEX AIM response, or the aggregate size of a FLEX Trader's FLEX AIM responses for the same EFID at the same price, at the size of the Agency Order (*i.e.*, the System ignores size in excess of the size of the Agency Order when processing the FLEX AIM Auction).	N/A	Rule 5.73(c)(5)(B) and (C).	This is consistent with current functionality. Current Rule 24A.5A contains no restriction on how many responses a FLEX Trader may submit; the proposed rule change merely makes this explicit in the Rules. The proposed rule change also states for purposes of a FLEX AIM Auction, the System aggregates all of a FLEX Trader's FLEX AIM responses for the same EFID at the same price. This (combined with the proposed size cap) will prevent a FLEX Trader from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order.
FLEX AIM responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX AIM response on the same side of the market as the Agency Order.	N/A	Rule 5.73(c)(5)(D)	This is consistent with current functionality, and the proposed rule change merely adds this detail to the rules. Additionally, the Exchange believes this is reasonable given that the purpose of an AIM response is to trade against the Agency Order in the AIM Auction into which the AIM response was submitted.
FLEX AIM responses are not visible to AIM Auction participants or disseminated to OPRA.	Rule 24A.5A(b)(1)(vi)	Rule 5.73(c)(5)(E)	None.
A FLEX Trader may modify or cancel its FLEX AIM responses during the FLEX AIM Auction.	Rule 24A.5A(b)(1)(viii)	Rule 5.73(c)(5)(F)	The current Rule permits FLEX Traders to cancel a FLEX AIM response, but does not explicitly state that those responses may be modified. A modification of a response is equivalent to a cancellation of an existing response and submission of a new response, but may instead be done through a different message type. Therefore, the proposed rule change permits the same activity that can be done pursuant to the current rule, but merely in a different manner (*i.e.,* modification rather than cancellation and separate entry).
A FLEX AIM Auction concludes at the earliest to occur of the following times: (1) The end of the FLEX AIM Auction period; and (2) any time the Exchange halts trading in the affected series, provided, however, that in such instance the FLEX AIM Auction concludes without execution.	Rule 24A.5A(b)(2)	Rule 5.73(d)	The proposed rule change deletes the provision that says a FLEX AIM Auction will conclude any time an RFR response matches the BBO on the opposite side of the market from the RFR responses, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.
At the conclusion of the FLEX AIM Auction, the System allocates the Initiating Order or FLEX AIM responses against the Agency Order at the best price(s) to the price at which the balance of the Agency Order can be fully executed (the ''final auction price''). If the FLEX AIM Auction results in no price improvement, the System executes the Agency Order at the stop price in the following order: Priority Customer responses receive first priority at each price level, the Initiating Order participation entitlement (50% or 40% depending on how many FLEX Traders submitted FLEX AIM responses at the same price receives second priority at the final auction price, all other responses have third priority and are allocated on a pro-rata basis pursuant to Rule 5.32(a)(1)(B), and the Initiating Order would have fourth priority to the extent there are any remaining contracts. If the FLEX AIM Auction results in price improvement for the Agency Order and the Initiating FLEX Trader selected a single-price submission, at each price better than the final auction price, the System executes the Agency Order first to Priority Customer responses (in time priority) and then to all other FLEX AIM responses, allocated on a pro-rata basis. At the final auction price, the System executes any remaining contracts from the Agency Order at that price in the order set forth in proposed subparagraph (e)(1). If the FLEX AIM Auction results in price improvement for the Agency Order and the Initiating FLEX Trader selected auto-match, at each price level better than the final auction price up to the designated limit price, the System executes the Agency Order against the Initiating Order for the number of contracts equal to the aggregate size of all FLEX AIM responses and then executes the Agency Order against those responses in the order set forth in proposed subparagraph (e)(2). At the final auction price, the System executes contracts at that price in the order set forth in proposed subparagraph (e)(1). If the Initiating FLEX Trader selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order. If the Initiating FLEX Trader elects last priority, then notwithstanding proposed subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX AIM responses at all prices equal to or better than the stop price. Last priority information is not available to other market participants and may not be modified after it is submitted.	Rule 24A.5A(b)(3).	Rule 5.73(e)	The proposed rule change deletes references to executions against FLEX Orders, and whether the final auction price locks an order on the electronic book, because there will no longer be an electronic book (and thus no BBO) for FLEX Options, and thus Agency Orders will only execute responses or the Initiating Order, as applicable. The proposed rule change deletes the reference to a FLEX Appointed Market-Maker participation entitlement, as there are currently no FLEX Appointed Market-Makers, and the Exchange has not applied a participation entitlement, and as a result, the Exchange is deleting FLEX Appointed Market-Makers from the Rules.[18] The proposed rule change provides that non-Priority Customer FLEX AIM responses will be allocated in a pro-rata manner rather than price-time. The majority of classes on the Exchange currently have a base allocation algorithm of pro-rata, and therefore the Exchange believes it is a reasonable manner in which to allocate FLEX AIM responses. FLEX AIM Priority Customer[19] responses will continue to have priority at each price level (in time priority); however, non-TPH broker-dealers will not and will be treated in the same manner as all other non-Priority Customer responses, as further discussed below. The Exchange notes the current rule states public customer orders have priority, rather than Priority Customers. Currently, the Exchange does not permit the submission of FLEX Orders with a Professional Capacity code, and so the terms public customer and Priority Customer practically mean the same thing. However, the Exchange plans to make the Professional Capacity code available for FLEX orders following migration, and because the System handles Professional orders like broker-dealer orders, those orders will not receive priority in a FLEX AIM Auction. Therefore, only Priority Customer responses will receive priority.[20] The proposed rule change also permits the Initiating FLEX Trader to select last priority, as further discussed below. Finally, the proposed rule change adds that any unexecuted responses (or portions) at the conclusion of the FLEX AIM Auction will be cancelled.
A FLEX Trader may only use a FLEX AIM Auction where there is a genuine intention to execute a bona fide transaction.	Rule 24A.5A, Interpretation and Policy .01.	Rule 5.73, Interpretation and Policy .01.	None.
It will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 10.1 (to which the Exchange intends to move Rule 4.1 from the current Rulebook) to engage in a pattern of conduct where the Initiating FLEX Trader breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating FLEX Trader would have otherwise received in accordance with the allocation procedures contained in paragraph (e) above.	Rule 24A.5A, Interpretation and Policy .02.	Rule 5.73, Interpretation and Policy .02.	The proposed rule change deletes the language that states the Agency Order cannot be broken up into separate orders for ''two (2) or fewer contracts,'' as that language is not in the corresponding provision for non-FLEX AIM (see Rules 5.37, Interpretation and Policy .02 and 5.38, Interpretation and Policy .02 of the shell Rulebook). Deletion of this language does not have any impact on the prohibited conduct in this provision, and provides consistency among the rules in the shell Rulebook regarding AIM Auctions.

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed substantive changes
FLEX SAM Auction			
A FLEX Trader (the ''Initiating FLEX Trader'') may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (''Agency Order'') against a solicited order(s) (which cannot have a Capacity of F for the same EFID as the Agency Order or for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (''Solicited Order'') if it submits the Agency Order for electronic execution into a FLEX SAM Auction pursuant to this Rule.	Rule 24A.5B, introductory paragraph and Interpretations and Policies .01 and .04.	Rule 5.74, introductory paragraph.	The proposed rule change adds that the Solicited Order cannot have a Capacity F for the same executing firm ID (''EFID'') as the Agency Order. Current Rule 24A.5B does not contain a similar provision, but the Exchange currently enforces the requirement that the contra-side order be a solicitation rather than a facilitation through surveillance. The proposed rule change adds this functionality, which will help with the enforcement of this requirement, in addition to surveillance. The proposed rule change also specifies in the introductory paragraph that both simple and complex orders may be submitted into a FLEX SAM Auction, as the auction will apply to both simple and complex orders in a substantially similar manner, as further discussed below.
An Agency Order must be in a FLEX Option class the Exchange designates as eligible for FLEX SAM Auctions.	Rule 24A.5B(a)(1)	Rule 5.74(a)(1)	None.
The Agency Order and Solicited Order must each be a FLEX Order that complies with Rule 5.72(b) in a permissible FLEX Option series that complies with Rule 4.21.	N/A	Rule 5.74(a)(2)	This requirement is not explicitly stated in the current Rules; however, it is consistent with current functionality, and the proposed rule change merely states this in the Rules. For a FLEX SAM Auction to occur, the orders submitted would need to be in a series eligible for FLEX trading, and thus include all the terms necessary to comprise a FLEX Option series.[21]
The Initiating FLEX Trader must mark an Agency Order for FLEX SAM Auction processing.	Rule 24A.5B(b)(1)(i)	Rule 5.74(a)(3)	None.
The Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The Solicited Order must be for (or must total, if the Solicited Order is comprised of multiple solicited orders) the same size as the Agency Order. The System handles each of the Agency Order and the Solicited Order as all-or-none.	Rule 24A.5B(a)(1) and (2).	Rule 5.74(a)(4)	The proposed rule change deletes the requirement that the Initiating FLEX Trader must designate each order entered into a FLEX SAM Auction as all-or-none (''AON''). The Exchange's new system has been designed to automatically handle any orders submitted into a SAM Auction (using the appropriate messaging) as all-or-none, so the Initiating FLEX Trader will no longer be required to add any specific AON designations to the Agency Order or Solicited Order. Therefore, the proposed rule change adds that the System handles each of the Agency Order and the Solicited Order as all-or-none. The proposed rule change clarifies the size requirements for mini-option contracts, which are 1/10th the size of standard option contracts. This is consistent with current functionality and is merely adding detail to the rule. See Rule 5.5, Interpretation and Policy .22 in the current Rulebook (which permits the listing of mini-options); see also Rule 5.39(a)(3) (which has the same size requirements for non-FLEX SAM Auctions). The proposed rule change clarifies in the Rules that the Solicited Order must be for the same size as the Agency Order, which is implied by the current Rules.[22]
The price of the Agency Order and Solicited Order must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Rule 5.4(c)(4)). The price must be in the same format (i.e., price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy.	Rule 24A.5B(a)(3)	Rule 5.74(a)(5)	The current rule state the minimum increment for the Initiating TPH's submission is determined by the Exchange but may not be smaller than $0.01 or .01%, and premiums are rounded to the nearest minimum increment. This is consistent with the minimum increment available for all FLEX Trading, so the proposed rule change merely references Rule 5.4(c)(4) in the shell Rulebook, which describes the permissible minimum increments for FLEX Option series, rather than repeats those increments. There is no substantive change to the permissible minimum increments for orders submitted to a FLEX SAM Auction. The proposed rule change maintains the rule provision that complex Agency and Initiating Orders must include a net price. See the discussion below regarding the application of FLEX SAM to complex orders, including proposed changes to current Rule 24A.5B, Interpretation and Policy .01.
An Initiating FLEX Trader may only submit an Agency Order to a FLEX SAM Auction after trading in FLEX Options is open pursuant to Rule 5.71.	N/A	Rule 5.74(a)(6)	This is consistent with current functionality, as executions cannot occur prior to the opening of trading. The proposed rule change clarifies this in the Rule.
The System rejects or cancels both an Agency Order and Solicited Order submitted to a FLEX SAM Auction that do not meet the conditions in proposed paragraph (a).	N/A	Rule 5.74(a)	This is consistent with current functionality, and the proposed rule change explicitly states this in the Rule.
The Solicited Order must stop the entire Agency Order at a price in the same format (i.e., price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy. The Initiating FLEX Trader must specify a single price at which it seeks to execute the Agency Order against the Solicited Order. The System rejects or cancels both an Agency Order and Solicited Order submitted to a FLEX SAM Auction that does not meet the conditions in proposed paragraph (b).	Rule 24A.5B(a)(3) and Interpretation and Policy .01, and 24A.5B(b)(1).	Rule 5.74(b)	The proposed rule change adds that the System rejects or cancels both an Agency Order and Solicited Order submitted to a FLEX SAM Auction that does not meet the conditions in proposed paragraph (b). This is consistent with current functionality, and the proposed rule change explicitly states this in the Rule. Additionally, while current rules permit bids and offers (including the price submitting into a FLEX SAM Auction) to be in a different format than the exercise price of a FLEX Option series, the current functionality does not permit this. Rule 5.3(e)(3) in the shell Rulebook makes it clear that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price.[23]
One or more FLEX SAM Auctions in the same FLEX Option series or complex strategy, as applicable, may occur at the same time.	Rule 24A.5B(b) and Interpretation and Policy .01.	Rule 5.74(c)(1)	The proposed rule change permits concurrent FLEX SAM Auctions, which the current rule prohibits, as further discussed below. The proposed rule change also deletes the provision that says unrelated FLEX Orders may not be submitted to the electronic book for the duration of a FLEX SAM Auction, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.
The System initiates the FLEX SAM Auction process by sending a FLEX SAM Auction notification message detailing the side, size, price, Capacity, Auction ID, the length of the FLEX SAM Auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all FLEX Traders that elect to receive FLEX SAM Auction notification messages. FLEX SAM Auction notification messages are not disseminated to OPRA.	Rule 24A.5B(b)(1)(ii)	Rule 5.74(c)(2)	The current rule states the auction message (currently called a request for responses (''RFR'')) details the price, size, and side of the order, which message is set to all FLEX Traders that have elected to receive RFRs upon receipt of a properly designated Agency Order for FLEX SAM processing. Other than changes to terminology and other nonsubstantive changes, the proposed provision specifies that the message will detail the Capacity of the Agency Order, an Auction ID, and the option series, in addition to the price, side, and size, of the Agency Order, which message is sent to all TPHs that elect to receive SAM Auction notification messages. This is consistent with the current auction message that is disseminated; the proposed rule change adds these details to the rule. The proposed rule change to add that the FLEX SAM Auction notification message includes the length of the FLEX SAM Auction period relates to the proposed change below that the Initiating FLEX Trader, rather than the Exchange, will designate the length of the FLEX SAM Auction period (and therefore FLEX Traders will know how long they have to respond to a FLEX SAM Auction). The proposed rule change also adds that FLEX SAM Auction notification messages are not included in the disseminated OPRA, which is also consistent with current functionality.[24]

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed substantive changes
The ''FLEX SAM Auction period'' is a period of time designated by the Initiating FLEX Trader, which may be no less than three seconds and no more than five minutes. The designated length of the FLEX SAM Auction period may not be longer than the amount of time remaining until the market close.	Rule 24A.5B(b)(1)(iii)	Rule 5.74(c)(3)	The proposed rule change adds a maximum time to the range for the FLEX SAM Auction period (the minimum potential auction period remains three seconds), which is consistent with current Exchange authority under the current Rules. Additionally, this corresponds to the same permissible time range as that for electronic FLEX Auctions pursuant to Rule 5.72 in the shell Rulebook, and permits the Initiating FLEX Trader to designate the length of the FLEX SAM Auction when submitting the Agency Order rather than have the Exchange establish a length for all FLEX SAM Auctions. It also ensures that a FLEX SAM Auction will conclude prior to the close of trading to prevent executions after the market close. This is consistent with standard FLEX electronic auction, which permits FLEX Traders to designate the length of that auction (and permits it to be from three seconds to five minutes). This provides consistency among FLEX trading. Additionally, it provides FLEX Traders with flexibility regarding the duration of the exposure time, which it may want to be longer than three seconds due to the terms of the FLEX Option series being auctioned.[25]
The Initiating FLEX Trader may not modify or cancel an Agency Order or Solicited Order after submission to a SAM Auction.	Rule 24A.5B(b)	Rule 5.74(c)(4)	The proposed rule change makes only nonsubstantive changes to this provision, as well as clarifies that the prohibition on cancelling a FLEX SAM Auction practically means that the Initiating FLEX Trader may not cancel (or modify, which would change the terms of the auction after it started, essentially creating a new auction) the Agency Order or the Solicited Order, the entry of which (subject to eligibility requirements) initiates the FLEX SAM Auction.
Any FLEX Trader other than the Initiating FLEX Trader (determined by EFID) may submit responses to a FLEX SAM Auction that are properly marked specifying price, size, side, and the Auction ID for the FLEX SAM Auction to which the FLEX Trader is submitting the response. A FLEX SAM response may only participate in the FLEX SAM Auction with the Auction ID specified in the response.	Rule 24A.5B(b)(1)(iii) and (vi).	Rule 5.74(c)(5)	The current rule specifies that responses must include prices and sizes; the proposed rule change adds responses must also specify side and an Auction ID, which is consistent with current functionality and merely adds details to the rule. The proposed rule change adds that a FLEX SAM response may only participate in the FLEX SAM Auction with the Auction ID specified in the response. This is consistent with current functionality. The Exchange proposes to include this language given the above proposal that permits concurrent FLEX SAM Auctions. The proposed rule change deletes the provision that caps the price of a FLEX SAM response at the opposite side of the BBO, because there will no longer be an electronic book (and thus no BBO) for FLEX Options. The proposed rule change permits all FLEX Traders (including Market-Makers from another options exchange) to submit responses to a FLEX SAM Auction. By permitting additional participants to submit responses to FLEX SAM Auctions, the Exchange believes this may provide the opportunity for additional liquidity in these auctions, which could lead to additional price improvement opportunities.
The minimum price increment for FLEX SAM responses is the same as the one the Exchange determines for a class pursuant to subparagraph (a)(4) above, and must be in the same format (i.e., price or percentage) as the exercise price of the FLEX Option series. A response to a FLEX SAM Auction of a complex Agency Order must have a net price. The System rejects a FLEX SAM response that is not in the applicable minimum increment or format.	Rule 24A.5B(b)(1)(v) and Interpretation and Policy .01.	Rule 5.74(c)(5)(A)	The proposed rule change adds that the System rejects a FLEX SAM response that is not in the applicable minimum increment or format, which is consistent with current functionality and merely adds detail to the rule. See the discussion below regarding the application of FLEX SAM to complex orders, including proposed changes to current Rule 24A.5B, Interpretation and Policy .01.
A FLEX Trader may submit multiple FLEX SAM responses at the same or multiple prices to a FLEX SAM Auction. For purposes of a FLEX SAM Auction, the System aggregates all of a FLEX Trader's FLEX SAM responses for the same EFID at the same price. The System caps the size of a FLEX SAM response, or the aggregate size of a FLEX Trader's FLEX SAM responses for the same EFID at the same price, at the size of the Agency Order (i.e., the System ignores size in excess of the size of the Agency Order when processing the FLEX SAM Auction).	N/A	Rule 5.74(c)(5)(B) and (C).	This is consistent with current functionality. Current Rule 24A.5B contains no restriction on how many responses a FLEX Trader may submit; the proposed rule change merely makes this explicit in the Rules. The proposed rule change also states for purposes of a FLEX SAM Auction, the System aggregates all of a FLEX Trader's FLEX SAM responses for the same EFID at the same price. This (combined with the proposed size cap) will prevent a FLEX Trader from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order.
FLEX SAM responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX SAM response on the same side of the market as the Agency Order.	N/A	Rule 5.74(c)(5)(D)	This is consistent with current functionality, and the proposed rule change merely adds this detail to the rules. Additionally, the Exchange believes this is reasonable given that the purpose of a FLEX SAM response is to trade against the Agency Order in the FLEX SAM Auction into which the FLEX SAM response was submitted.
FLEX SAM responses are not visible to FLEX SAM Auction participants or disseminated to OPRA.	Rule 24A.5B(b)(1)(iv)	Rule 5.74(c)(5)(E)	None.
A FLEX Trader may modify or cancel its FLEX SAM responses during the FLEX SAM Auction.	Rule 24A.5B(b)(1)(vii)	Rule 5.74(c)(5)(F)	The current Rule permits FLEX Traders to cancel a FLEX SAM response, but does not explicitly state that those responses may be modified. A modification of a response is equivalent to a cancellation of an existing response and submission of a new response, but may instead be done through a different message type. Therefore, the proposed rule change permits the same activity that can be done pursuant to the current rule, but merely in a different manner (*i.e.,* modification rather than cancellation and separate entry).
A FLEX SAM Auction concludes at the earliest to occur of the following times: (1) The end of the FLEX SAM Auction period; and (2) any time the Exchange halts trading in the affected series, provided, however, that in such instance the FLEX SAM Auction concludes without execution.	Rule 24A.5A(b)(2)	Rule 5.74(d)	The proposed rule change deletes the provision that says a FLEX SAM Auction will conclude any time an RFR response matches the BBO on the opposite side of the market from the RFR responses, , because there will no longer be an electronic book (and thus no BBO) for FLEX Options.
The Agency Order executes against the Solicited Order at the stop price if there are no Priority Customer FLEX SAM responses and the aggregate size of FLEX SAM responses at an improved price(s) is insufficient to satisfy the Agency Order. The Agency Order executes against FLEX SAM responses if: (a) There is a Priority Customer FLEX SAM response and the aggregate size of that response and all other FLEX SAM responses is sufficient to satisfy the Agency Order or (b) the aggregate size of FLEX SAM responses at an improved price(s) is sufficient to satisfy the Agency Order. At each price level, Priority Customer FLEX SAM responses have first priority, and all other FLEX SAM responses are allocated second on a pro-rata basis. There is no execution at the conclusion of a FLEX SAM Auction if there is a Priority Customer FLEX SAM response and the aggregate size of that response and other FLEX SAM responses is insufficient to satisfy the Agency Order. The System cancels or rejects any unexecuted FLEX SAM responses (or unexecuted portions) at the conclusion of a FLEX SAM Auction.	Rule 24A.5B(b)(3).	Rule 5.74(e)	The proposed rule change deletes references to executions against FLEX Orders, and whether the execution price is better than the BBO, because there will no longer be an electronic book (and thus no BBO) for FLEX Options, and thus Agency Orders will only execute responses or the Initiating Order, as applicable. The proposed rule change deletes the reference to a FLEX Appointed Market-Maker participation entitlement, as there are currently no FLEX Appointed Market-Makers, and the Exchange has not applied a participation entitlement, and as a result, the Exchange is deleting FLEX Appointed Market-Makers from the Rules (as noted above). The proposed rule change provides that FLEX SAM responses will be allocated in a pro-rata manner rather than time priority. The majority of classes on the Exchange currently have a base allocation algorithm of pro-rata, and therefore the Exchange believes it is a reasonable manner in which to allocate FLEX SAM responses. FLEX SAM Priority Customer responses will continue to have priority at each price level; however, non-TPH broker-dealers will not and will be treated in the same manner as all other non-Priority Customer responses, as further discussed below. Finally, the proposed rule change adds that any unexecuted responses (or portions) at the conclusion of the FLEX SAM Auction will be cancelled. See discussion above with respect to FLEX AIM regarding changing the term ''public customer'' to ''Priority Customer,'' as the same reasoning applies to the proposed change in the FLEX SAM rule.

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed substantive changes
Prior to entering Agency Orders into a FLEX SAM Auction on behalf of customers, Initiating FLEX Traders must deliver to the customer a written notification informing the customer that his order may be executed using the FLEX SAM Auction. The written notification must disclose the terms and conditions contained in proposed Rule 5.74 and be in a form approved by the Exchange.	Rule 24A.5B, Interpretation and Policy .03.	Rule 5.74, Interpretation and Policy .01.	None.
Under proposed Rule 5.74, Initiating FLEX Traders may enter contra-side orders that are solicited. FLEX SAM provides a facility for FLEX Traders that locate liquidity for their customer orders. FLEX Traders may not use the FLEX SAM Auction to circumvent Rule 5.9 or 5.73 in the shell Rulebook limiting principal transactions. This may include, but is not limited to, FLEX Traders entering contra-side orders that are solicited from (a) affiliated broker-dealers or (b) broker-dealers with which the FLEX Trader has an arrangement that allows the FLEX Traders to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal.	Rule 24A.5B, Interpretation and Policy .04.	Rule 5.74, Interpretation and Policy .02.	None.

The proposed rule change clarifies in the proposed introductory paragraph of each of proposed Rules 5.73 and 5.74 that the Initiating Order or Solicited Order, respectively, may consist of one or more solicited orders. This accommodates multiple contra-parties and increases the opportunities for customer orders to be submitted into a FLEX AIM or SAM Auction with the potential for price improvement, since the Initiating Order or Solicited Order, respectively, must stop the full size of the Agency Order. This has no impact on the execution of the Agency Order, which may already trade against multiple contra-parties depending on the final auction price, as set forth in proposed paragraph (e) of each of proposed Rules 5.73 and 5.74.

Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 currently describe the applicability of FLEX AIM and SAM Auctions, respectively. Because FLEX AIM and SAM Auctions apply to

[6] A FLEX Market-Maker with an appointment in a FLEX Option class is not what is currently referred to as a ''FLEX Appointed Market-Maker'' in the current Rulebook. Under current Rules, a ''FLEX Qualified Market-Maker'' is an Exchange-registered Market-Maker that is eligible to trade FLEX Options and is appointed to one or more FLEX Option classes, and a ''FLEX Appointed Market-Maker'' is an Exchange-registered Market-Maker that is eligible to trade FLEX Options that is selected by the Exchange to serve in such capacity for one or more FLEX Option classes, which has certain FLEX quoting obligations. *See* current Rule 24A.9. The Exchange currently has no FLEX Appointed Market-Makers in any FLEX Option class, and does not intend to, so it has deleted its rules related to FLEX Appointed Market-Makers. *See* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR–CBOE–2019–059).

[7] With respect to FLEX Options, the term ''BBO'' means the best bid or offer, or both, as applicable, entered in response to a Request for Quotes or resting in the electronic book. With respect to FLEX AIM and SAM Auctions, which are different than a Request for Quotes, the BBO only incorporates any bids and offers resting in the electronic book. While the Exchange currently has an electronic book for FLEX Options, it has only been used in recent months by one customer for limited purpose, and for a minimal amount of FLEX volume. Therefore, it is unlikely there would be resting FLEX Orders to be incorporated into the BBO. The Exchange will no longer have an electronic FLEX Book. *See* SR–CBOE–2019–084. Additionally, there is no RFQ process that is part of a FLEX AIM Auction.

[8] *See* SR–CBOE–2019–084 (which filing describes the current minimal, limited use of an electronic FLEX Book and the elimination of a book for FLEX Orders as of the System migration, and deletes rule provisions related to a FLEX electronic book from the rules in current Chapter XXIV).

[9] *See* Rule 5.72(b) of the shell Rulebook (which states that submission of a FLEX Order into a FLEX AIM Auction establishes a FLEX Option series as eligible for trading); *see also* Rule 4.21 (which describes the permissible terms of FLEX Option series, and states that a FLEX Option series may not have the same terms as a non-FLEX Option series on the same undelyring security or index that is already available for trading) and Rule 4.22 (which describes fungibility provisions when the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series).

[10] *See* current Rule 24A.5A(a)(2), which states the Initiating TPH must stop the ''entire'' Agency Order.

[11] Pursuant to Rule 5.4(c)(4) in the shell Rulebook, the minimum increment for bids and offers on FLEX Options may be no smaller than (A) $0.01, if the exercise price for the FLEX Option series is a fixed price, or (B) 0.01%, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index. The System rounds bids and offers to the nearest minimum increment.

[12] In current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01, the price of a complex order is referenced as a net debit or net credit price, while proposed Rules 5.73 and 5.74 just use the simplified term ''net price'' as that is consistent with the term used in other FLEX Rules in the shell Rulebook. *See, e.g.,* Rule 5.72(b)(2) in the shell Rulebook. A net debit price is merely a complex order with a net price to buy, and a net credit price is merely a complex order with a net price to sell, so the term net price covers both terms.

[13] *See also* SR–CBOE–2019–084.

[14] Pursuant to Rule 5.71 in the shell Rulebook, trading in FLEX Options in a trading session may begin, with respect to the Regular Trading Hours trading session, after 9:30 a.m. of the first disseminated (a) transaction on the primary listing market in the security underlying an equity option or (b) index value for the index underlying an index option, and with respect to the Global Trading Hours trading session, after 3:00 a.m.

[15] *See supra* note 7.

[16] This is also consistent with the auction notification message for non-FLEX AIM Auctions. *See* Rules 5.37(c)(3) and 5.38(c)(3) in the shell Rulebook.

[17] The Exchange believes the proposed time range is reasonable, because it is consistent with the lengths designated by FLEX Traders in the current electronic RFQ process. Specifically, the Exchange notes that from January through August of 2019, for electronic FLEX trading in the FLEX RFQ process (but not FLEX AIM and SAM Auctions), the average RFQ Response period is less than nine seconds, and the average RFQ Reaction period is approximately three minutes. Therefore, the average length of the electronic RFQ process is within the proposed exposure interval. Additionally, in 2019, only 25 of 3457 (or 0.7%) of electronic FLEX RFQs lasted for a total of more than five minutes in 2019, so the Exchange does not believe capping the length of the proposed electronic FLEX Auction at five minutes will have a significant impact on FLEX trading. *See* SR–CBOE–2019–084.

[18] *See supra* note 6.

[19] As defined in Rule 1.1 in the shell Rulebook, a ''Priority Customer'' is a person or entity that is a Public Customer (which is a person that is not a broker or dealer in securities) or a Professional (which is defined as any person or entity that (a) is not a broker or dealer in securities, and (b) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s); the System handles Professional orders in the same manner as broker-dealer orders unless otherwise specified).

[20] This is consistent with other Exchange auction functionality that prioritizes Priority Customer orders, as well as the customer overlay, which prioritizes Priority Customer orders, rather than Public Customer orders. *See, e.g.,* Rules 5.32(a)(2)(A) (describing the Priority Customer overlay), 5.33(d)(5) (describing how Priority Customers receive first priority following a complex order auction), and 5.37(e) (describing how Priority Customers receive first priority at each price level following an AIM Auction).

[21] *See supra* note 9.

[22] *See* current Rule 24A.5B(a)(2) (b)(3), which states each order entered into the FLEX SAM Auction must be AON, and that the Agency Order executes in full or is cancelled, and may be allocated entirely to the Solicited Order, subject to certain conditions. Given that both orders must be AON, if the Solicited Order was not the same size as the Agency Order, they would not be able to execute against each other at the conclusion of a FLEX SAM Auction.

[23] *See also* SR–CBOE–2019–084.

[24] This is also consistent with the auction notification message for non-FLEX SAM Auctions. *See* Rules 5.39(c)(3) and 5.40(c)(3) in the shell Rulebook.

[25] *See supra* note 17.

complex orders in the same manner as they apply to simple orders, other than the need for complex orders (and responses to auctions of complex orders) to include a net price (as required in current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01),[26] the Exchange no longer believes a separate interpretation and policy is necessary for complex orders. The Exchange makes FLEX AIM and SAM Auctions, respectively, available for complex orders in any FLEX Option class in which it makes the applicable auction available for simple orders, so the Exchange no longer needs separate flexibility to apply each auction to complex orders as provided by current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 (which state the Exchange may determine on a class-by-class basis to make the FLEX AIM Auction or FLEX SAM Auction, respectively, available for complex orders). As discussed below, the proposed rule change will permit multiple FLEX AIM and SAM Auctions for a complex strategy, and in any of the same individual series legs of the strategy, to be ongoing at the same time, so the proposed rule change deletes the provisions from current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 that state only one FLEX AIM Auction may be ongoing at any given time. Additionally, the proposed rule change deletes the provision in current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 that state unrelated FLEX Orders in any individual series legs may not be submitted to the electronic book for the duration of a FLEX AIM or SAM Auction, as there will no longer be a book available for FLEX Orders.[27] The Exchange believes this will simplify the FLEX AIM and SAM Auctions.

All eligibility requirements for FLEX AIM and SAM Auctions are set forth in the proposed rules,[28] so the proposed rule change also deletes the current flexibility to determine order types, origin codes, and marketability that are eligible for those auctions from current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01. As discussed above, complex orders, like simple orders, will only be able to trade against FLEX AIM or SAM responses, as applicable, so the proposed rule change deletes the provisions that state complex orders will only be eligible to trade with other complex orders through a FLEX AIM or SAM Auction, respectively. Order allocation for simple and complex orders following a FLEX AIM or SAM Auction will continue to be the same, as proposed Rule 5.73(e) and 5.74(e) apply to both simple and complex orders, and therefore the proposed rule change deletes that provision from current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01. Finally, because there will no longer be an electronic book (and thus no BBO) for FLEX Options, the proposed rule change deletes the provisions in Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 regarding the impact of bids and offers in the electronic book on FLEX AIM and SAM Auctions, respectively, and regarding the ability of orders in the individual legs to be submitted to the electronic book during an auction.

With respect to FLEX AIM Auctions, the proposed rule change provides that if the Initiating FLEX Trader selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order.[29] If the Initiating FLEX Trader selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order. In this case, the Initiating Order would only execute against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX AIM responses at all prices equal to or better than the stop price. Last priority information is not available to other market participants and may not be modified after it is submitted. This proposed rule change provides Initiating FLEX Traders with additional control over its execution of an Initiating Order against an Agency Order, which may further encourage FLEX Traders to submit Agency Orders to a FLEX AIM Auction for potential price improvement opportunities for those orders. This may also provide more opportunities for other FLEX Traders to participate in the FLEX AIM Auctions. The proposed last priority option is the same as the last priority provision option available in non-FLEX AIM Auctions, and thus the proposed rule change provides further consistency across the Exchange's auction mechanisms.[30]

The proposed rule change permits the Initiating FLEX Trader to designate the length of FLEX AIM and SAM Auctions, rather than the Exchange. The permissible length of the auctions continues to have a minimum of three seconds, which is consistent with the current Rules. The proposed rule change also imposes a maximum for the length of the auctions of five minutes, which is consistent with the permissible times for the FLEX electronic auction.[31] This will permit the Initiating FLEX Trader to determine a reasonable timeframe for the duration of an auction based on the FLEX Option series or complex strategy submitted into the auction, as well as provide for a timely execution of Agency Orders.

Unlike today, one or more FLEX AIM or SAM Auctions in the same FLEX Option series or complex strategy (as applicable) may occur at the same time. To the extent there is more than one FLEX AIM or SAM Auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the auctions will conclude sequentially based on the times at which each auction period concludes. At the time each auction concludes, the System allocates the Agency Order pursuant to proposed Rule 5.73(e) or 5.74(e), as applicable, and takes into account all FLEX responses submitted during the auction period. Concurrent auctions will be permitted in various other electronic auctions on the Exchange following migration.[32] If a FLEX Trader attempts to initiate a FLEX AIM or SAM Auction in a FLEX Option series while another auction in that series is ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX Auction, rather than requiring the FLEX Trader to wait for the first auction to conclude. The second FLEX Trader may not be able to submit a response to trade in the ongoing FLEX AIM or SAM Auction, because the terms may not be consistent with that FLEX Trader's order (for example, there may not be sufficient size, and the FLEX Trader may only receive a share of the auctioned order depending on other responses). Therefore, the Exchange believes providing this functionality for FLEX AIM and SAM Auctions may similarly lead to an increase in these auctions, which may provide additional opportunities for execution of FLEX Orders.

The proposed rule change eliminates priority for non-TPH broker-dealer responses at the conclusion of FLEX AIM and SAM Auctions, and thus those responses will be prioritized in the same

[26] *See supra* note 12.

[27] *See* SR–CBOE–2019–084.

[28] *See* proposed Rules 5.73(a) and 5.74(a), respectively.

[29] *See* proposed Rule 5.73(e)(4).

[30] *See* Rule 5.37(e) in the shell Rulebook.

[31] *See* Rule 5.72(b)(1)(F) in the shell Rulebook.

[32] *See, e.g.,* Rule 5.37(c)(1), 5.38(c)(1), 5.39(c)(1), and 5.40(c)(1).

manner as all other non-Priority Customer responses. Non-TPH broker-dealers do not, and have not, received priority in the non-FLEX AIM and SAM Auctions, so the proposed rule change aligns the provision regarding who receives first priority in a FLEX AIM or SAM Auction with the corresponding provisions for non-FLEX AIM and SAM Auctions.[33] The Exchange currently prioritizes contra-interest from these market participants to ensure that FLEX AIM and SAM Auctions satisfy the ''G'' exemption for yielding priority to non-members under Section 11(a)(1) of the Act. However, as discussed below, the Exchange believes the FLEX AIM and SAM Auctions, as proposed, satisfy the ''Effect vs. Execute'' exemption from Section 11(a) under the Act, and therefore does not need to provide additional functionality for TPHs to satisfy another exemption from Section 11(a) under the Act. Priority Customer responses will continue to receive first priority in both FLEX AIM and SAM Auctions, as they do in non-FLEX AIM and SAM Auctions. Therefore, the proposed rule change provides further consistency across the Exchange's auction mechanisms.[34]

As proposed, the general framework of the FLEX AIM and SAM Auctions will continue to be the same as the Exchange's non-FLEX AIM and SAM Auctions, with the differences being only those relating to the differences between FLEX and non-FLEX Options. The Exchange believes it will benefit investors to provide continued consistency across the Exchange's price improvement mechanisms.

The proposed rule change deletes Rule 24A.5A, Interpretation and Policy .06 and Rule 24A.5B, Interpretation and Policy .02 regarding post-trade verification procedures for FLEX AIM and SAM Auctions for complex orders. Due to the System updates in connection with the System migration, parties to executions follow FLEX AIM and SAM Auctions will no longer need to take additional steps with respect to executions of complex orders following an electronic FLEX AIM or SAM Auction.[35] These procedures require FLEX Traders to input the leg price, exercise price, and/or premium information into the System following execution of a complex FLEX Order. Pursuant to Rule 5.72(b)(2) in the shell Rulebook, FLEX Traders must submit all of this information upon entry of a FLEX Order. Therefore, pursuant to the proposed rule change, a FLEX Trader will be required to input the same information for each leg of a complex FLEX Order prior to submission rather than following execution. A FLEX Official may nullify a transaction following a FLEX AIM or SAM Auction pursuant to Rule 5.75(b) (such as if it did not conform to the terms in Rule 4.21 in the shell Rulebook),[36] or update any inaccurate information in a complex FLEX Order in the same manner as any TPH may update any inaccurate information in any order pursuant to current Rule 6.67.[37] Because all FLEX Orders will now be systematized, as discussed above, there is no longer a need for separate procedures regarding the correction of inaccurate information entered for FLEX transactions.

The proposed rule change deletes Rule 24A.5A, Interpretation and Policy .07 and Rule 24A.5B, Interpretation and Policy .05 regarding determinations made pursuant to those Rules, because the Exchange will announce all determinations it may make with respect to FLEX AIM and SAM Auctions pursuant to Rule 1.5 in the shell Rulebook, making these current interpretations no longer necessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[38] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[39] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[40] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's FLEX AIM and SAM Auctions as proposed—both for simple and complex orders—will function in a substantially similar manner following the technology migration as they do today. The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by providing continued consistency across the Exchange's price improvement mechanisms for both FLEX and non-FLEX Option. The general framework of the FLEX AIM and SAM Auction process as proposed to be amended will continue to be substantively the same as the framework for the non-FLEX AIM and SAM Auctions, as the Exchange recently amended, retaining differences that relate to the differences between FLEX and non-FLEX Options (*e.g.,* exercise prices in prices or percentages, no electronic book and thus no BBO).[41] The continued similarity of the Exchange's price improvement auctions will allow the Exchange's price improvement functionality to continue to fit seamlessly into the options market and benefit market participants with consistency across similar functionality. When auctions have similar functionality, Trading Permit Holders can use the same technology and coding for multiple auctions, rather than have to expend resources to participate in different auctions. Therefore, maintaining consistency across auction functionality will benefit investors. The Exchange also believes this will encourage Trading Permit Holders to compete vigorously to provide the opportunity for price improvement for

[33] *See* Rules 5.37(e), 5.38(e), 5.39(e), and 5.40(e) in the shell Rulebook.

[34] *See* Rules 5.37(e) and 5.39(e) in the shell Rulebook.

[35] Note current Rule 24A.5A, Interpretation and Policy .06 and Rule 24A.5B, Interpretation and Policy .02 also apply to electronic transactions in FLEX Options with exercise prices and premiums based on a methodology for fixing that number or based on a percentage. As described in another rule filing, the Exchange will no longer offer exercise prices and premiums based on such a methodology. *See* SR–CBOE–2019–084 (in which filing the Exchange proposes to delete the provisions from current Rules regarding the ability of FLEX Traders to designate exercise prices and premiums in these formats).

[36] Rule 5.75(b) of the shell Rulebook states, among other things, that a FLEX Official may nullify a FLEX Option transaction if it determines the transaction did not conform to the terms of Rules 4.21, 4.22, 5.3, or 5.4 (or the priority principles set forth in Rule 5.72(c) and (d), which do not apply to transactions following a FLEX AIM or SAM Auction).

[37] Rule 6.67 in the current Rulebook describes the Exchange's Cboe Trade Match System, which permits TPHs to correct bona fide errors, subject to certain restrictions. The Exchange moved Rule 6.67 from the current Rulebook to Rule 6.6 in the shell Rulebook in separate rule filings. *See* Securities Exchange Act Release No. 86920 (September 10, 2019), 84 FR 48687 (September 16, 2019) (SR–CBOE–2019–056); and 87079 (September 24, 2019) (SR–CBOE–2019–062).

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

[40] *Id.*

[41] *See* SR–CBOE–2019–084.

customer orders in FLEX Options in competitive auction processes, which will further benefit and protect investors.

The Exchange believes the proposed rule change to permit an Initiating Order submitted into a FLEX AIM Auction, and a Solicited Order submitted into a FLEX SAM Auction, to be comprised of multiple contra-party orders will, in general, protect investors and the public interest, because it may increase the opportunity for customers to have orders participate in a FLEX AIM or SAM Auction. As a result, this may increase opportunities for price improvement, because this will increase the liquidity available for the Initiating Order or Solicited Order, as applicable, which is consistent with the purpose of FLEX AIM and SAM Auctions. The Exchange believes that this is beneficial to participants because allowing multiple contra-parties should foster competition for filling the Initiating Order or Solicited Order, as applicable, and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade.

As noted above, the proposed rule change will allow FLEX AIM and SAM Auctions to occur concurrently with other FLEX AIM and SAM Auctions. Although FLEX AIM and SAM Auctions will be allowed to overlap, the Exchange does not believe that this raises any issues that are not addressed by the proposed rule change. For example, although overlapping, each FLEX AIM or SAM Auction will be started in a sequence and with a duration that determines its processing. Thus, even if there are two FLEX AIM or SAM Auctions that commence and conclude, at nearly the same time, each Auction will have a distinct conclusion at which time the Auction will be allocated, and only against responses submitted into that Auction. As discussed above, each FLEX AIM or SAM response is required to specifically identify the FLEX AIM or SAM Auction, respectively, for which it is targeted and if not fully executed will be cancelled back at the conclusion of the Auction. Thus, responses will be specifically considered only in the specified Auction.

The proposed rule change to allow multiple auctions to overlap for Agency Orders is consistent with functionality already in place on other exchanges, and will therefore remove impediments to and perfect the mechanism of a free and open market and a national market system.[42] Additionally, the proposed rule change is consistent with the Exchange's rules for non-FLEX AIM and SAM Auctions.[43] Those issues generally relate to the interaction of auctioned orders with contra-side interest at the end of the various auctions. Different series or complex strategies, as applicable, are essentially different products—orders different strategies or in different series cannot interact, just as orders in different classes cannot interact. Therefore, the Exchange believes concurrent FLEX AIM and SAM Auctions in different series or complex strategies, respectively, is appropriate. The Exchange believes this new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that permit overlapping price improvement auctions, while providing an opportunity for price improvement for Agency Orders and assuring that Priority Customers are protected. Therefore, the Exchange believes this proposed rule change will protect investors and the public interest.

While the terms of FLEX Options are different than those of non-FLEX Options, any potential issues raised by concurrent auctions are the same for non-FLEX and FLEX Options. Additionally, unlike in non-FLEX trading, there is no electronic book for FLEX trading. As noted above, responses submitted to a FLEX AIM or SAM Auction may only execute against the Agency Order in the Auction into which the responses were submitted, so there can be no conflict among contra-side interest with respect to executions. Further, unlike in non-FLEX trading, because there is no electronic book for FLEX Options, there are no events that cause a FLEX AIM or SAM Auction to conclude prior to the end of the respective auction period that would result in an execution, and therefore, the same event could not cause multiple auctions to conclude early. As discussed above, the proposed rule change addresses any of these potential issues.

The proposed range for the length of each of the FLEX AIM and SAM Auction periods is consistent with the range for the exposure interval of the electronic FLEX Auction. Because of the unique terms of FLEX Options, the Exchange believe it is appropriate to provide a reasonable and sufficient amount of time in which market participants may submit responses. Therefore, the minimum length of a FLEX AIM and SAM Auction (and is proposed to continue to be) three seconds. The Exchange also proposes a maximum length of an auction period of five minutes, as the Exchange also believes it is appropriate to provide for efficient and timely executions so that customers do not potentially miss a market. The proposed rule change also permits the Initiating FLEX Trader to establish the length of the auction period (which will be included in the auction notification message), as the FLEX Trader can determine a reasonable period of time to provide other FLEX Traders to respond based on the complexity of the FLEX Option series that is the subject of the auction, as well as based on market conditions (for example, in a volatile market, the FLEX Trader may believe it is in the best interests of a customer to have shorter auction given quickly changing prices).

The Exchange believes the proposed rule change to permit all FLEX Traders (other than the Initiating FLEX Trader) to respond to FLEX SAM Auctions will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because it permits all FLEX Traders to submit responses to FLEX SAM Auctions. Permitting all FLEX Traders to submit responses to FLEX SAM Auctions may result in more FLEX Traders having the opportunity to participate in executions at the conclusion of FLEX SAM Auctions. Additionally, it may increase liquidity in FLEX SAM Auctions, which may lead to more opportunities to price improvement, which the Exchange believes ultimately protects investors and the public interest. The Exchange's SAM Auction for non-FLEX Options similarly permits market-makers from other options exchange to submit responses.[44]

Additionally, much of the proposed rule change is merely relocating provisions from the FLEX AIM and SAM Auction Rules (such as certain auction eligibility requirements, provisions related to auction responses, and provisions related to executions following the conclusion of an auction) from the current Rulebook to the shell Rulebook and making only nonsubstantive changes, which will

[42] *See, e.g.,* EDGX Rules 21.19(c)(1) and 21.22(c)(1); *see also, e.g.* Nasdaq ISE LLC (''ISE'') Rules 716(d) and 723, Interpretation and Policy .04; and Boston Options Exchange LLC (''BOX'') Rule 7270 and BOX IM–7150–3.

[43] *See* Rules 5.37(c)(1), 5.38(c)(1), and 5.39(c)(1) in the shell Rulebook.

[44] *See* Rules 5.39(c)(5) and 5.40(c)(5) in the shell Rulebook.

therefore have no impact on FLEX AIM and SAM Auctions. The Exchange believes providing a reorganized, holistic rulebook upon migration will also benefit investors.

The proposed rule change is also consistent with Section 11(a)(1) of the Act[45] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account with respect to which the member or a person associated with the member exercises investment discretion, unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),[46] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[47] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[48]

The ''Effect vs. Execute'' exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (a) Must transmit the order from off the exchange floor; (b) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[49] (c) may not be affiliated with the executing member; and (d) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that TPHs entering orders into a FLEX AIM or SAM Auction would satisfy the requirements of Rule 11a2–2(T).

The Exchange believes FLEX AIM and SAM Auctions will place all users—both TPHs and non-TPHs—on the ''same footing'' as intended by Rule11a2–2(T). Given the automated matching and execution at the conclusion of a FLEX AIM or SAM Auction, no TPH would enjoy any special control over the time of execution or special order handling advances for orders executed electronically following a FLEX AIM or SAM Auction, because such orders would be centrally processed for execution by computer, as compared to being handled by a member through bids and offers on the trading floor. Because the electronic trading platform components are designed to prevent any TPHs from gaining any time and place advantages, the Exchange believes each of the FLEX AIM and SAM Auctions satisfies the four components of the ''Effect vs. Execute'' rule as well as the general policy objectives of Section 11(a) of the Act.

In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from off the floor directly to the Exchange by electronic means.[50] Because the Exchange's FLEX AIM and SAM Auctions each receive, and will continue to receive, orders from FLEX Traders electronically through remote terminals or computer-to-computer interfaces, the Exchange believes that orders submitted to a FLEX AIM or SAM Auction from off the Exchange's trading floor will satisfy the off-floor transmission requirement.[51]

The second condition of Rule 11a2–2(T) requires that neither a member nor an associated person of such member participate in the execution of its order. The Exchange represents that, upon submission to a FLEX AIM or SAM Auction, an order or response will be executed automatically pursuant to the Rules set forth for the applicable Auction. In particular, execution of an order or response sent to a FLEX AIM or SAM Auction depends not on the FLEX Trader entering the order or response, but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of an order or response is a FLEX Trader or associated person of such FLEX Trader able to acquire control or influence over the result or timing of order or response execution. The Initiating FLEX Trader may not cancel or modify the Agency Order or applicable contra-side order once submitted into a FLEX AIM or SAM Auction, but FLEX Traders may modify or cancel their responses after being submitted into a FLEX AIM or SAM Auction.[52] Once the Agency Order and Initiating Order or Solicited Order, or response, as applicable, have been transmitted, the FLEX Trader that submitted the order or response will not participate in its execution. No FLEX Trader, including the Initiating FLEX Trader, will see a response submitted into a FLEX AIM or SAM Auction, and therefore and will not be able to influence or guide the execution of the Agency Orders (or contra-side orders) or responses, as applicable. Finally, with respect to FLEX AIM, the last priority feature will not permit a FLEX Trader to have any control over an order. The election to apply last priority to an Initiating Order is available prior to the submission of the order and therefore could not be utilized to gain influence or guide the execution of the Agency Order and Initiating Order. The information provided with respect to the last priority feature by the Initiating FLEX Trader will not be broadcast and further, the information may not be modified by the Initiating FLEX Trader during the FLEX AIM Auction.[53]

Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as FLEX AIM and SAM Auctions, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after

[45] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[46] 15 U.S.C. 78k(a)(1)(A).

[47] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[48] 17 CFR 240.11a2–2(T).

[49] The member may, however, participate in clearing and settling the transaction.

[50] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[51] *See* Rule 5.72(e) in the shell Rulebook.

[52] The Exchange notes that the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'').

[53] *See* proposed Rule 5.73(e)(4).

transmitting them to the exchange.[54] The Exchange represents that the FLEX AIM and SAM Auctions are designed so that no FLEX Trader has any special or unique trading advantage in the handling of its orders or responses after transmitting them to the mechanisms.

A TPH (not acting in a market-maker capacity) could submit an order for a covered account from off of the Exchange's trading floor to an unaffiliated floor broker for submission for execution the FLEX AIM or SAM Auction from the trading floor and satisfy the ''Effect vs. Execute'' exemption (assuming the other conditions are satisfied).[55] However, a TPH, relying on this exemption, could not submit an order for a covered account to its ''house'' floor broker on the trading floor for execution. Because a TPH may not rely on the ''G'' exemption when submitting an order to a FLEX AIM or SAM Auction,[56] it must ensure another exception applies in this situation.

Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[57] The Exchange recognizes that FLEX Traders relying on Rule 11a2–2(T) for transactions effected through a FLEX AIM or SAM Auction must comply with this condition of the Rule, and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

Therefore, Exchange believes that the instant proposal is consistent with Rule 11a2–2(T), and that therefore the exception should apply in this case. Therefore, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Act and the Rules thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition. FLEX AIM and SAM Auctions will continue to be voluntary for FLEX Traders to use and will be available to all FLEX Traders. Additionally, the ability to respond to FLEX SAM Auctions will now be available to all FLEX Traders (except the Initiating TPH, which is consistent with the requirement that the contra-side order be a solicitation rather than a facilitation). These auction mechanisms will apply to all FLEX Traders in the same manner. The Exchange believes the FLEX AIM and SAM Auctions will continue to provide opportunities price improvement for Agency Orders in FLEX Options in a competitive auction process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. The Exchange believes keeping FLEX AIM and SAM Auctions aligned with corresponding non-FLEX auction mechanisms, with the only differences relating to the differences between FLEX and non-FLEX options, may further encourage submission of FLEX Orders into these price improvement mechanisms. By enhancing our FLEX trading platform, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[58] and Rule 19b–4(f)(6) thereunder.[59]

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[60] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[61] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative prior to the proposed Exchange's system migration on October 7, 2019, in order to permit the Exchange to provide FLEX AIM and SAM Auction functionality to market participants on an uninterrupted basis. In support of its waiver request, the Exchange states that the FLEX AIM and SAM Auctions for both simple and complex orders will function in a substantially similar manner following the technology

[54] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[55] Orders for covered accounts that rely on the ''Effect vs. Execute'' exemption in this scenario must be transmitted from a remote location directly to the Floor Broker on the trading floor by electronic means.

[56] *See* Rule 5.72(e) in the shell Rulebook; *see also* proposed Rules 5.73(e) and 5.74(e) (which do not prioritize non-TPH broker-dealers, as would be necessary for submission of orders into the FLEX AIM and SAM Auctions to comply with the ''G: exemption).

[57] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[58] 15 U.S.C. 78s(b)(3)(A).

[59] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[60] 17 CFR 240.19b–4(f)(6).

[61] 17 CFR 240.19b–4(f)(6)(iii).

migration as they do today. The Exchange further notes that the general framework of the Exchange's FLEX AIM and SAM Auction process will continue to be substantively the same as the framework for the non-FLEX AIM and SAM Auctions, except for differences that relate to the distinctions between FLEX and non-FLEX Options.[62] Additionally, the Exchange states that the proposal relocates certain provisions from the current Rulebook to the shell Rulebook, such as provisions related to auction eligibility requirements, auction responses, and executions following the conclusion of an auction, and makes only non-substantive changes to such provisions, which the Exchange believes will have no impact on FLEX AIM and SAM Auctions. The Exchange further notes that it has provided market participants with notice of this change in advance of the system migration.[63] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[64]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–093 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–093. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–093 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22157 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

[62] *See supra* note 41.

[63] *See, e.g,* Exchange Notice C2019092500, *Trading of FLEX Options on Cboe Options Exchange* (September 25, 2019); Exchange Notice 2019092501, *Cboe Town Hall on FLEX Trading on the New Cboe Options Exchange Platform* (September 25, 2019); BOE and FIX Specifications, available at *http://markets.cboe.com/us/options/support/technical/.*

[64] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87235; File No. SR–CBOE–2019–084]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Trading of Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 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 October 2, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the Exchange's Rules regarding the trading of flexible exchange options ''FLEX Options''[5] and moves those Rules from the currently effective Rulebook (''current Rulebook'') to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* current Rule 24A.1(d), (f), and (g) (which define a FLEX Option, FLEX Index Option, and FLEX Equity Option) and proposed definition of FLEX Option in Rule 1.1 of the shell Rulebook (with nonsubstantive changes to simplify the definition of FLEX Options). A FLEX Option on an equity security may be referred to as a ''FLEX Equity Option,'' and a FLEX Option on an index may be referred to as a ''FLEX Index Option.'' The proposed rule change also adds a period following the rule number of Rule 1.1 to conform to the formatting of other Rules in the shell Rulebook. The proposed rule change also deletes the corresponding definitions of Non-FLEX Option, Non-FLEX Equity Option, and Non-FLEX Index Option, as the Exchange believes the meanings of those terms are self-evident, making the definitions unnecessary. *See* current Rule 24A.1(o), (p), and (q).

shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

As part of this effort, the Exchange is reorganizing its Rules within the shell Rulebook to, among other things, include all rules regarding the Exchange's trading hours in a single rule, include all rules related to listing of options products within one chapter, and include all rules related to trading of all products within one chapter. The Exchange has provided market participants with notice of this change in advance of the system migration.[6] Subject to regulatory review, these proposed rule changes will be in effect October 7, 2019, in conjunction with the system migration. For example, rules related to the classes and series of FLEX Options the Exchange may list for trading will be in the same chapter as the rules related to the classes and series of equity options and index options the Exchange may list for trading. Additionally, the rules related to the manner in which FLEX Options may trade will be in the same chapter as the rules related to the manner in which all other types of options may trade.[7] The shell Rulebook will clearly identify the Rules that apply to the trading of FLEX Options.

Chapter XXIVA of the current Rulebook sets forth the Rules applicable to the trading of FLEX Options on the Exchange's hybrid trading system (*i.e.,* trading in both open outcry and electronically). Trading of FLEX Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise specified in Chapter XXIVA of the current Rulebook (proposed Chapter 5, Section F in the shell Rulebook).[8] A Trading Permit Holder (a ''TPH'') may trade FLEX Options if the Exchange has approved the TPH to trade FLEX Options on the Exchange; such a TPH is referred to as a ''FLEX Trader.''[9] Currently, FLEX Options trade on the Exchange's FLEX Hybrid Trading System, which is the Exchange's trading platform that allows FLEX Traders to submit electronic and open outcry request for quotes (''RFQs''), FLEX quotes in response to those RFQs, and FLEX Orders into the electronic book.[10] Upon the Exchange's trading platform migration, FLEX trading will occur on the same Exchange System[11] as all other options trading occurs on the Exchange.

Pursuant to current Rule 24A.3, there are no trading rotations in FLEX Options, either at the opening or at the close of trading. The proposed rule change moves the provision that states there is no opening rotation in FLEX Options to Rule 5.71(a) of the shell Rulebook. The proposed rule change deletes the provisions from current Rule 24A.3 regarding the absence of closing rotations for FLEX Options, as closing rotations do not occur in any class of options on the Exchange.

Currently, FLEX Options open for trading at a randomly selected time within a number of seconds after 9:30 a.m. Eastern Time.[12] Currently, the Exchange has set that number of seconds at one. Proposed Rule 5.71(b) states the times when FLEX Traders may begin submitting FLEX Orders into an electronic FLEX Auction pursuant to proposed Rule 5.72(c), a FLEX AIM pursuant to proposed Rule 5.73, or a FLEX SAM pursuant to proposed Rule 5.74,[13] or initiate an open outcry FLEX Auction the Exchange's trading floor

[6] *See, e.g,* Exchange Notice C2019092500, *Trading of FLEX Options on Cboe Options Exchange* (September 25, 2019); Exchange Notice 2019092501, *Cboe Town Hall on FLEX Trading on the New Cboe Options Exchange Platform* (September 25, 2019); BOE and FIX Specifications, available at *http://markets.cboe.com/us/options/support/technical/.*

[7] In separate rule filings, the Exchange will move to the shell Rulebook certain FLEX Rules not being moved in this rule filing. These rules include Rule 24A.6 regarding discretionary transactions, Rule 24A.7 regarding position limits and reporting requirements, Rule 24A.8 regarding exercise limits, and Rule 24A.13 regarding Letters of guarantee or authorizations. The Exchange notes it will not be making any substantive changes to those Rules, but will rather merely be moving them into the shell Rulebook (and thus will update the rule number, as well as the paragraph lettering and numbering), and therefore these Rules will continue to apply to FLEX trading in the same manner they apply today.

[8] *See* current Introduction to Chapter XXIVA and proposed Rule 5.72(a).

[9] *See* current Rule 24A.1(l) in the current Rulebook and proposed Rule 3.57 in the shell Rulebook. The proposed rule change makes nonsubstantive changes to the definition of a FLEX Trader, including to make the definition plain English by eliminating passive voice and deleting the unnecessary language ''FLEX-participating,'' as that is redundant of the provision that provides the TPH is approved to trade FLEX Options on the Exchange.

[10] *See* current Rule 24A.1(e).

[11] The term ''System'' means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. *See* Rule 1.1 in the shell Rulebook. Because there will no longer be a separate FLEX system, the proposed rule change deletes the definition of FLEX Hybrid Trading System in current Rule 24A.1(e).

[12] *See* current Rule 24A.3 (the current rule includes times in Central Time, while the proposed rule includes times in Eastern Time, consistent with Rule 1.6 in the shell Rulebook).

[13] The Exchange intends to amend and move current Rules 24A.5A and 24A.5B regarding FLEX AIM and SAM Auctions, respectively, from the currently Rulebook to Rules 5.73 and 5.74, respectively, of the shell Rulebook in a separate rule filing.

pursuant to proposed Rule 5.72(c).[14] Specifically, FLEX Traders may begin submitting FLEX Orders (a) with respect to the Regular Trading Hours (''RTH'') trading session, after the System's observation after 9:30 a.m. Eastern Time of the first disseminated (1) transaction on the primary market in the security underlying an equity option or (2) index value for the index underlying an index option, and (b) with respect to the Global Trading Hours (''GTH'') trading session, after 3:00 a.m. Eastern Time.[15]

As discussed further below, while the Exchange currently has an electronic book for orders for FLEX Options, it has only been used in recent months by one customer for limited purpose, and for a minimal amount of FLEX volume. Because of the limited usage of an electronic book for FLEX Orders, the Exchange has determined there will be no electronic book of resting orders for FLEX Options available following the technology migration, which lack of availability of a FLEX Book is consistent with current Exchange authority. Additionally, because there will also be no opening rotation, at the time at which FLEX Trading opens, there will be no automatic executions. Therefore, being ''open'' for FLEX trading merely means that FLEX Traders may submit FLEX Orders into one of the various FLEX Auctions, at the conclusion of which executions in FLEX Auctions may occur (which are all discussed below). Because market participants incorporate transaction prices of underlying securities or the values of underlying indexes when pricing options (including FLEX Options), the Exchange believes it will benefit investors for FLEX Options trading to not be available until that information has begun to be disseminated in the market. Additionally, the proposed trigger events occur for many underlying securities or indexes within one second of 9:30 a.m. Eastern Time (which is consistent with the current time at which the Exchange has determined to open FLEX Option classes), and the majority occur within ten seconds. Therefore, pursuant to the proposed rule change, the opening of FLEX Options for trading may occur over a longer timeframe, which would further reduce any potential market impact of the change to the opening time for FLEX Options. While the Exchange believes it is important to open series for trading as soon as possible, the Exchange also believes the proposed rule change will permit it to manage the number of FLEX Option series that may begin to trade during a short time period to ensure a fair and orderly opening in all options listed on the Exchange. The Exchange also notes that FLEX Options trading volume currently represents approximately 1.5% of total trading volume on the Exchange, and therefore the Exchange believes any potential market impact of this change would be de minimis.

The proposed rule change moves the provision in current Rule 24A.3 that states a new FLEX Option series may be established on any business day prior to the expiration date and opened for trading pursuant to the procedures and principles for trading as provided in other rules within current Chapter XXIV, to proposed Rule 4.21(a)(2). As described below, other current rules have the same provision, and the Exchange does not believe they also need to be in the rule regarding the opening of trading, but rather in the rules regarding permissible series.[16] The Exchange moves these provisions to the shell Rulebook as set forth below. The Exchange also makes nonsubstantive changes to provisions moved from current Rule 24A.3 to proposed Rule 5.71, including changes to make the language more plain English, update cross-references, update times to Eastern Time, and incorporate defined terms.

Current Rule 24A.4 (and other Rules in current Chapter XXIVA) sets forth the terms of FLEX Options. The Exchange moves these provisions to Chapter 4, Section C of the shell Rulebook.[17] The Exchange moves the provisions that state the Exchange may authorize for trading a FLEX Option class on any equity security or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Rules 4.3 and 4.10,[18] respectively, of the shell Rulebook, even if the Exchange does not list that non-FLEX Option class for trading, from current Rule 24.4A(b)(1) and (c)(1) to proposed Rule 4.20.[19] Because the provisions related to FLEX Index Options and FLEX Equity Options provide the Exchange with the same authority with respect to each type of FLEX Options, the proposed rule change combines them into a single one.

The proposed rule change moves the following provisions regarding the terms of FLEX Option series from the current Rulebook to the shell Rulebook. In addition to the substantive changes described below, the proposed rule change makes additional nonsubstantive changes to these Rules, including to make the rule text plain English, simplify the rule provisions, use consistent language throughout the Rules, use active voice, incorporate defined terms, update cross-references and paragraph numbering and lettering, and eliminate redundant provisions.

[14] This is consistent with current Rule 24A.3, which states after the time at which a FLEX Option series opens for trading, a FLEX auction may be initiated. The proposed rule change deletes the provision that states FLEX Orders may be entered directly into the electronic book (if available), because, as discussed below, the Exchange will not have an electronic book available for FLEX Options.

[15] *See* Securities Exchange Act Release No. 86879 (September 5, 2019), 84 FR 47984 (September 11, 2019) (SR–CBOE–2019–034) (approval of proposed rule change to provide that the opening rotation for non-FLEX Options will be triggered by the same events, which are substantially the same as those in current Rule 6.2(b)). Pursuant to Rule 5.1(b)(3) in the shell Rulebook, Regular Trading Hours for FLEX Options are the same as the corresponding non-FLEX Options, except the Exchange may determine to narrow or otherwise restrict the trading hours for FLEX Options. The rule change clarifies in Rule 5.1(b)(3)(A) that Regular Trading Hours for FLEX Options are the same as the Regular Trading Hours for the corresponding non-FLEX Options, as the Exchange inadvertently omitted the phrase ''the Regular Trading Hours for'' from that Rule (therefore, the proposed rule change makes no substantive changes to the trading hours for FLEX Options). Additionally, pursuant to Rule 5.1(c)(1) in the shell Rulebook, if the Exchange designates a class of index options as eligible for trading during Global Trading Hours, FLEX Options with the same underlying index are also deemed eligible for trading during Global Trading Hours.

[16] *See, e.g.,* current Rule 24A.4(a)(1) (which the proposed rule change moves to proposed Rule 4.21(a)(2)). The table below describes the proposed changes to the language of this provision.

[17] Chapter 4 of the shell Rulebook will contain all Rules related to the listing of options on the Exchange.

[18] The Exchange intends to move current Rules 5.3 and 24.2 to Rules 4.3 and 4.10, respectively, in the shell Rulebook in a separate rule filing.

[19] *See also* proposed Rule 4.21(a) (which states the Exchange may approve a FLEX Option series for trading on any FLEX Option class it may authorize for trading pursuant to proposed Rule 4.20).

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed changes
FLEX Option series are not pre-established	Rule 24A.4(a)(1)	Rule 4.21(a)	The proposed rule change incorporates the term FLEX Option series (rather than options series) into this rule provision.
The Exchange may approve a FLEX Option series for trading in any FLEX Option class it may authorize for trading pursuant to proposed Rule 4.20.	Rule 24A.4(b)(1) and (c)(1)	4.21(a) (introductory paragraph).	The proposed rule change combines the provisions for trading FLEX Index Options and FLEX Equity Options into a single provision, as they provide the Exchange with the same authority. As further discussed below, a FLEX Option series is not created (and thus not eligible to trade) until a FLEX Order for the series is submitted into one of the FLEX Auctions. Therefore, the proposed rule change deletes the reference to the Exchange being able to ''open for trading'' any FLEX Option series.
A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to proposed Rule 5.72 (as well as Rules 5.73 and 5.74) [20].	Rules 24A.4(a)(1) and 24A.5(a).	Rule 4.21(a) (introductory paragraph).	The current rule states FLEX Option series are established through the bidding and offering mechanics detailed in current Rule 24A.5. As discussed below, the proposed rule change amends the provisions governing how FLEX Options may trade on the Exchange. A FLEX Option series may only be eligible for trading after submission into one of the various auctions available for FLEX trading. A FLEX Option series may be established under current rules upon submission of a FLEX Order to a FLEX auction, as is the case pursuant to the proposed rule change, but will no longer be able to be established upon submission of a FLEX Order into the book (as there will be no book).[21] See additional discussion below regarding the elimination of an electronic book for FLEX Options.
The Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading. This includes permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. If the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Options series pursuant to proposed Rule 4.22. The System does not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading.	Rule 24A.4, Interpretation and Policy .02(b).	Rule 4.21(a)(1)	The proposed rule change deletes the introductory clause in current Rule 24A.4, Interpretation and Policy .02(b) that references the requirement that options on an underlying security or index to be otherwise eligible for FLEX Trading, as that language is redundant of the language in proposed Rule 4.21(a). The proposed rule change also eliminates the use of passive voice and makes other nonsubstantive changes to this provision.
A FLEX Order for a FLEX Option series may be established on any trading day prior to the expiration date.	Rule 24A.3 and Rule 24A.4(a)(1).	Rule 4.21(a)(2)	Updated to reflect the proposed changes to the FLEX trading procedures, which provide that a FLEX Option series is only available for trading upon submission of a FLEX Order (as noted above).
The Exchange may halt trading in a FLEX Option class pursuant to Rule 5.20, and always halts trading in a FLEX Option class when trading in a non-FLEX Option class with the same underlying equity security or index is halted on the Exchange. The System does not accept a FLEX Order for a FLEX Option series while trading in a FLEX Option class is halted.	N/A	Rule 4.21(a)(3)	This provision is not explicitly stated in current Chapter XXIV. However, it is consistent with Exchange authority to halt trading in options classes listed for trading on the Exchange (see current Rules 6.3 and 24.7, which were moved to Rule 5.20 in the shell Rulebook), and current Exchange practice. The reasons why the Exchange would halt trading in a non-FLEX Option class *(e.g.,* trading in the underlying security is halted) would generally be reasons why the Exchange would halt a FLEX Option class, and therefore the Exchange will always halt trading in a FLEX Option class when trading in a non-FLEX Option class with the same underlying equity security or index is halted on the Exchange.[22]
When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order, which terms constitute the FLEX Option series.	Rules 24A.1(w) and 24A.4(a)(2).	Rule 4.21(b)	The current definition of a series of FLEX Options (the proposed rule change uses the term FLEX Option series) is all option contracts of the same class having the same exercise price, exercise style, and expiration date (and with respect to FLEX Index Options, the same settlement value and index multiplier). The current Rules also require a FLEX Request for Quotes (''RFQ''), FLEX Order, or FLEX Option contract contain one element from the categories of underlying security, type, exercise style, expiration date, and exercise price. As noted above, a FLEX Option series may only be established through the submission of a FLEX Order, and therefore, the proposed rule change combines the provisions to provide that a FLEX Order must contain one element of each of the listed terms, which terms constitute the actual FLEX Option series being established by that order.
• underlying equity security or index, as applicable (the index multiplier for FLEX Index Options is 100).	Rules 24A.1(m) and 24A.4(a)(2)(i).	Rule 4.21(b)(1)	The proposed rule change simplifies the language of this provision and includes the fact that the index multiplier for all FLEX Index Options is 100 in this provision, rather than in a definition, as the term index multiplier is not otherwise used in the proposed rule.
• type of option (*i.e.,* put or call), except an Asian-settled or Cliquet-settled FLEX Option series may only be a call.	Rule 24A.4(a)(2)(ii), (b)(5) and (6).	Rule 4.21(b)(2)	The proposed rule change refers to type of option, which is defined in Rule 1.1 in the shell Rulebook as put or call. The proposed rule change also combines the provisions regarding the permissible type of option available for Asian-settled and Cliquet-settled FLEX Options, so that provisions regarding types of options available for FLEX Option series are included in the same place.
• exercise style, which may be American-style or European-style, except an Asian-settled or Cliquet-settled FLEX Option series may only be European-style.	Rules 1.1(aa) and (cc) and 24A.4(a)(2)(iii).	Rule 4.21(b)(3)	Only nonsubstantive changes.

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed changes
• expiration date, which may be any business day (specified to the day, month, and year) no more than 15 years from the date on which a FLEX Trader submits a FLEX Order to the System, except an Asian-settled or Cliquet-settled FLEX Option series, which must have an expiration date that is a business day but may only expire 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date on which a FLEX Trader submits a FLEX Order to the System.	Rule 24A.4(a)(2)(iv), (a)(5), and (a)(6).	Rule 4.21(b)(4)	The proposed rule change incorporates the concept that a FLEX Option series is available for trading only when a FLEX Trader submits a FLEX Order to the System, and therefore the date on which the FLEX Order is submitted is the date from which the expiration date is measured (this is consistent with FLEX trading today, pursuant to which a FLEX series may only be opened for trading through the RFQ process). The proposed rule change also includes all provisions regarding permissible expiration dates in the same place.
• settlement type [23]: ○ FLEX Equity Options are (i) settled with physical delivery of the underlying security; and (ii) subject to the exercise by exception provisions of OCC Rule 805. ○ FLEX Index Options are settled in U.S. dollars and may be: (i) a.m.-settled; [24] (ii) p.m.-settled,[25], or (iii) for a FLEX Index Option on a broad-based index, Asian-settled or Cliquet-settled (which have unique settlement procedures); [26]	Rules 24A.1(aa) through (cc) and 24A.4(a)(2)(iv) and (b)(3) through (6), (c)(3) through (4), and Interpretation and Policy .01.	Rule 4.21(b)(5)	The proposed rule change uses the term ''settlement type'' to describe all potential ways in which the settlement value will be determined (current rules also use the term settlement style), and includes all provisions regarding the permissible settlement types in a single place.
• exercise price (which the System rounds to the nearest minimum increment), which may be (1) for a FLEX Equity Option or FLEX Index Option that is not Cliquet-settled, (a) a fixed price expressed in terms of dollars and cents or a specific index value, as applicable, or (b) a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date; or (2) for a FLEX Index Option that is Cliquet-settled, the capped monthly return (which must be expressed in dollars and cents).	Rule 24A.4(a)(2)(v), (b)(2)(i) and (iii), (b)(6), and (c)(2)(i) and (iii).	Rule 4.21(b)(6)	The proposed rule change includes all provisions regarding permissible exercise prices in a single place within the Rules. In addition to the exercise price options in proposed Rule 4.21(b)(6), current Rule 24A.4(b)(2) and (c)(2) permits exercise prices for FLEX Index Options to be specified as a method for fixing an index value or dollar amount at the time of a FLEX RFQ or a FLEX Order is traded, or as a percentage of the index value calculated at the time of the trade, and for FLEX Equity Options, to be specified as a method for fixing a dollar amount at the time of a FLEX RFQ or a FLEX Order is traded, or as a percentage of the price of the underlying security at the time of the trade. In the past year, no FLEX Trader has designated the exercise price for a FLEX series in any of these manners—FLEX Traders have only designated the exercise price for a series as a fixed price or as a percentage of the closing value of the underlying on the trade date. Therefore, the Exchange proposes to only offer the two options for exercise prices for FLEX Options that are used by FLEX Traders.[27] Because FLEX Traders do not use the other types of exercise prices for FLEX Options, the Exchange believes elimination of that functionality will have a de minimis, if any, impact on FLEX trading.
• All other terms of a FLEX Option series are the same as those that apply to non-FLEX Options.	Rule 24A.4(a)(1)	Rule 4.21(b)	Only nonsubstantive changes of types described above.
Bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals, if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit of the underlying security or index, as applicable.[28] The System rounds bids and offers to the nearest minimum increment.	Rules 24A.4(b)(2) and (c)(2) and 24A.5(e).	Rule 5.3(e)(3) [29]	The proposed rule change adds the term ''dollars and decimals'' regarding how bids and offers (currently referred to as premiums in Rule 24A.4(b) and (c)) [30] to be consistent with terminology in Rule 5.3 in the shell Rulebook (this is merely a change in terminology). The proposed rule change moves the provisions regarding the form of bids and offers of FLEX Options to Rule 5.3 in the shell Rulebook, so that all provisions regarding the form of bids and offers for all options eligible for trading on the Exchange are included in a single Rule. The proposed rule change adds detail that the bid and offer amount is per unit of the underlying security or index, as applicable. This is true today and is merely adding detail to the rules.[31] The proposed rule change makes no substantive changes to the form and manner in which FLEX Traders may make bids and offers on FLEX Options.
The Exchange determines the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than (a) $0.01, if the exercise price for the FLEX Option series is a fixed price, or (b) 0.01%, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date. The System rounds bids and offers to the nearest minimum increment.	Rules 24A.4(b)(2) and (c)(2) and 24A.5(e) [32].	Rule 5.4(c)(4) [33]	The proposed rule change moves the provisions regarding the minimum increment for FLEX Options to Rule 5.4 in the shell Rulebook, so that all provisions regarding permissible minimum increments for all options eligible to trade on the Exchange are included in a single Rule.[34]
FLEX Traders may apply trade conditions to FLEX Orders	Rules 24A.1(y), 24A.4(a)(3)(ii) and (4)(ii), and 24A.5(d)(3) [35].	N/A	Currently, FLEX Traders may designate FLEX Orders as immediate-or-cancel (''IOC''), which executes (in whole or in part) as soon as it is represented or is cancels (or the unexecuted portion cancels). As further discussed below, the will not make a FLEX Book available following the technology migration. Because there will be no book, all FLEX Orders will be functionally equivalent to an IOC, which can only trade (or partially trade) following an auction, and thus no designation will be necessary.[36] Additionally, FLEX Traders may currently designate a FLEX Order as a ''hedge,'' which is an electronic condition that makes execution of a FLEX Option contingent on the trade of an execution in a non-FLEX Option or other non-FLEX components. In the past year, no FLEX Trader has applied this trade condition to a FLEX Order. Therefore, the Exchange no longer intends to offer this trade condition for FLEX Options. Because FLEX Traders do not use this trade condition for FLEX Options, the Exchange believes elimination of this functionality will have a de minimis, if any, impact on FLEX trading.

Rule provision	Current rule (current rulebook)	Proposed rule (shell rulebook)	Proposed changes
Fungibility of FLEX Options	Rule 24A.4, Interpretation and Policy .02.	Rule 4.22	The proposed rule change makes no substantive changes to the fungibility of FLEX Options with non-FLEX options, and makes various nonsubstantive changes of the type described above. The proposed rule change updates terminology in the proposed provision to reflect changes to the FLEX trading procedures, which are described below, and updates cross-references to applicable Rules in the shell Rulebook. The proposed rule change adds a cross-reference to the rule (Rule 5.1(d) in the shell Rulebook) that lists Exchange holidays rather than use the term ''Exchange holiday'' so that market participants will know where in the Rules to look to know what constitutes an Exchange holiday. The proposed rule change deletes the phrase that states Interpretation and Policy .02 (proposed Rule 4.22) applies to all FLEX Options. The proposed rule lists no exceptions for when this provision applies to FLEX Options, and therefore this phrase is unnecessary.

Pursuant to Rule 5.6(a) in the shell Rulebook, the Exchange may make order types, Order Instructions, and Times-in-Force available on a class basis. Pursuant to that authority, which authority the Exchange currently has pursuant Rule 6.53 in the current Rulebook, the proposed rule change adopts Rule 5.70(a) in the shell Rulebook to state that it may make the following order types, Order Instructions, and Times-in-Force available for orders submitted in FLEX Options (''FLEX Orders''): [37]

[20] As noted above, the Exchange intends to move current Rules 24A.5A and 24A.5B regarding FLEX AIM and SAM Auctions, respectively, to Rules 5.73 and 5.74, respectively, in the shell Rulebook in a separate filing.

[21] The Exchange notes there is an electronic book available for FLEX Options today, but only being used by one FLEX Trader for a limited purpose, as further discussed below, and only for approximately 1.2% of FLEX trading. Therefore, the vast majority of FLEX Option series are established for trading today in the same manner as they will be able to be established pursuant to the proposed rule change. *See* current Rule 24A.5(a) (which states the Request for Quotes (''RFQ'') process is required to open trading in a new series (unless the auction process under Rule 24A.5A or 24A.5B is used to open trading in a new series); and (b).

[22] Rule 5.20 in the shell Rulebook also provides the Exchange with authority to halt trading in a FLEX Option, even if trading in a non-FLEX Option with the same underlying is not halted. While such situation would be rare, there may be unusual circumstances that would cause the Exchange to halt trading in the FLEX Option (see Rule 5.20(a)(5) in the shell Rulebook).

[23] FLEX Index Options are cash-settled in U.S. dollars, and FLEX Equity Options are physical settled, subject to the exercise by exception provisions of Options Clearing Corporation (''OCC'') Rule 805. *See* current Rule 24A.4(b)(4) and (c)(3) and (4) (proposed Rule 4.21(a)(5)).

[24] The exercise settlement value for an a.m.-settled FLEX Index Option series is determined by reference to the reported level of the index derived from the reported opening prices of the component securities. *See* current Rule 24A.4(b)(3) (proposed Rule 4.21(b)(5)(A)). The proposed rule change eliminates the defined term Expiration Friday, as it is not used elsewhere in the Rules. The proposed rule change deletes the provision regarding the exercise settlement value of FLEX Index Options on the NYSE Composite Index, as the Exchange no longer lists options on that index for trading. The proposed rule change includes the provisions regarding how the exercise settlement value is determined for each settlement type, as how the exercise settlement value is determined is dependent on the settlement type.

[25] The exercise settlement value for a p.m.-settled FLEX Index Option series is determined by reference to the reported level of the index derived from the reported closing prices of the component securities. *See* current Rule 24A.4(b)(3) (proposed Rule 4.21(b)(5)(B)). A FLEX Index Option that expires on any business day that falls on or within two business days of a third Friday-of-the-month for a non-FLEX Option (other than a QIX option) may only be a.m.-settled; however, FLEX Index Options with an expiration date on the third-Friday of the month may be p.m.-settled pursuant to a pilot program ending the earlier of November 4, 2019 or the date on which the pilot program is approved on a permanent basis. *See* current Rule 24A.4, Interpretation and Policy .01 (proposed Rule 4.21(a)(5)(B)).

[26] Asian-settled FLEX Index Options have an exercise settlement value based on an arithmetic average of the specified closing prices of an underlying broad-based index taken on 12 predetermined monthly observation dates (including on the expiration date), which dates the FLEX Trader specifies. Cliquet-settled FLEX Index Options have an exercise settlement value equal to the greater of $0 or the sum of capped monthly returns (*i.e.,* percent changes in the closing value of the underlying broad-based index from one month to the next) applied over 12 predetermined monthly observation dates (including an expiration date), which dates and monthly cap value (which must be no smaller than $0.05 and no larger than $25.95, and in an increment of $0.05) the FLEX Trader specifies. For Asian- and Cliquet-settled FLEX Index Options, if a monthly observation date falls on a non-business day, the monthly observation occurs on the immediately preceding business days. *See* current Rule 24A.1(aa) through (cc) and 24A.4(b)(5) and (6) (proposed Rule 4.21(b)(5)(C) and (D)). The proposed rule change deletes the definition of ''preceding business day convention'' and incorporates its meaning into the descriptions of each of Asian-settled and Cliquet-settled, as that defined term is not otherwise used in the Rules, and also incorporates the defined term ''business day.'' *See* Rule 1.1 in the shell Rulebook.

[27] The proposed rule change also deletes current Rule 24A.5, Interpretation and Policy .02, which relates only to FLEX Options with exercise prices specified using the terms that the proposed rule change deletes (*i.e.,* exercise prices for FLEX Index Options specified as a method for fixing an index value or dollar amount at the time of a FLEX RFQ or a FLEX Order is traded, or as a percentage of the index value calculated at the time of the trade, and for FLEX Equity Options, specified as a method for fixing a dollar amount at the time of a FLEX RFQ or a FLEX Order is traded, or as a percentage of the price of the underlying security at the time of the trade), and any other provisions in Rules 24A.1, 24A.4, and 24A.5 related to these exercise types.

[28] While the current rule permits bids and offers to be in a different format than the exercise price, the current functionality does not permit this. Therefore, the proposed rule change makes it clear that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price.

[29] The proposed rule change also updates the subparagraph numbering in Rule 5.3(e) in the shell Rulebook.

[30] The term ''premium'' refers to the prices at which a market participant is willing to trade an option, which is also referred to as a bid or offer. The proposed rule change just uses the terms bids and offers in proposed Rule 5.3(e)(3), which is consistent with the bid and offer provisions for other types of options in Rule 5.3 in the shell Rulebook.

[31] It is also consistent with language applicable to bids and offers in non-FLEX Options. *See* Rule 5.3(a) in the shell Rulebook.

[32] The proposed rule change deletes the provision regarding the Exchange's pronouncement of minimum increments for FLEX by regulatory circular, as the Exchange will announce all determinations pursuant to Rule 1.5 in the shell Rulebook (see also Rule 1.2 in the current Rulebook).

[33] The proposed rule change also updates the subparagraph numbering in Rule 5.4(c) in the shell Rulebook.

[34] The Exchange notes the current rules reference the term ''minimum tick'' as well as ''other decimal increment.'' The term ''minimum tick'' generally refers to the minimum increment applicable to an option, which in non-FLEX trading is a dollar amount. Because FLEX Options may also have a minimum increment in a percentage, that is included in the reference in the current rules to ''other decimal increment.'' However, the Exchange believes the term ''minimum increment'' applies to both formats (dollars and percentage), and therefore eliminates the reference to tick.

[35] The proposed rule change deletes all additional provisions in current Chapter XXIVA of the current Rulebook related to these trade conditions.

[36] As set forth in proposed Rule 5.72(c)(3)(B), and as discussed below, a FLEX Order may trade in whole or in part following an electronic FLEX Auction, as any unexecuted FLEX Order (or unexecuted portion) cancels at the conclusion of the auction.

[37] *See* Rule 5.6 in the shell Rulebook for definitions of these order types, Order Instructions, and Times-in-Force. The proposed rule change deletes the corresponding current definition of FLEX Order in current Rule 24A.1(j). The only proposed substantive change to the definition of FLEX Order is the deletion of the reference to the

- Order Types—limit orders
- Order Instructions—All Sessions, Attributable, Direct to PAR, Electronic Only, Non-Attributable, Not Held, and RTH Only
- Times-in-Force—Day

Given that FLEX Orders will only be eligible to trade following an electronic or open outcry FLEX Auction and not rest in an electronic book or route away (for which most Order Instructions and Times-in-Force set forth in Rule 5.6 in the shell Rulebook are relevant), the Exchange believes these are appropriate designations for FLEX Orders. Because there is no existing market for FLEX Options, and thus no price protections available to ensure execution of FLEX Orders at reasonable prices, the Exchange believes it is appropriate to only permit FLEX Options be submitted as limit orders. The Direct to PAR and Electronic Only Order Instructions permit a FLEX Trader to determine whether it wants a FLEX Order to be eligible for electronic execution or subject to manual handling for execution in open outcry on the Exchange's trading floor. Additionally, as set forth in Rule 5.1(c) of the shell Rulebook, following the migration the Exchange may designate certain FLEX Option classes as eligible for trading during the Global Trading Hours sessions, and the All Sessions and RTH Only designations will permit a FLEX Trader to determine in which trading session(s) it wants a FLEX Order to be eligible for execution. While not specified in the Rules, FLEX Traders may designate a FLEX Order as Attributable (pursuant to the Exchange's authority pursuant to current Rule 6.53, which permits the Exchange to make certain order types available on a class basis). FLEX Orders not designated as Attributable will be Non-Attributable.[38]

Current Rules 24A.4(a)(2) and 24A.5, Interpretation and Policy .01 contemplate the availability of complex orders for FLEX trading. Proposed Rule 5.70(b) explicitly states the Exchange may make complex orders, including security future-option orders and stock-option orders,[39] available for FLEX trading. Complex FLEX Orders may have up to the maximum number of legs determines by the Exchange. Each leg of a complex FLEX Order:

- Must be for a FLEX Option series authorized for trading[40] with the same underlying equity security or index;[41]
- must have the same exercise style (American or European); and
- for a FLEX Index Option, may have different settlement types (a.m.-settled or p.m.-settled),[42] except each leg must have the same settlement type if designated as Asian-settled or Cliquet-settled.

The Exchange believes requiring the legs of a FLEX Option complex order to have the same exercise style is appropriate given the conflict that would arise with legs with different exercise styles. Similarly, the Exchange believes requiring the legs of a FLEX Option complex order to have the same settlement type for Asian-settled and Cliquet-settled FLEX Index Options is appropriate given the complex nature of those settlement types. The Exchange believes this may alleviate any potential difficulties that may arise if the market needed to price such complex strategies. The Exchange notes it has not receive any complex orders at least within the last year that have legs with difference exercise styles, or that have legs that are Asian-settled and Cliquet-settled with other legs that have a different settlement types.

Proposed Rule 5.70(c) states a FLEX Trader may enter a FLEX Order into the System during the times set forth in Rule 5.7 of the shell Rulebook.[43] This proposed rule change merely applies the rule that sets forth the times at which the System is available to receive orders to FLEX Orders. The System only available for receipt of a FLEX Order at the times at which the System is available for all other orders.

A FLEX Trader must designate a FLEX Order entered prior to the opening of the applicable trading session or during a trading halt as Direct to PAR; the System rejects a FLEX Order designated as Electronic Only prior to the opening of the applicable trading session or during a trading halt. As discussed below, there will be no electronic book in which FLEX Orders may rest, and FLEX Orders may only be submitted for electronic execution into a FLEX auction. Therefore, a FLEX Order designated for electronic execution would have nowhere to rest if submitted when trading on the Exchange is not open. Because a FLEX Order designated as Direct to PAR (like any order designated as Direct to PAR) would rest on a PAR workstation and be available for manual handling by a Floor Broker after the opening of trading, there is not risk of execution of such an order submitted to the Exchange while trading is not available on the Exchange.

Proposed Rule 5.72 describes the procedures for FLEX trading on the Exchange following the migration. As noted above, trading of FLEX Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in proposed Chapter 5, Section F of the shell Rulebook.[44] Because there will be no electronic book available in which FLEX Orders may rest,[45] a FLEX Option series is only eligible for trading if a FLEX Trader (the ''Submitting FLEX Trader'') (a) submits a FLEX Order for that series into an electronic FLEX Auction pursuant to proposed Rule 5.72(c) (as described below); (b) represents the FLEX Order in an open outcry FLEX Auction pursuant to proposed Rule 5.72(d) (as described below); or submits the FLEX Order to a FLEX AIM or SAM Auction pursuant to Rule 5.73 or 5.74, respectively, of the shell Rulebook.[46]

submission of FLEX Orders to the electronic book, as there will no longer be a FLEX Book available (consistent with the Exchange's current authority to not make a FLEX Book available), as discussed below. Because all FLEX Traders, including FLEX Market-Makers, will submit FLEX Orders, and responses to FLEX Auctions, in the same manner, the proposed rule change does not distinguish between bids and offers submitted by different types of FLEX Traders, and also deletes the defined term ''FLEX Quote'' from current Rule 24A.1(k).

[38] *See* definitions of ''Attributable Order'' and ''Non-Attributable Order'' in current Rule 6.53 (Rule 5.6(c) in the shell Rulebook). Attribution has no impact on trading, and merely relates to information that a FLEX Trader may want disseminated with respect to its orders.

[39] *See* definition of complex order in Rule 1.1 of the current Rulebook and Rule 1.1 of the shell Rulebook, which provide that unless the context otherwise requires, the term ''complex order'' includes a stock-option order and a security future-option order. Additionally, proposed Rule 5.70(b) is consistent with current Exchange authority to determine in which classes complex orders (including FLEX classes) may be made available for trading, and to determine the maximum number of legs for a complex order. *See* definition of complex order in Rule 1.1 of the current Rulebook (which states the Exchange determines in which classes complex orders are eligible for processing). The proposed rule change merely states this authority explicitly for FLEX complex orders.

[40] Current Rule 24A.4(a)(2) provides that each component of a multi-legged RFQ or FLEX Order must contain the information required for a FLEX series, as specified in that Rule and in proposed Rule 4.21(b).

[41] This is consistent with current Rules (see Rule 1.1 of the current Rulebook and Rule 1.1 of the shell Rulebook), as a complex order may consist of legs in multiple series in the same class (*i.e.,* the same underlying security or index). Therefore, the proposed rule change merely explicitly states this in the rules for FLEX Option complex orders.

[42] The current Rules does not restrict legs of a complex order to all be either a.m.-settled or p.m.-settled.

[43] Rule 5.7 in the shell Rulebook provides that Users can enter orders and quotes into the System, or cancel previously entered orders and quotes, from 2:00 a.m. Eastern Time until Regular Trading Hours market close, subject to certain terms and conditions.

[44] *See* proposed Rule 5.72(a) (current Chapter XXIV, Introduction).

[45] This is consistent with current Exchange authority pursuant to current Rule 24A.5(b) to not make an electronic book available for FLEX Auctions.

[46] *See* proposed Rule 5.72(b).

This is consistent with current Rule 24A.5(a), which states the current RFQ process is required to open trading in a new series (unless the auction process in current Rules 24A.5A or 24A.5B (current Rules describing FLEX AIM and SAM Auctions, respectively) is used to open trading in a new series), which RFQ process may be conducted through the System or in open outcry. The proposed rule change only makes nonsubstantive changes, including to update rule cross-references and conform terminology to the proposed trading procedures.

The proposed rule change makes explicit the requirements for both simple and complex FLEX Orders:

- A FLEX Order for a FLEX Option series submitted to the System must include all terms for a FLEX Option series set forth in Rule 4.21 (including that a non-FLEX Option series with identical terms is not listed for trading), size, side of the market, and a bid or offer price, subject to the order entry requirements set forth in Rule 5.7 of the shell Rulebook.[47]
- A FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in proposed Rule 5.70(b) (see discussion above) and include size, side of the market, a net debit or credit price, and a bid or offer price for each leg of the FLEX Order, which leg prices must add together to equal the net price.[48] Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in Rule 4.21 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in Rule 5.7 of the shell Rulebook.[49]

These proposed order requirements are consistent with current Rule 24A.4(a)(2), 24A.4(a)(3)(iv), and 24A.4(a)(4). Those current provisions state every RFQ Order must contain one element from each contract term category and the same transaction specifications as the related RFQ (and any additional trade conditions, which as discussed below, will no longer be available following migration), and that every RFQ Order must contain the quote type and form sought (*i.e.,* the RFQ order must specify whether it seeks bids or offers, the size of the order, whether it seeks responses as a dollar amount or percentage, and contingencies and trade conditions (which will no longer be available following migration)). Additionally, with respect to complex orders, the current rules add that each component series in a multilegged FLEX RFQ or FLEX Order must include all terms of a FLEX Option series. As discussed above, pursuant to the proposed rule change, bids and offers for a FLEX Option series must be expressed in dollars and decimals, if the exercise price of the series is a fixed price, or as a percentage, if the exercise price of the series is a percentage of the closing value of the underlying equity security or index. Therefore, the proposed rule change does not require the submission of a FLEX Order to identify whether it seeks bid and offer responses in the form of a dollar amount or percentage, as that is dictated by the format of the exercise price of the FLEX Option series in the FLEX Order. Rule 5.7 of the shell Rulebook includes provisions that apply to all order submitted to the Exchange, including FLEX Orders. Therefore, the proposed rule change makes no substantive changes to the required information for a simple FLEX Order, and makes only nonsubstantive changes to the language in the proposed provision.

Current Rule 24A.5 describes how electronic and open outcry trading in FLEX Options may occur on the Exchange today.[50] To initiate an electronic RFQ,[51] a TPH (the ''Submitting TPH'')[52] submits an RFQ with the terms of a FLEX Option series, as well as whether the Submitting TPH is requesting a bid, offer, or both.[53] The System then communicates the terms of the RFQ to FLEX Traders.[54] Only one electronic RFQ may be ongoing at a given time in a series, and electronic RFQs may not overlap or queue.[55] During the RFQ Response Period (which is the period of time during which FLEX Traders may provide bids and offers in response to RFQs),[56] FLEX Traders (including the Submitting TPH)[57] may then submit bids and offers in response to the RFQ, which they may withdraw during that period.[58] Current Rule 24A.5(a)(1)(ii)(A) does not permit options market-makers from another options exchange to enter bids and offers (currently referred to in the Rules as FLEX Quotes (see current Rule 24A.1(k)) in response to an RFQ. The Exchange does not believe this restriction is necessary and proposes to delete it, and therefore permit all FLEX Traders to provide liquidity in electronic FLEX auctions. The Exchange believes permitting additional participants to submit responses to FLEX Auctions will provide the opportunity for additional liquidity in these auctions, which could lead to additional price improvement opportunities.

Currently, the Submitting TPH may designate the length of the RFQ Response Period when initiating the RFQ, which time must be within a time range established by the Exchange and not less than three seconds.[59] During the RFQ Response Period, the System calculates and disseminates the then-current market given current FLEX orders and quotes.[60] At the conclusion of the RFQ Response Period, the Submitting TPH may accept or reject the

[47] *See* proposed Rule 5.72(b)(1).

[48] As discussed below, current Rules requires a FLEX Trader to input leg prices for a complex FLEX Order following a transaction. The proposed rule change merely moves the requirement to input this information upon submission of the FLEX Order, rather than following a transaction.

[49] *See* proposed Rule 5.72(b)(2).

[50] Current Rule 24A.5, Interpretation and Policy .01 describes how the electronic RFQ process applies to complex FLEX Orders, which the proposed rule change also deletes, as complex FLEX orders will trade electronically in the same manner as simple FLEX orders.

[51] *See* current Rule 24A.5(a)(1) for a description of the electronic RFQ process.

[52] This proposed definitions replaces the current definition of a Submitting TPH in current Rule 24A.1(x), which the proposed rule change deletes. The proposed rule change also deletes the provision in current Rule 24A.1(x) regarding the ability of a Submitting TPH to submit a FLEX Order into an electronic book, as there will be no electronic book available following the migration.

[53] *See* current Rules 24A.4(a)(3)(i) and 24A.5(a)(1)(i)(A).

[54] *See* current Rule 24A.5(a)(1)(i)(B).

[55] *Id.*

[56] *See* current Rule 24A.1(u).

[57] Pursuant to Rule 1.1 in the shell Rulebook, a User must specify the Capacity (which is defined in Rule 1.1 of the shell Rulebook as the capacity in which a User submits an order, which the User specifies by applying the corresponding code to the order; the Exchange notes the various Capacity codes listed in Rule 1.1 will be available for FLEX Orders) of each order upon submission to the Exchange (Rule 5.7(f) in the shell Rulebook requires at least the information specified in that rule to be input upon submission of an order prior to representation on the Exchange, and requires any additional information with respect to that order to be input contemporaneously). While responses to FLEX Auctions will no longer be restricted by Capacity, the Exchange uses Capacity information for a variety of reasons, including prioritization in certain transactions as well as several surveillances for compliance with various regulatory obligations.

[58] *See* current Rule 24A.5(a)(1)(ii)(B). The proposed rule change permits responses to be modified or cancelled, as opposed to just cancelled/withdrawn. Modification of a response is equivalent to cancelling and reentering a response, which is permitted under the current rule, and is merely a different type of message to accomplish the same thing. The proposed rule change deletes the reference to the obligations of a FLEX Appointed Market-Maker from that provision in the current Rules, as the Exchange does not currently have any FLEX Appointed Market-Makers and does not intend to in the future, and thus is deleting provisions related to FLEX Appointed Market-Makers from the Rules.

[59] *See* current Rule 24A.4(a)(3)(iii); *see also* Cboe Options Regulatory Circular RG12–056 (April 20, 2012) (which sets the current range for RFQ Response Periods as three seconds to ten minutes).

[60] *See* current Rule 24A.5(a)(1)(ii)(C).

bids and offers submitted during the RFQ Response Period within an RFQ Reaction Period, the length of which the Exchange determines on a class-by-class basis and may not be more than five minutes.[61] During the RFQ Reaction Period, FLEX Traders may continue to submit or cancel responses, and the Submitting TPH may accept bids and offers or cancel the RFQ (or let it expire).[62] During the RFQ Reaction Period, the System calculates and disseminates the then-current market given current FLEX orders and quotes.[63]

If the Submitting TPH chooses to trade, it may enter the RFQ Order to trade with one side of the market provided by the RFQ.[64] The FLEX Order will trade with contra-side interest first at the best prices. If there are multiple bids or offers available at the same price, then the FLEX Order is allocated as follows:

- Bids and offers for the account of public customers and non-TPH broker-dealers in time priority;
- bids and offers of a FLEX Appointed Market-Maker if the Exchange has applied a participation entitlement;[65] and
- all other bids and offers in time priority.

Any remaining balance of the FLEX Order would enter the FLEX Book (if the Exchange made a FLEX Book available) or be cancelled (if there was no FLEX Book). The Submitting TPH has no obligation to accept any FLEX bid or offer.[66]

The Exchange proposes to replace the current electronic RFQ process[67] with a new electronic FLEX Auction process. Pursuant to proposed Rule 5.72(c), a Submitting FLEX Trader may electronically submit a FLEX Order (simple or complex) into an electronic FLEX Auction for execution. Pursuant to proposed Rule 5.72(c)(1), the Submitting FLEX Trader may initiate a FLEX Auction if all of the following conditions are met:

- The FLEX Order is in a class of options the Exchange is authorized to list for trading on the Exchange.[68] As discussed above regarding proposed Rule 5.72(b), a FLEX Order must be in a FLEX Option series (or FLEX Option complex strategy, each of which consists of a FLEX Option series), which series must be in a FLEX eligible class.[69] The proposed rule change is therefore consistent with current requirements for submission of a FLEX Order into a FLEX Auction.
- There is no minimum size for FLEX Orders. Current Rule 24A.5 includes no restrictions on the size of FLEX Orders that may be submitted for electronic execution. Therefore, the proposed rule change is consistent with current functionality and merely specifies this in the Rules.
- A simple or complex FLEX Order must comply with proposed paragraph (b) above. As discussed above, current Rules require FLEX Orders (and RFQ Orders, which are orders submitted into an electronic FLEX RFQ, which is being replaced by the proposed electronic FLEX Auction) to include the information in proposed paragraph (b), so this proposed rule change imposes no new requirements on the submission of FLEX Orders into an auction. As discussed below, the only difference is that the Submitting TPH must submit the FLEX Order to initiate the electronic FLEX Auction, rather than initiate an RFQ and only submit an order if it chooses to trade following the conclusion of the RFQ Response Period.
- A simple FLEX Order must include a bid or offer price (the ''auction price''). A complex FLEX Order must include a net bid or offer price and a bid or offer price for each leg of the FLEX Order, which leg prices must add together to equal the net price (the ''auction price''). Because the current process is an RFQ rather than an auction, the Submitting TPH does not include a price on RFQ when initiating an RFQ. Requiring the inclusion of a price on a FLEX Order when initiating an electronic FLEX Auction is consistent with an auction process. As discussed below, the auction price will not be included on the auction notification message disseminated to FLEX Traders,[70] and therefore FLEX Traders will be encouraged to submit their best priced responses in response to the auction as they are today when submitting their markets in response to the RFQ.
- The Submitting FLEX Trader may only submit a FLEX Order for electronic execution in a FLEX Auction after FLEX trading has opened pursuant to proposed Rule 5.71 (as discussed above). This is consistent with current Rule 24A.3, which states only after the open of FLEX trading may FLEX Orders be submitted into a FLEX Auctions pursuant to current Rules 24A.5, 24A.5A, or 24A.5B.
- The Submitting FLEX Trader must designate the length of the ''exposure interval,'' which must be between three seconds and five minutes. The designated time may not go beyond the market close. Current Rule 24A.4(a)(3)(iii) also requires the Submitting FLEX Trader to designate the length of the RFQ Response Period, the permissible range of which is established by the Exchange but may not be less than three seconds. Currently, the Exchange has set the range at three seconds to ten minutes.[71] The proposed rule change to set the exposure interval between three seconds and five minutes is consistent with the

[61] *See* current Rule 24A.5(a)(1)(iii)(A). Currently, the Exchange has set the maximum time of the Reaction Period at three minutes. *See* Cboe Options Regulatory Circular RG12–056 (April 20, 2012).

[62] *See* current Rule 24A.5(a)(1)(iii)(B)(I) and (III). The proposed rule change deletes the reference to the obligations of a FLEX Appointed Market-Maker from that provision in the current Rules, as the Exchange does not currently have any FLEX Appointed Market-Makers and does not intend to in the future, and thus is deleting provisions related to FLEX Appointed Market-Makers from the Rules. The proposed rule change also deletes the provision regarding the inability to submit FLEX Orders to the electronic book during the RFQ Reaction Period, as there will be no electronic book for FLEX Orders, as further discussed below.

[63] *See* current Rule 24A.5(a)(1)(iii)(B)(II).

[64] *See* current Rule 24A.5(a)(1)(iii)(B)(IV). If the Submitting TPH enters a response during the RFQ Reaction Period, it must bid or offer for at least the crossing exposure period prior to entering the FLEX Order (which period the Exchange establishes on a class-by-class basis and may not be less than three seconds, which the Exchange has currently established as three seconds).

[65] *See* current Rule 24A.5(d)(2)(ii). Current Rule 24A.1(h) defines a ''FLEX Market-Maker'' as a FLEX Trader (see proposed Rule 3.57 in the shell Rulebook) that is appointed as a FLEX Appointed Market-Maker or a FLEX Qualified Market-Maker, each as described in current Rule 24A.9. The proposed rule change intends to move the definition of a FLEX Market-Maker, as well as the rule provisions regarding the roles of a FLEX Market-Maker, to the shell Rulebook in a separate rule filing.

[66] *See* current Rule 24A.5(a)(iii)(C). The current Rules include additional provisions regarding what happens if the RFQ Market is locked or crossed, and what happens to any unexecuted responses at the conclusion of the RFQ Reaction Period. As discussed below, there will be no market, as FLEX electronic auctions will be one-sided, so there cannot be a locked or crossed market, and responses may only execute against the FLEX Order submitted into the auction.

[67] Therefore, the proposed rule change deletes all provisions that describe the current electronic RFQ process and related definitions, including Rules 24A.1(a), (b), (k), (r), (s), (t), (u), (v), and (z) (note certain of these definitions also apply to open outcry RFQs, which the Exchange proposes to eliminate and replace with a different manner of open outcry trading for FLEX options, as discussed below), 24A.4(a)(3), and 24A.5(a)(1).

[68] *See* current Rule 24A.4(a)(2), (b)(1) and (c)(1) (which provide that a FLEX Order must contain the underlying security or index, as applicable, which underlying must be eligible for non-FLEX trading pursuant to current Rules 5.3 or 24.2, respectively).

[69] *See* proposed Rule 4.21 and accompanying discussion above, demonstrating the proposed rule change makes no substantive changes to the classes that are eligible for FLEX trading on the Exchange.

[70] Other Exchange auction mechanisms do not include the price on the auction notification message disseminated to market participants. *See, e.g.,* Rules 5.33(d)(1) (regarding the auction message for a complex order auction (''COA'') and 5.37(d)(2) (regarding the notification message for an AIM Auction for non-FLEX Options).

[71] *See* Cboe Options Regulatory Circular RG12–056 (April 20, 2012).

Exchange's current authority in the Rules, as it only requires a minimum of three seconds. The Exchange believes this interval is reasonable, because it is consistent with the lengths designated by FLEX Traders in the current electronic RFQ process. Specifically, the Exchange notes that from January through August of 2019, the average RFQ Response period is less than nine seconds, and the average RFQ Reaction period is approximately three minutes. Therefore, the average length of the electronic RFQ process is within the proposed exposure interval. Additionally, in 2019, only 25 of 3457 (or 0.7%) of electronic FLEX RFQs lasted for a total of more than five minutes in 2019, so the Exchange does not believe capping the length of the proposed electronic FLEX Auction at five minutes will have a significant impact on FLEX trading. In addition, the Exchange believes a shorter maximum time is appropriate based on feedback received from market participants, and because FLEX Traders will only need to submit responses on the opposite side of the auctioned FLEX Order, rather than responses on potentially both sides to create a market. As further discussed below, the Exchange believes a shortened auction process may increase liquidity in the electronic FLEX market on the Exchange.

The System rejects or cancels a FLEX Order that does not meet the conditions in proposed Rule 5.72(c)(1). This is consistent with the concept of eligibility requirements, as well as current Rule 24A.5(a)(1)(i)(A), which states a Submitting TPH may submit a FLEX RFQ using the form, format, and procedures prescribed by the Exchange.

As described in the bulleted paragraphs above, the proposed requirements to initiate an electronic FLEX Auction are substantially similar to the current requirements to initiate an electronic RFQ. The proposed electronic FLEX Auction will be voluntary, just as the current electronic RFQ is voluntary, and all FLEX Traders will be able to initiate an electronic FLEX Auction, just as they are all able to currently initiate an electronic RFQ, if they so choose. However, rather than submit an order in response/following to an RFQ if and when the Submitting TPH determines to trade against RFQ responses, the proposed rule change requires the Submitting TPH to submit a FLEX Order to initiate the electronic FLEX Auction. This is consistent with the Exchange's other electronic auction processes,[72] as the auction will result in automatic execution against any responses (if they satisfy the auction price) at the conclusion of the auction. The unique feature of FLEX Options is the flexibility with respect to their terms, which is why current FLEX Rules, and the proposed FLEX Rules, provide a longer time frame for FLEX Traders to submit bids and offers. As noted above, the proposed exposure interval is consistent with the Exchange's authority under the current Rules, and appropriately shortened given the one-sided nature of the proposed auction.[73] Additionally, as further discussed below, the Exchange believes a generally shorter electronic auction process, combined with the certainty of execution at the conclusion if responses satisfy the price of the auctioned order, may encourage additional market participants to submit FLEX Orders to the Exchange for electronic execution.

Proposed Rule 5.72(c)(2) describes the FLEX Auction process. Upon receipt of a FLEX Order that meets the conditions in proposed subparagraph (c)(1), the FLEX Auction Process commences. As it does today,[74] the System will initiate a FLEX Auction by sending a FLEX Auction notification message to FLEX Traders detailing the FLEX Option series or complex strategy (as applicable).[75] The current RFQ identifies the terms of the FLEX Option (see current Rule 24A.4(a)(2)), which correspond to the series or complex strategy. Additionally, the current RFQ identifies whether a bid, offer, or both are sought (see current Rule 24A.4(a)(3)), and whether a price in dollars or percentage is sought (as discussed above, bids and offers must be in the same format as the exercise price of the FLEX Option series under proposed Rule 5.3(e)(3), and thus there is no need to separately identify whether a price in dollars or percentage is sought, as that will be dictated by the series' exercise price). Because the proposed process is a one-sided auction process, the proposed auction notification message will include the side and size of the auctioned order, which will permit FLEX Traders to focus their responses on the side on which a potential execution may occur. Auction ID,[76] Capacity,[77] the time at which the exposure interval will conclude,[78] and Attribution (if the FLEX Order is designated as Attributable).[79] FLEX Auction notification messages are not disseminated to OPRA.[80]

The FLEX Auction message will not include the price of the auctioned FLEX Order. The Exchange believes not including the auction price in the notification message will encourage FLEX Traders to respond with the best prices at which they are willing to trade against the auctioned FLEX Order. If the message included the price, FLEX Traders may only respond to trade at that price; without the price, FLEX Traders may respond at better prices, which may result in price improvement opportunities for the auctioned FLEX Order. This is consistent with other electronic auctions on the Exchange.[81] This is similar to the current RFQ process today, in which there is no disseminated price, and instead market participants submit bids and offers based on prices at which they are willing to transact in the series subject to the RFQ.

Pursuant to current Rule 24A.5(a)(1)(i)(B), only one electronic RFQ may be ongoing at any given time in a series, and electronic RFQs in the same series may not queue or overlap in any manner. Similarly, pursuant to Rule 24A.5, Interpretation and Policy .01, only one electronic RFQ may be ongoing at any given time for a given complex order strategy, and electronic RFQs may not queue or overlap in any manner.[82]

[72] *See, e.g.,* current Rules 6.14A (describing the Exchange's step-up mechanism), 6.53C (describing the Exchange's single-sided complex order auction), and 6.74A (describing the Exchange's price improvement automated improvement mechanism), all of which require an order with a price to initiate.

[73] As noted above, the length of auction intervals for non-FLEX Options is generally under one second.

[74] *See* current Rule 24A.5(a)(1)(i)(B) (pursuant to which the System causes the terms and specifications of the RFQ to be communicated to FLEX Traders upon receipt of an RFQ in proper form).

[75] *See* proposed Rule 5.72(c)(2)(A).

[76] This is new information on the auction message based on the proposed rule change discussed below, which permits responses to only execute at the conclusion of the auction into which the responses were submitted.

[77] This is new information on the auction message. Because an order was not previously required to initiate an RFQ, there was no Capacity to include. Capacity will be provided on the auction message for informational purposes, and FLEX Traders may consider the Capacity in any manner they see fit when determining how to respond to an electronic FLEX Auction.

[78] While not specified in the Rules, this is true today, so that FLEX Traders know how long they have to submit responses.

[79] While not specified in the Rules, this is true today, as it is consistent with the concept of an attributable order. *See* definition of ''Attributable Order'' in current Rule 6.53 (Rule 5.6(c) in the shell Rulebook).

[80] This is true today, as RFQs are only sent to FLEX Traders. *See id.*

[81] *See also* current Rules 6.53C and 6.74A (Rules 5.33 and 5.37 in the shell Rulebook) pursuant to which COA auction messages and AIM auction messages do not include the auction price.

[82] In the event there are bids (offers) in any of the individual component series legs represented in the electronic book when an electronic RFQ for a complex strategy is submitted to the System, the electronic RFQ will not commence, and an unrelated FLEX Order in any of the individual series legs may not be submitted to the electronic

Due to current limitations, the Exchange's System is not currently able to process multiple electronic RFQs at the same time, nor is it able to process an electronic RFQ for a complex strategy if an order in any of the leg series that comprise that complex order is present in the System. However, different types of auctions for the same series or complex strategy may occur at the same time. For example, the Rules do not currently prevent a complex order auction (''COA'') of a complex order from occurring at the same time as an AIM in one of the leg series of the complex order subject to a COA. The System to which the Exchange's trading platform will move upon completion of the technology migration is able to process concurrent auctions for orders in the same series (including auctions for complex strategies and for legs series that comprise those strategies).[83] Therefore, the Exchange believes it is similarly reasonable to permit multiple FLEX Auctions in the same series to occur at the same time. As proposed, one or more FLEX Auctions in the same FLEX Option series or complex strategy (as applicable) may occur at the same time.[84] To the extent there is more than one FLEX Auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX Auctions conclude sequentially based on the times at which each FLEX Auction's exposure interval concludes. At the time each FLEX Auction concludes, the System allocates the FLEX Order pursuant to proposed subparagraph (b)(3) (as described below), and takes into account all FLEX responses submitted during the exposure interval. Concurrent auctions will be permitted in various other electronic auctions on the Exchange following migration.[85] If a FLEX Trader attempts to initiate an electronic FLEX Auction in a FLEX Option series while another auction in that series is ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX Auction, rather than requiring the FLEX Trader to wait for the first auction to conclude. The second FLEX Trader may not be able to submit a response to trade in the ongoing FLEX Auction, because the terms may not be consistent with that FLEX Trader's order (for example, there may not be sufficient size, and the FLEX Trader may only receive a share of the auctioned order depending on other responses). Therefore, the Exchange believes providing this functionality for electronic FLEX Auctions may similarly lead to an increase in electronic FLEX Auctions, which may provide additional opportunities for execution of FLEX Orders. Pursuant to proposed Rule 5.72(c)(2)(C), the Submitting FLEX Trader may cancel a FLEX Auction prior to its conclusion. This is consistent with a Submitting TPH's current ability to not accept any FLEX bid or offer, and thus not execute an order for which it requests a market pursuant to an RFQ.[86]

Proposed Rule 5.72(c)(2)(D) describes the requirements for responses that FLEX Traders may submit to an electronic FLEX Auction.[87] Any FLEX Trader (including the Submitting FLEX Trader if it is seeking to effect a cross)[88] may submit responses to a FLEX Auction that are properly marked specifying the FLEX Option series or complex strategy (as applicable), bid or offer price or net price (respectively), size, side of the market, and the Auction ID for the FLEX Auction to which the User is submitting the response. This information is currently required to be included on response to RFQs (other than an Auction ID), and the proposed rule change merely adds this detail to the Rules. A FLEX response may only participate in the FLEX Auction with the Auction ID specified in the response, which is why the auction notification will include an Auction ID and response must identify the applicable Auction ID.[89] The Exchange proposes to include this given the above proposal that permits concurrent electronic FLEX Auctions in the same series or complex strategy.

A FLEX Trader may submit multiple FLEX responses at the same or multiple prices to a FLEX Auction. This is consistent with current functionality. Current Rule 24A.5(a)(1) contains no restriction on how many responses a FLEX Trader may submit; the proposed rule change merely makes this explicit in the Rules. For purposes of a FLEX Auction, the System aggregates all of a FLEX Trader's FLEX responses for the same Executing Firm ID (''EFID'') at the same price. The System will cap the size of a FLEX response, or the aggregate size of a FLEX Trader's FLEX responses for the same EFID at the same price, at the size of the FLEX Order (*i.e.,* the System ignores the size in excess of the size of the FLEX Order when processing the FLEX Auction). These provisions are new given the potential for an automatic execution at the conclusion of the FLEX Auction (unlike the current process which provides the Submitting TPH with the opportunity to trade or not trade). Additionally, the Exchange proposes to add these provisions given the proposed rule change to apply a pro-rata allocation to responses at the conclusion of an electronic FLEX Auction, as further discussed below. These provisions are consistent with other auction functionality that apply a pro-rata allocation to executions following those auctions.[90] The Exchange believes these proposed changes are reasonable to prevent a User from submitting a response with an extremely large size in order to obtain a larger pro-rata share of the FLEX Order.

FLEX responses must be on the opposite side of the market as the FLEX Order. The System rejects a FLEX response on the same side of the market as the FLEX Order. Unlike the current RFQ process, FLEX Traders will know the side of the market on which the Submitting FLEX Trader is looking to trade, and therefore the Exchange believes this is reasonable given that the purpose of a response is to trade against the FLEX Order in the auction into which the response was submitted. Pursuant to the current RFQ process, the

book or for electronic RFQ processing during the duration of an electronic RFQ. *See* current Rule 24A.5, Interpretation and Policy .01.

[83] *See* Rules 5.33(d), 5.37(c)(1), 5.38(c)(1), 5.39(c)(1), and 5.40(c)(1) in the shell Rulebook; *see also* EDGX Options Rules 21.19(c)(1), 21.20(d), 21.21(c)(1), and 21.22(c)(1).

[84] *See* current Rule 24A.5(a)(1)(i)(B) and Interpretation and Policy .01; and proposed Rule 5.72(c)(2)(B).

[85] *See, e.g.,* Rules 5.33, 5.37, and 5.38 in the shell Rulebook; *see also* EDGX Options Rules 21.19, 21.20, and 21.22.

[86] *See* current Rule 24A.5(1)(iii).

[87] The proposed provisions regarding FLEX responses are consistent with rules regarding responses to other electronic auctions. *See, e.g.,* Rules 5.33, 5.37, and 5.38 in the shell Rulebook; *see also* EDGX Options Rules 21.19, 21.20, and 21.22.

[88] Current Rule 24A.5(a)(1)(iii)(B)(IV) states if a Submitting TPH enters a response (referred to in the current Rule as a FLEX Quote) during the RFQ Reaction Period (and thus a quote to trade against the RFQ Order, should the Submitting TPH decide to execute during the RFQ Reaction Period), it must be bidding (offering) for at least the crossing exposure period prior to entering the RFQ Order to trade. The Exchange may determine the duration of this period, which must be at least three seconds (and which the Exchange has currently set at three seconds). The purpose of this time period is to ensure all FLEX Traders have an opportunity to submit responses if the Submitting TPH decides to execute a cross. Because the exposure interval (which occurs after the submission of a FLEX Order) in the new process must be at least three seconds, which will be the earliest time at which execution of the FLEX Order may occur, all FLEX Traders will have the same opportunity and time to participate in an execution against the FLEX Order.

[89] If there are concurrent FLEX Auctions occurring, a FLEX Trader may submit responses to all ongoing auctions, and thus concurrent auctions will not hinder a FLEX Trader's ability to participate in any FLEX Auction.

[90] *See, e.g.,* Rules 5.33, 5.37, and 5.38 in the shell Rulebook; *see also* EDGX Options Rules 21.19, 21.20, and 21.22.

Submitting TPH may request bids and offers on both sides of the market. By only requesting responses on the opposite side of the market, the proposed rule change will allow FLEX Traders to focus on pricing responses that would be eligible to execute (*i.e.,* on the opposite side of the market on which the Submitting FLEX Trader is looking to trade).

FLEX responses are not visible to FLEX Traders or disseminated to OPRA. RFQ responses are also not currently disseminated to OPRA.[91] However, while the Exchange does not disseminate all individual responses to an electronic RFQ, the best market created by responses is intermittently calculated and disseminated during the RFQ Response Period and Reaction Period, during which time FLEX Traders may withdraw those responses.[92] The proposed rule change is consistent with many electronic auctions, in which responses are not visible to the market.[93] Responses to electronic auctions are not firm prior to the conclusion of the auction, and thus are not disseminated to OPRA, because they are not executable until the conclusion of the auction, at which time their price and size are firm.[94] For the same reason as the Exchange does not disseminate the auction price on the auction notification message as discussed above, the Exchange believes it will encourage FLEX Traders to submit their best possible priced-responses if they do not know the prices at which other FLEX Traders are willing to trade. For example, if during a FLEX Auction of a buy FLEX Order, a FLEX Trader submitted a response to sell at $1.05, if another FLEX Trader saw that response, it may merely respond to sell at $1.05, or maybe $1.04, even though it may ultimately be willing to sell at $1.03. Without seeing the other responses, the second FLEX Trader may instead submit a response to sell at $1.03, which could result in price improvement for the auctioned order. The Exchange appreciates that there is no disseminated market in FLEX Options. However, the length of the exposure interval (which, as discussed above, is longer than the interval in typical electronic auctions and consistent with the minimum RFQ response period in the current RFQ process) will provide all FLEX Traders with the same opportunity to submit responses. A FLEX Trader may modify or cancel its FLEX responses during the exposure interval. As noted above, the current Rule permits FLEX Traders to withdraw (which is the equivalent of cancel) a response to a FLEX RFQ, but does not explicitly state that those responses may be modified. A modification of a response is equivalent to a cancellation of an existing response and submission of a new response, but may instead be done through a different message type. Therefore, the proposed rule change permits the same activity that can be done pursuant to the current rule, but merely in a different manner (*i.e.,* modification rather than cancellation and separate entry).

Pursuant to proposed Rule 5.72(c)(3), the FLEX Auction concludes at the end of the exposure interval, unless the Exchange halts trading in the affected series or the Submitting FLEX Trader cancels the FLEX Auction, in which case the FLEX Auction concludes without execution. There are no events that will cause the current RFQ Response Period to conclude early pursuant to current Rule 24A.5(a)(1). While the current Rule does not discuss how a trading halt may impact an ongoing electronic RFQ, the proposed rule change is consistent with current functionality, as the Exchange would not permit any executions to occur during a trading halt.[95]

At the conclusion of the FLEX Auction:

- The System executes the FLEX Order against the FLEX responses at the best price(s), to the price at which the balance of the FLEX Order or the FLEX responses can be fully executed (the ''final auction price''). If there are multiple FLEX responses at the same price level, then the contracts in those FLEX responses are allocated proportionally, according to size (in a pro-rata fashion).[96]
- The System cancels an unexecuted FLEX Order (or unexecuted portion).
- The System cancels any unexecuted FLEX responses (or unexecuted portions).

The proposed allocation process is consistent with the electronic pro-rata allocation with no overlays that they Exchange may apply to trading in non-FLEX Options.[97] Unlike the proposed allocation process, the current allocation at the conclusion of an electronic FLEX RFQ provides priority to Priority Customers and non-TPH broker-dealers orders and quotes, the purpose of which was to accommodate TPHs that rely on the ''G'' exemption from Section 11(a)(1) of the Exchange Act when submitting orders for electronic execution. While certain other electronic auctions available on the Exchange prioritize Priority Customer orders, none prioritize non-TPH broker-dealers, and thus electronic submission of an order into those auctions would not be eligible for the ''G'' exemption either. Currently, a minimal number of TPHs rely on the ''G'' exemption. As discussed below, the Exchange believes the proposed electronic FLEX Auction satisfies the ''Effect vs. Execute'' exemption, and will permit TPHs to rely on that exemption (subject to satisfaction of the requirements of that exemption) when submitting FLEX Orders for electronic execution. A TPH (not acting in a market-maker capacity) could submit an order for a covered account from off of the Exchange's trading floor to an unaffiliated Floor Broker for submission for execution in the FLEX Auction from the trading floor and satisfy the ''Effect vs. Execute'' exemption (assuming the other conditions are satisfied).[98] However, a TPH could not submit an order for a covered account to its ''house'' Floor Broker on the trading floor for execution and rely on this exemption. If a FLEX Trader cannot satisfy the ''Effect vs. Execute'' exemption (for example, because the FLEX Trader submits a proprietary order from on the Exchange's trading floor), it may submit a FLEX Order into the proposed electronic FLEX Auction only if it satisfies another exemption from Section 11(a)(1) of the Exchange Act. Alternatively, a FLEX Trader may execute a FLEX Order in open outcry on the Exchange's trading floor (subject to satisfaction of an exemption—for example, a FLEX Trader may yield priority as necessary to satisfy the ''G'' exemption, as it may do today). Because

[91] Responses to an RFQ are considered indications of interest, which are exempt from disseminated bids and offers. *See, e.g.,* current Rule 6.80(2).

[92] *See* current Rule 24A.5(a)(ii)(C) and (iii)(B)(II).

[93] *See, e.g.,* current Rules 6.53C and 6.74A (Rules 5.37 and 5.38 in the shell Rulebook); *see also* EDGX Options Rules 21.19, 21.20, and 21.22.

[94] *See, e.g.,* Rules 5.33(d)(4)(C) and (D), 5.37(c)(5)(H), 5.38(c)(5)(H), 5.39(c)(5)(F), 5.40(c)(5)(F).

[95] Concluding an electronic auction without an execution due to a trading halt is consistent with other electronic auctions on the Exchange. *See, e.g.,* current Rules 6.53C and 6.74A (Rules 5.33, 5.37, and 5.38 in the shell Rulebook); *see also* EDGX Options Rules 21.19, 21.20, and 21.22.

[96] The executable quantity is allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If the executable quantity cannot be evenly allocated, contracts will be distributed using this pro-rata priority methodology until there are no contracts remaining. This is consistent with the Exchange's standard pro-rata electronic allocation algorithm. *See* Rule 5.32(a)(1)(B) in the shell Rulebook.

[97] *See id.*

[98] Orders for covered accounts that rely on the ''Effect vs. Execute'' exemption in this scenario must be transmitted from a remote location directly to the Floor Broker on the trading floor by electronic means.

there will not be an electronic FLEX Book (as discussed below),[99] there will be no resting Priority Customer orders resting that would receive priority at the conclusion of the Auction (or any resting orders to trade against the auctioned FLEX Order). And because there will be no FLEX Appointed Market-Makers, there will be no participation entitlement at the conclusion of the Auction. Therefore, there will only be responses available at the conclusion of the Auction to execute against the auctioned FLEX Order. The Exchange has determined to apply pro-rata allocation to those responses, rather than time priority (as it does today), because that is the allocation the Exchange applies to the majority of classes on the Exchange, and therefore this will provide additional consistency for market participants. Additionally, the Exchange believes application of pro-rata may encourage FLEX Traders to submit larger-sized responses, because if the responses are at the marketable prices, those responses will receive execution based on size rather than time (as is the case today).

Current Rule 24A.5(b) states the Exchange may make an electronic book available into which FLEX Orders may be entered or remaining balances of FLEX Orders submitted into an RFQ may rest. Currently, while the Exchange makes an electronic book available for FLEX Orders, prior to April 2019, no FLEX Traders were submitting FLEX Orders into the Book in any class. Beginning in April 2019, one FLEX Trader began submitting FLEX orders for a customer into the FLEX Book, and then after the required exposure period passed, that FLEX Trader would submit an order on the opposite side to trade with that resting customer order (in other words, to execute a cross with that resting order). The Exchange understands from this FLEX Trader that it does not submit these orders into an electronic RFQ, because it is difficult for that FLEX Trader to code to that process, given how different it is from other electronic auctions.[100] For the five-month period from April through August 2019, this activity represented approximately 1.2% of total FLEX volume during that time. As noted above, only one FLEX Trader was using the FLEX Book, and only for a limited purpose. While all FLEX Traders have access to the current FLEX Book, they are choosing not to use it. There are no FLEX Traders submitting FLEX Orders into the FLEX Book to rest and wait for another FLEX Trader to submit interest to trade against that resting order, which is the general purpose of an electronic book. Therefore, the Exchange does not intend to make one available following migration, consistent with its current authority under current Rule 24A.5(b). Therefore, the Exchange proposes to delete current Rule 24A.5(b) and all other provisions in its Rules regarding an electronic FLEX Book. As a result, all FLEX executions currently occur following an electronic RFQ or FLEX Automated Improvement Mechanism [101] for electronic execution, and deletion of the Rules regarding an electronic FLEX Book will have no significant impact on FLEX trading given the current limited use of a FLEX Book by one FLEX Trader. The Exchange also notes the Rules currently provide that there is no electronic book for complex FLEX Orders, and therefore the proposed rule change will have no impact on the trading of complex FLEX Orders.[102]

Because the proposed auction will result in automatic execution following the exposure interval, there is no period equivalent to the RFQ reaction period in the proposed auction process. The Exchange believes automatic execution will provide FLEX Traders with more certainty regarding executions of their FLEX Orders and responses, as well as more timely executions. The Exchange notes the current maximum time for the Submitting TPH to decide whether to trade against the RFQ Market is five minutes, which is the proposed maximum time for the exposure interval. Additionally, as noted above, in January through August of 2019, the average length of the entire electronic RFQ process (as designated by the Submitting TPH) is just over three minutes (combining the RFQ Response and Reaction periods), during which time FLEX Traders may submit responses, and less than 1% of electronic RFQs lasted more than five minutes. Therefore, pursuant to the proposed electronic FLEX Auction process, the Submitting FLEX Trader may designate an exposure interval duration during which FLEX Traders may submit responses consistent with the average duration, and over 99%, of current electronic RFQs.

The Exchange believes the proposed electronic FLEX Auction simplifies the process pursuant to which FLEX Traders may execute FLEX Orders on the Exchange, as it is similar to other electronic auctions (as noted above) and eliminates the multiple periods in which FLEX Traders may submit responses. Pursuant to the proposed Auction process, an electronic FLEX Auction in which an order is entered and exposed to FLEX Traders, and then automatically executes against best-priced bids and offers at the conclusion of the auction. As discussed above, the proposed range for the auction exposure interval is consistent with the average length of the entire electronic RFQ process. Additionally, while the proposed range of the exposure interval is shorter than the current range designated by the Exchange, the proposed range is consistent with the Exchange's authority under the current Rules, as the Rules only require that the length of the RFQ Response Period be at least three seconds. Because the auction message will identify the side of the auctioned order, and thus responses will only be on the opposite side of that order, the Exchange believes a shorter maximum time is appropriate, as FLEX Traders will not need to determine responses on the side of the market on which there is no potential execution. Therefore, the Exchange believes the proposed rule change will continue to provide FLEX Traders with sufficient time to price FLEX Option series that are auctioned and submit bids or offers at which they would be willing to effect transactions in the series subject to the auction.

As is the case today, market participants will not know the price at which the Submitting TPH is seeking to trade an order (which the Submitting TPH must include a price on the FLEX Order submitted to the auction, it will not be included in the notification message). The Exchange believes not notifying FLEX Traders of the auction price, as well as not permitting FLEX Traders to see prices of other responses, will encourage FLEX Traders to submit responses at the best prices at which they would be willing to trade, as noted above.

The proposed electronic FLEX Auction is similar to other electronic auctions offered by the Exchange, such

[99] As discussed above, while one customer has recently begin to submit interest to the FLEX Book, that interest is generally executed within a few seconds (after the required exposure period) and, thus, there are generally no orders resting on the FLEX Book available for allocation following an open outcry RFQ.

[100] Additionally, this FLEX Trader is unable to cross these orders through a FLEX AIM or SAM, because the solicited contra-side order is for the account of a Market-Maker, which is not permissible in those auctions. *See* current Rules 24A.5A, Interpretation and Policy .04 and 24A.5B, Interpretation and Policy .04.

[101] *See* Rule 24A.5A in the current Rulebook, which the Exchange intends to move to the shell Rulebook in a separate rule filing. The Exchange notes current Rule 24A.5B provides for a FLEX Solicitation Auction Mechanism, which the Exchange has not currently made available in any FLEX Option classes, but does intend to make available following migration.

[102] *See* Rule 24A.5, Interpretation and Policy .01 in the current Rulebook.

as the Automated Improvement Mechanism (''AIM'') in Rule 6.74A in the current Rulebook (Rule 5.37 in the shell Rulebook) and the Complex Order Auction (''COA'') in Rule 6.53C in the current Rulebook (which the Exchange intends to move to Rule 5.33 in the shell Rulebook). These electronic auctions do not provide for a request for market, which concept does not currently exist in electronic trading. The Exchange believes implementing a simpler electronic FLEX Auction that is similar to other electronic auctions may encourage TPHs to submit FLEX Orders for electronic execution. Market participants are more familiar with this type of functionality and have their systems coded to conform to these types of auctions. The Exchange has received feedback from market participants indicating the difficulty and additional resources necessary to code to the nonstandard FLEX RFQ process given the multiple intervals. Additionally, the Exchange believes elimination of a reaction period at the conclusion of an electronic FLEX Auction will permit executions of FLEX Orders to be completed in a more timely fashion. As a result, the Exchange believes the proposed auction will permit FLEX Traders to continue to compete vigorously and potentially provide price improvement for FLEX Orders in a competitive auction process, as they do for non-FLEX Orders, and thus will fit more seamlessly into the Exchange's market.[103]

Current Rule 24A.5(a)(2) describes the current open outcry RFQ process for FLEX Orders. Currently, a Submitting TPH may submit to a FLEX Official an RFQ, and then announce the terms of the RFQ to the trading crowd.[104] At that point, FLEX Traders in the trading crowd may respond to the RFQ with bids and offers during an RFQ Response Period, during which time those responses (referred to in the current Rule as FLEX Quotes) may be modified or withdrawn.[105] At the conclusion of the RFQ Response Period, the Submitting TPH announces the best market to the trading crowd.[106] It may then promptly accept or reject the best priced bids and offers, or announce an intention to cross the FLEX order (in which it may receive an entitlement pursuant to Rule 24A.5(b)(3) and (d)(2)).[107] If the Submitting TPH determines to execute the FLEX Order against the responses from the trading crowd (and not cross), the bids and offers are allocated as described below.[108] If the Submitting TPH rejects the BBO or accepts it for less than the entire size requested, all FLEX Traders (other than the Submitting TPH) may match or improve the BBO during the BBO Improvement Interval,[109] after which the Submitting TPH must promptly accept or reject the BBO.[110] If the Submitting TPH indicates an intention to cross, then the Submitting TPH must announce the price to the crowd and permit the rest of the crowd to attempt to improve or match the BBO during the BBO Improvement Interval. At the expiration of the BBO Improvement Interval, the Submitting TPH must promptly accept or reject the BBO, and may execute the order against responses as described below.[111] The Submitting TPH has no obligation to accept any FLEX bid or offer.[112]

Current Rule 24A.5(d)(2)(i) provides that the Exchange may establish a crossing participation entitlement, subject to certain conditions. The Exchange proposes to delete that provision, as the Exchange does not intend to establish any priority overlays, including a crossing participation entitlement, to the proposed FLEX Auctions.[113] The Exchange does not currently establish a crossing participation entitlement for electronic FLEX trading, so this will have no impact on electronic trading. The Exchange has currently established a crossing participation entitlement for open outcry FLEX trading. However, as further discussed below, the Exchange proposes to permit FLEX Trades to be crossed in accordance with general crossing rules for open outcry trading, which provide for a similar crossing procedure and participation entitlement as the current FLEX crossing procedure and entitlement.

Current Rule 24A.5(d)(2)(ii) provides that the Exchange may establish a participation entitlement for a FLEX Appointed Market-Maker. The Exchange currently does not have any FLEX Appointed Market-Makers, and thus does not have a participation entitlement established, and deletes that provision from the Rules.[114]

The highest bid (lowest offer) will have priority at the conclusion of a FLEX open outcry RFQ. If there are multiple bids or offers at the same price, any crossing participation entitlements have second priority, any FLEX Appointed Market-Maker participation entitlements have third priority, all other response have fourth priority (in time sequence), and finally orders resting in the book have last priority.[115]

Proposed Rule 5.72(d) provides that a Submitting FLEX Trader may represent and execute a FLEX Order that complies with paragraph (b) above on the Exchange's trading floor in the same manner as a TPH may represent and execute an order for a non-FLEX Option (which includes systemization of the FLEX Order pursuant to Rule 5.7(f) and routing the FLEX Order to PAR pursuant to Rule 5.82 of the shell Rulebook) on the Exchange's trading floor pursuant to Chapter 5, Section G

[103] The Exchange notes it intends to continue to offer a FLEX AIM process to provide FLEX Orders with price improvement and electronic crossing opportunities, and will move that from Rule 6.74A in the current Rulebook to Rule 5.73 in the shell Rulebook in a different rule filing.

[104] *See* current Rule 24A.5(a)(2)(i).

[105] *See* current Rule 24A.5(a)(2)(ii). The proposed rule change deletes from that provision the reference to obligations of FLEX Appointed Market-Makers. As noted above, the Exchange currently has none and does not intend to have them following migration, so the Exchange is deleting all references to FLEX Appointed Market-Makers in the rules. As is the case for electronic RFQs, the open outcry RFQ Response Period may not be less than three seconds.

[106] *See* current Rule 24A.5(a)(2)(ii)(B). The proposed rule change deletes the reference that the BBO will consider orders in the electronic book, as there will be no book following migration, as noted above.

[107] *See* current Rule 24A.5(a)(2)(iii)(A).

[108] *See id.*

[109] The ''BBO Improvement Interval'' is the period of time in respect of the open outcry RFQ process during which FLEX Traders in the trading crowd may submit responses (referred to in the current rules as FLEX Quotes) to meet or improve the BBO established during the RFQ Response Period. *See* current Rule 24A.1(b). The rules do not specify a duration of the BBO Improvement Interval, so the Exchange permits responses to be made in a reasonably prompt manner (consistent with a similar provision that applies to current open outcry trading if there are remaining contracts, *see* current Rule 6.45(b)(i)(B)(5)).

[110] *See* current Rule 24A.5(a)(2)(iii)(A).

[111] *See* current Rule 24A.5(a)(2)(iii)(B).

[112] *See* current Rule 24A.5(a)(2)(iii)(C). Rejection of the BBO or failure to promptly accept the BBO results in expiration of the BBO and the RFQ. *See* current Rule 24A.5(a)(2)(iv). If the Submitting TPH rejects the BBO or the BBO size exceeds the FLEX transaction size in the RFQ, FLEX Traders in the crowd may accept the unfilled balance by public outcry promptly following the rejection of the BBO (or expiration of the BBO Improvement Interval). *See* current Rule 24A.5(a)(2)(iii)(D).

[113] This is consistent with the Exchange's authority under current Rule 24A.5(d)(2) to not establish any priority overlays.

[114] The Exchange intends to delete all provisions regarding FLEX Appointed Market-Makers from the Rules in a separate rule filing. To the extent the Exchange determines in the future to appoint FLEX Appointed Market-Makers (or similar market participant) or apply a participation entitlement to FLEX Auctions (electronic or open outcry), the Exchange will submit a separate rule filing. Because there will no longer be any priority overlays, the proposed rule change deletes current Rule 24A.5(d)(2)(iii) regarding announcements of participation entitlements.

[115] *See* current Rule 24A.5(a)(2)(v)(A); *see also* current Rule 24A.5(d) (which describes current crossing participation entitlements). As is the case in all open outcry trading, any FLEX Traders relying on the ''G'' exemption must yield priority to any bid (offer) at the same price. *See* current Rule 24A.5(a)(2)(v)(B) (Rule 5.85(a)(2)(E) in the shell Rulebook).

of the shell Rulebook,[116] except (1) In-Crowd Market Participants (''ICMPs'') will have a reasonable amount of time (which amount of time must be between three seconds (the current minimum for an RFQ Response Period) and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option Series or represents a FLEX Order (including announcing a crossing transaction pursuant to Rule 5.87 in the shell Rulebook) to respond with bids and offers; and (2) FLEX Orders are allocated only to responses from the trading crowd pursuant to Rule 5.85(a)(2)(C) of the shell Rulebook.[117] The proposed time period is consistent with the proposed time period for electronic FLEX Auctions described above, as well as current Rules (which require at least three seconds to pass),[118] and the Exchange believes this will ensure there is sufficient time for the crowd to price a FLEX Option series given its unique terms as well as ensure executions of FLEX Orders take place in a timely manner. Whether a reasonable amount of time has passed before a Submitting TPH determines to represent an order after a request for quotes, or to execute an order after it was represented will be based on facts and circumstances, and will be determined by the Submitting FLEX Trader. This is consistent with general open outcry trading, in which the representing Floor Broker (which will be the Submitting FLEX Trader) determines at what time a market is established and which ICMPs responded at that time and in what order.[119] As set forth in Rule 5.85(a)(2), orders represented in open outcry may also be allocated to Priority Customers resting in the book (which will not apply to FLEX Options since there will be no book), or to certain market-makers if there is a participation entitlement (which there will not be for FLEX Options), or to other orders resting in the book (which, again, will not apply to FLEX Options since there will be no book). Therefore, the only interest against which a FLEX Order may execute in open outcry are bids and offers from the trading crowd.

The Exchange believes the current open outcry RFQ process for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders, and therefore believes completely aligning the two processes is appropriate. Currently, in open outcry trading, a Floor Broker can request a market from the crowd.[120] ICMPs may then respond with their markets. There is no formal time frame in which ICMPs may respond with a market, but ICMPs generally respond promptly with their market. This is substantially similar to the current RFQ process described above, in which a FLEX Trader requests a market and provides FLEX Traders in the crowd with at least three seconds to respond with a market. The Exchange believes it is appropriate to ensure there is at least a minimum amount of time FLEX Traders to respond give the unique terms of FLEX Options. The proposed timeframe in which ICMPs that are FLEX Traders must respond is consistent with the current Rule, which as noted above, requires the RFQ Response Period to be at least three seconds long. The proposed rule change also permits a FLEX Trader to initially represent a FLEX Order to the trading crowd, and then receive bids or offers (as appropriate) and trade.[121] Therefore, other than eliminating the formal name of the RFQ Response Period which is not contemplated in non-FLEX Option open outcry trading, the Exchange believes the proposed rule change will have minimal (if any) impact on how a FLEX Trader may request a market on the Exchange's trading floor.

Unlike the current process, which requires a FLEX Trader to submit an RFQ to a FLEX Official, the proposed rule change will require a FLEX Trader to systematize a FLEX Order in the same manner as Floor Brokers systematize non-FLEX Orders, which is to systematize them pursuant to current Rule 6.24 (Rule 5.7(f) in the shell Rulebook). TPHs have familiarity with the systemization process, and the Exchange believes the proposed rule change will result in a more efficient open outcry trading process for FLEX Options, as a FLEX Trader can request a market as soon as it gets that request from a customer rather than first go to a FLEX Official.[122] This may ultimately result in a more timely execution for customers.

Once a Floor Broker has received a market from the crowd, the Floor Broker may then represent its order on the floor (after systematizing it and routing it to PAR, which it must do prior to representing an order on the trading floor) and elect to trade against the best prices or not, or announce an intention to cross at a specific price.[123] As discussed above, this is substantially similar to the current RFQ process, in which a FLEX Trader can elect to trade or not trade with the best prices from the crowd, or announce an intention to cross. Currently, the Exchange has set a crossing entitlement for facilitations and solicitations of FLEX Orders in all

[116] Therefore, a FLEX Order may be represented and executed, in addition to Rule 5.85 as described above, pursuant to Rule 5.86 in the shell Rulebook regarding facilitated and solicited transactions and Rule 5.87 in the shell Rulebook regarding crossing orders.

[117] The proposed rule change notes that Rule 5.85(b) through (e) (complex order priority (this relates to the prices at which complex orders may trade depending on resting simple orders, which will not apply given there will be no book for FLEX Options), split-price priority, multi-class spread orders, and SPX Combo Orders) does not apply to FLEX Options, which is consistent with FLEX trading today. *See* current Rules 24.19 (which sets forth specific trading rules for multi-class spreads, which are not consistent with FLEX trading), 24.20 (which sets forth specific trading rules for SPX Combo Orders, which are not consistent with FLEX trading), and 24A.15 (which provides that split-price priority does not apply to FLEX trading, and the Exchange moves the provision that states the inapplicability of split-price priority to the portion of the Rule regarding open outcry trading, so that all provisions regarding open outcry priority are included in the same place). To the extent the Exchange intends to make any of these provisions applicable to FLEX Options in the future, it will submit a rule filing. As discussed above, there will be no electronic FLEX Book (and thus no Priority Customer orders resting that would otherwise have priority). Additionally, as discussed below, there will be no participation entitlements. The Exchange notes FLEX Orders may be crossed on the Exchange trading floor in the same manner as non-FLEX Orders pursuant to Rule 5.87 in the shell Rulebook, rather than pursuant to separate crossing rules as is the case today.

[118] *See* current Rule 24A.4(a)(3)(iii).

[119] If another FLEX Trader does not believe there was a reasonable amount of time to respond permitted, that FLEX Trader may request a review from a FLEX Official for compliance with the applicable rules (see proposed Rule 5.75).

[120] A Floor Broker may also initially represent an order to the trading crowd, and then receives bids or offers, as appropriate, and trade. However, this is an uncommon scenario but permissible under the Rules.

[121] The Exchange notes this is an uncommon scenario in open outcry trading, but is permissible under the Rules.

[122] Because the proposed rule change will require FLEX Orders to be systematized in the same manner as all other orders, the proposed rule change deletes Rule 5.7, Interpretation and Policy .04, which exempts FLEX Options from systematization requirements. The Exchange notes systemization will capture FLEX Options in the Exchange's audit trail, and thus the Exchange will no longer need to maintain separate records similar to COATS data. The current rule requires the Exchange to make the data it retained with respect to FLEX Options available to the SEC upon request. While the proposed ruled does not explicitly state this (the Rules generally impose obligations on TPHs rather than the Exchange), the Exchange is required to maintain these records and provide them to the Commission upon request pursuant to its SRO obligations. *See* 17 CFR 240.17a–1 (which requires an exchange to keep and preserve at least one copy of all documents made or received in the course of its business and in the conduct of its self-regulatory activity, to retain such documents for at least five years (in an easily accessible place for the first two years) subject to destruction and disposition provisions of Rule 17a–6 under the Act, and to promptly furnish copies of these documents to the Commission upon request).

[123] *See* current Rule 6.74 (Rule 5.87(f) in the shell Rulebook), which describes procedures for crossing orders on the Exchange's trading floor.

classes to be 40%.[124] As set forth in current Rule 6.74(d) (Rule 5.87(f) of the shell Rulebook), the Exchange may similarly set a crossing entitlement on a class-by-class basis up to 40%. The Exchange intends to set this entitlement for FLEX Orders at 40% in all classes, as it does today.[125] Rule 5.87(f) of the shell Rulebook requires a Floor Broker representing an eligible-sized order to request bids and offers for a series. Once the trading crowd has provided a quote, once a reasonable amount of time has passed, there is a significant change in the price of the underlying, or the price of the responses has been improved, the Floor Broker may cross the applicable percentage of the order, after all Public Customer orders in the book or crowd have been satisfied. This is similar to how a FLEX Trader may cross a FLEX Order in open outcry, as noted above. Specifically, a FLEX Trader would request a market, and after a reasonable amount of time has passed, announce an intention to cross, and receive a crossing entitlement after Public Customer interest has been satisfied. Therefore, the Exchange believes the proposed rule change will have a minimal (if any) impact on the crossing of FLEX Orders in open outcry.

The proposed rule change eliminates the formal BBO Improvement Interval. However, pursuant to general open outcry rules regarding crossing, as noted in the previous paragraph, if a FLEX Trader announces an intention to cross a FLEX Order, the FLEX Trader must provide time for the trading crowd to submit bids and offers (which is equivalent to what occurs during the BBO Improvement Interval). Similarly, if there is no intention to cross, but the FLEX Trader elects to not trade or there is insufficient size, the crowd may make subsequent bids and offers in a reasonably prompt manner.[126]

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry (if there were no FLEX Appointed Market-Makers, and if the Exchange determined to not offer an electronic book for FLEX Options pursuant to its authority under the current Rules). With respect to allocation, best-priced responses will continue to have first priority.[127] With respect to responses at the same price, because there will be no electronic Book for FLEX Options, there can be no Priority Customer FLEX Orders resting in the book that would receive first priority at the same price.[128] Additionally, there will be no FLEX Appointed Market-Makers, so there will be no participation entitlement applicable to FLEX trading.[129] The crossing participation will continue to next priority.[130] All other interest in the crowd will continue to then have priority in the sequence in which they were made; to the extent multiple bids or offers were submitted at the same time, or if the Submitting FLEX Trader cannot reasonable determine the sequence in which they were made, priority will be apportioned equally among those bids and offers.[131] As there will be no electronic book of orders for FLEX Options, there will be no non-customer orders in the book that would be eligible for execution after all other interest trades.[132] Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.[133]

As is the case regarding the proposed electronic FLEX Auction described above, the proposed rule change simplifies the process pursuant to which FLEX Traders may execute FLEX Orders on the Exchange in open outcry. As demonstrated above, the general open outcry trading rules are substantially similar to the current open outcry RFQ procedure for FLEX Options. However, the proposed rule change eliminates the terminology that applies only to FLEX trading. FLEX Traders are more familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage TPHs to submit FLEX Orders for execution. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated. However, as noted above, one difference that will remain is the minimum amount of time that the trading crowd will have to respond to a request for a market or to a represented FLEX Order, which will ensure the crowd has sufficient time to price the unique terms of FLEX Options. The proposed range of a reasonable time that must be three seconds (but no more than five minutes), is consistent with the current Rule, which requires the response period to be at least three seconds. The Exchange believes the maximum time accommodate this pricing while permitting executions of FLEX Orders to be completed in a more timely fashion. As a result, the Exchange believes the proposed auction will fit more seamlessly into the Exchange's market. The Exchange also believes this will encourage FLEX Traders to compete vigorously and potentially provide price improvement for FLEX Orders in a competitive auction process, as they do for non-FLEX Orders.

The proposed rule change deletes current Rule 24A.5(c), which states that acceptance of any bid or offer creates a binding contract under Rule 6.48 in the current Rulebook (which the Exchange intends to move to Rule 5.11 in the shell Rulebook). Current Rule 6.48 applies to all acceptances of bids and offers on the Exchange, including FLEX bids and offers, and thus the Exchange does not believe it is necessary to include a separate provision in the FLEX Rules. This has no impact on the binding nature of the acceptance of bids and offers on FLEX Options pursuant to proposed Rule 5.72.

The proposed rule change moves the provision that states all transactions must be in compliance with Section 11(a)(1) of the Exchange Act and the rules promulgated thereunder, including the description of the activity prohibited by Section 11(a)(1), from current Rule 24A.5(d)(4) (as well as current Rules 24A.5(a)(2)(v)(B) and (b)(2)(ii), which are cross-referenced in

[124] Current Rule 24A.5(d)(2)(i) permits the Exchange to establish a crossing participation entitlement on a class-by-class basis up to 40%.

[125] The Exchange would announce any changes to this percentage pursuant to Rule 1.5 in the shell Rulebook.

[126] *See* Rule 5.85(a)(2)(C)(v) in the shell Rulebook.

[127] *See* current Rule 24A.5(a)(2)(v)(A) and Rule 5.85(a)(1) in the shell Rulebook.

[128] Therefore, Rule 5.85(a)(2)(A) in the shell Rulebook will be inapplicable to FLEX trading.

[129] Therefore, Rule 5.85(a)(2)(B) in the shell Rulebook will be inapplicable to FLEX trading.

[130] *See* current Rule 24A.5(a)(2)(v)(A)(I) and Rule 5.87(a) and (f) in the shell Rulebook.

[131] *See* current Rule 24A.5(a)(2)(v)(A)(III) and Rule 5.85(a)(2)(C) in the shell Rulebook.

[132] As discussed above, while one customer has recently begin to submit interest to the FLEX Book, that interest is generally executed within a few seconds (after the required exposure period) and, thus, there are generally no orders resting on the FLEX Book available for allocation following an open outcry RFQ. Therefore, Rule 5.85(a)(2)(D) in the shell Rulebook will be inapplicable to FLEX Trading.

[133] As is the case today, and with open outcry non-FLEX trading, a TPH relying on the exemption in Section 11(a)(1)(G) of the Exchange Act and Rule 11a–1(T) thereunder may submit a proprietary order to the Exchange for execution in open outcry if it yields priority to any bid (offer) at the same price that is represented by all other bids (offers) that have priority over the TPH's order. *See* proposed Rule 5.72(e)(1); *see also* Rule 5.85(a)(2)(E) in the shell Rulebook and current Rule 24A.5(a)(5)(v)(B).

Rule 24A.5(d)(4)) to proposed Rule 5.72(e). The proposed rule change amends this provision to state that it applies to all executions of FLEX Orders, as this provision is only applicable to FLEX trading. The proposed rule change deletes current Rule 24A.5(d)(4)(i) and (iii) regarding the market-maker exemption and the effect versus execute exemption, respectively. Those exemptions will continue to be available to FLEX Traders with respect to FLEX trading. However, there is nothing unique about the applicability of those exemptions to FLEX trading, as they are available to all market participants with respect to all trading in the same manner. Additionally, the proposed rule change deletes current Rule 24A.5(d)(4)(iv), which states that a TPH may rely on any other exception to comply with the requirements of Section 11(a)(1) and the rules promulgated thereunder. That will continue to be true, and is captured by the introductory language in proposed Rule 5.72(e), which references that an exception to Section 11(a)(1) may apply. Because, FLEX traders may currently rely on the ''G'' exemption for electronic FLEX trading given the current priority structure but will no longer be able to rely on that exemption with respect to electronic FLEX trading given the proposed priority changes (see discussion above regarding this change),[134] the proposed rule change makes clear that the ''G'' exemption will only be available for FLEX Orders represented in open outcry, as long as the TPH relying on that exemption yields priority to any bid (offer) at the same price that is represented by all other bids (offers) that have priority over the TPH's order pursuant to proposed Rule 5.72. The proposed rule change also states that a TPH may not submit an electronic FLEX Order pursuant to proposed Rule 5.72(b), Rule 5.73, or Rule 5.74 to effect any proprietary order transactions by relying on the ''G'' exemption. As discussed below, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Exchange Act.

The proposed rule change deletes current Rule 24A.5, Interpretation and Policy .03 regarding post-trade verification procedures for electronic RFQs for complex orders. Due to the System updates in connection with the System migration, parties to FLEX transactions will no longer need to take additional steps with respect to executions of complex orders following an electronic FLEX Auction.[135] These procedures require FLEX Traders to input the leg price, exercise price, and/or premium information into the System following execution of a complex FLEX Order. As discussed above, FLEX Traders must submit all of this information upon entry of a FLEX Order.[136] Therefore, pursuant to the proposed rule change, a FLEX Trader will be required to input the same information for each leg of a complex FLEX Order prior to submission rather than following execution. A FLEX Trader may request nullification of a FLEX Option transaction if it did not conform to the terms in proposed Rule 4.21, or update any inaccurate information in a complex FLEX Order in the same manner as any TPH may update any inaccurate information in any order pursuant to current Rule 6.67.[137] Because all FLEX Orders will now be systematized, as discussed above, there is no longer a need for separate procedures regarding the correction of inaccurate information entered for FLEX transactions.

The proposed rule change moves the provisions in Rules 24A.1(i) and 24A.14 in the current Rulebook regarding FLEX Officials to Rule 5.75 in the shell Rulebook. The proposed rule change makes only nonsubstantive changes to this Rule, including to make the Rule plain English, delete redundant language (such as saying any TPH approved to act as a Market-Maker, as pursuant to Rule 8.1 in the current Rulebook, a Market-Maker must be a TPH), incorporate defined terms (including the term ''ICMP,'' which is an in-crowd Market-Maker, on-floor designated primary market-maker or lead market-maker with an allocation in a class, or a floor broker or PAR official representing an order in the trading crowd on a trading floor[138]), and update cross-references and paragraph lettering and numbering. FLEX Officials will have the same responsibilities as they do today.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[139] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[140] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[141] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. As described above, the proposed electronic FLEX Auction is closely aligned to the Exchange's other electronic auctions for non-FLEX Options, and the proposed open outcry FLEX Auction is closely aligned with the current open outcry trading process for non-FLEX Options, but are still similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading to eliminate potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Auctions, and possibly increase participation in FLEX Auctions, which could add liquidity to the Exchange's FLEX Market, which ultimately benefits investors. Additionally, with respect to electronic trading, market participants are more familiar with this type of functionality and have their systems coded to conform to these types of

[134] As discussed below, electronic FLEX trading, like all other electronic trading on the Exchange, will not allow FLEX Traders to take advantage of the ''G'' exemption.

[135] Note current Rule 24A.5, Interpretation and Policy .03 also applies to electronic transactions in FLEX Options with exercise prices and premiums based on a methodology for fixing that number or based on a percentage. As noted above, the Exchange will no longer offer exercise prices and premiums based on such a methodology.

[136] *See* proposed Rule 5.72(b)(2).

[137] Rule 6.67 in the current Rulebook describes the Exchange's Cboe Trade Match System, which permits TPHs to correct bona fide errors, subject to certain restrictions. The Exchange intends to move Rule 6.67 from the current Rulebook to Rule 6.6 in the shell Rulebook in a separate rule filing.

[138] *See* Rule 1.1 in the shell Rulebook.

[139] 15 U.S.C. 78f(b).

[140] 15 U.S.C. 78f(b)(5).

[141] *Id.*

auctions. The Exchange has received feedback from market participants indicating the difficulty and additional resources necessary to code to the nonstandard FLEX RFQ process given the multiple intervals.

Additionally, the Exchange believes the proposed rule change will permit executions of FLEX Orders to be completed in a more timely fashion, while providing the crowd with sufficient time to price the unique terms of FLEX Options (as the proposed ranges for the duration of the electronic and open outcry FLEX Auctions are consistent with current Rules).[142] The Exchange believes the proposed auction processes will ultimately benefit investors, as they will provide TPHs with greater harmonization of auction mechanisms on the Exchange. The Exchange believes the proposed auctions will provide mechanisms for more efficient and timely executions of FLEX Options, given participants' familiarity with the trading processes and reasonable durations of the auctions. Additionally, by providing for automatic executions following electronic auctions of FLEX Orders, the Exchange believes there will be more certainty of execution at the end of an auction, unlike today, when a FLEX Trader may reject the market after a period of potentially minutes. The Exchange believes the proposed auctions will encourage FLEX Traders to continue to compete vigorously and potentially provide price improvement for FLEX Orders in a competitive auction process, as they do for non-FLEX Orders, as they will be encouraged to submit their best-priced bids and offers during the auctions to have the opportunity to execute against the FLEX Order.

By permitting FLEX Options to trade in a manner similar to non-FLEX Options, the Exchange believes this further improves a comparable alternative to the over-the-counter (''OTC'') market in customized options. By enhancing our FLEX trading platform and making it similar to trading procedures in non-FLEX options, with which market participants are generally more familiar, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The Exchange believes the proposed rule change to eliminate the ability for FLEX Traders to specify exercise prices for FLEX Index Options as a method for fixing an index value or dollar amount at the time of a FLEX RFQ or a FLEX Order is traded, or as a percentage of the index value calculated at the time of the trade, and for FLEX Equity Options, as a method for fixing a dollar amount at the time of a FLEX RFQ or a FLEX Order is traded, or as a percentage of the price of the underlying security at the time of the trade will have no impact on FLEX Trading.[143] As noted above, FLEX Traders only designate an exercise price for a FLEX series as a fixed amount or a percentage of the closing value of the underlying security or index, as applicable, on the trade date. Similarly, the Exchange believes the proposed rule change to eliminate the ability for FLEX traders to apply the hedge trade condition to orders will have no impact on FLEX Trading.[144] As noted above, FLEX Traders do not apply this trade condition to FLEX Orders. Because FLEX Traders do not use this functionality, the Exchange believes it will benefit investors if the Exchange does not expend resources to rebuild on a new System functionality that is not in demand, and to not include references to unused functionality in the Exchange's rules. In addition, the current Rules permit the Exchange to make a FLEX Book available on a class-by-class basis.[145] The Exchange currently makes a FLEX Book available; however, FLEX Traders were not submitting orders into that Book until recently (April 2019). Additionally, at that time (and since that time), only one FLEX Trader has been submitting FLEX Orders into the FLEX Book, and only for a limited purpose, as discussed above. The activity in the FLEX Book represented only approximately 1.2% of all FLEX trading from the period of April to August 2019. As a result, the proposed elimination of the Exchange's ability to make a FLEX Book available is consistent with the Exchange's current authority to not make a FLEX Book available, and will also have no significant impact on FLEX trading, given that the vast majority of FLEX trading occurs outside of the book, and given that only one customer has recently been using the book for a limited purpose.

The Exchange believes the proposed rule change to allow multiple electronic FLEX auctions to overlap will benefit investors, as it may lead to an increase in Exchange volume and permit the Exchange to further compete with the OTC market, while providing for additional opportunities for price discovery and execution. Although electronic FLEX Auctions will be allowed to overlap, the Exchange does not believe that this raises any issues that are not addressed through the proposal as described above. For example, although overlapping, each Auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two Auctions that commence and conclude, at nearly the same time, each Auction will have a distinct conclusion at which time the Auction will be allocated. Additionally, FLEX Orders submitted into an electronic FLEX Auction will be able to execute only against FLEX responses submitted to that Auction. If market participants desire to have interest execute against both FLEX Orders subject to concurring FLEX Auctions, market participants may submit responses to both Auctions.

Additionally, the proposed rule change to permit concurrent auctions is not novel, and is consistent with functionality already in place on other exchanges with respect to other types of auctions.[146] The Exchange does not believe the unique terms of FLEX Options create any additional issues not previously considered by the Commission with respect to concurrent auctions. As described above, the Exchange believes concurrent auctions may increase execution opportunities, and permit more timely executions, of FLEX Orders in a more timely fashion, which would ultimately benefit investors. Additionally, the Rules do not currently prevent a COA of a complex order from occurring at the same time as an AIM in one of the components of a complex order subject to a COA. Therefore, the Exchange believes it is similarly reasonable to permit multiple

[142] *See* current Rule 24A.4(a)(3)(iii) and proposed Rule 5.72(c)(1)(E) and (d)(1) (which all provide for a minimum of three seconds of response time).

[143] *See* current Rule 24A.4(b)(2) and (c)(2).

[144] *See* current Rule 24A.1(y). As discussed above, elimination of the IOC trade condition will have no impact, as it is no longer necessary given that all FLEX Orders submitted for electronic execution may only execute following an auction or be cancelled.

[145] *See* current Rule 24A.5(b).

[146] *See, e.g.,* EDGX Rules 21.19(c)(1) and 21.22(c)(1); *see also, e.g.,* Nasdaq ISE LLC (''ISE'') Rules 716(d) and 723, Interpretation and Policy .04; and Boston Options Exchange LLC (''BOX'') Rule 7270 and BOX IM–7150–3. Other Exchange rules to take effect following the migration also permit concurrent auctions. *See, e.g.,* Rules 5.33, 5.37, and 5.38 in the shell Rulebook.

FLEX Auctions in the same series to occur at the same time.

The proposed rule change to permit all FLEX Traders to respond to electronic FLEX Auctions will benefit investors. Permitting all FLEX traders to submit responses, as opposed to not permitting options market-makers at away exchanges to respond, may result in more FLEX Traders having the opportunity to participate in executions at the conclusion of electronic FLEX Auctions. Additionally, it may increase liquidity in these auctions, which may lead to more opportunities to price improvement and ultimately benefit investors.

The Exchange believes the proposed rule change regarding the time at which trading in FLEX Options will be available will benefit investors. Because market participants incorporate transaction prices of underlying securities or the values of underlying indexes when pricing options (including FLEX Options), the Exchange believes it will benefit investors for FLEX Options trading to not be available until that information has begun to be disseminated in the market. Because the Exchange will have no electronic book of resting orders for FLEX Options, and no opening rotation, at the time at which FLEX Trading opens, there are (and will be) no automatic executions. Therefore, being ''open'' for FLEX trading merely means that FLEX Traders may submit FLEX Orders into one of the various FLEX Auctions, at the conclusion of which executions in FLEX Auctions may occur (which are all discussed below). Additionally, the proposed trigger events occur for many underlying securities or indexes within one second of 9:30 a.m. Eastern Time (which is consistent with the current time at which the Exchange has determined to open FLEX Option classes), and the majority occur within ten seconds. Therefore, pursuant to the proposed rule change, the opening of FLEX Options for trading may occur over a longer timeframe, which would further reduce any potential market impact of the change to the opening time for FLEX Options. While the Exchange believes it is important to open series for trading as soon as possible, the Exchange also believes the proposed rule change will permit it to manage the number of FLEX Option series that may begin to trade during a short time period to ensure a fair and orderly opening in all options listed on the Exchange. The Exchange further believes aligning the trigger events for the opening of FLEX and non-FLEX Options may eliminate any confusion among market participants regarding when options with the same underlying are open for trading. The Exchange also notes that FLEX Options trading volume currently represents approximately 1.5% of total trading volume on the Exchange, and therefore the Exchange believes any potential market impact of this change would be de minimis.

The Exchange believes the proposed order types and instructions that will be available for FLEX Orders will promote just and equitable principles of trade, and benefit investors, because they will provide FLEX Traders with control over the executions of their FLEX Orders while being consistent with the proposed FLEX trading processes. Instructions that are available for non-FLEX Orders but will not be available for FLEX Orders are consistent with the fact that FLEX Orders will only be eligible to trade following an electronic or open outcry FLEX Auction and not rest in an electronic book or route away, and because there is no market for FLEX Options (for which most Order Instructions and Times-in-Force set forth in Rule 5.6 in the shell Rulebook are relevant). The Exchange believes making these order types, instructions, and times-in-force available for FLEX Orders is consistent with the Exchange's authority to designate availability of orders types on a class-by-class basis.[147] The Exchange believes the proposed rule change will benefit investors by specifying the order types that are available for FLEX trading, as it provides investors with additional transparency.

Similarly, the proposed rule change regarding FLEX Order requirements will benefit investors, because it provides investors with additional transparency regarding complex order entry requirements for FLEX Options. As noted above, certain of the proposed requirements are consistent with current rules, while the restrictions on permissible combinations of exercise styles and settlement types on the leg components will have no impact on trading, as FLEX Traders do not currently trade complex orders with legs in the combinations that the proposed rule change proposes to restrict. Additionally, as noted above, the proposed rule change to require FLEX Traders to input the leg prices of complex FLEX Orders upon entry merely moves this requirement to the time of order submission rather than post-trade (as is required today). Additionally, much of the proposed rule change is merely relocating rules from the current Rulebook to the shell Rulebook, including flexible terms (such as settlement type, exercise price, exercise style, and expiration date) and fungibility provisions, and making only nonsubstantive changes, which will therefore have no impact on FLEX trading. The Exchange believes providing a reorganized, holistic rulebook upon migration will also benefit investors.

The proposed rule change to adopt electronic and open outcry FLEX Auctions is also consistent with Section 11(a)(1) of the Act[148] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account with respect to which the member or a person associated with the member exercises investment discretion, unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),[149] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[150] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[151]

As noted above, FLEX Traders that effect FLEX transactions in open outcry may qualify for the ''G'' exemption by yielding priority to any bid (offer) at the same price of any other bid (offer) that has priority over those broker-dealer orders under this Rule. However, FLEX Traders may not rely on the ''G'' exemption to execute proprietary orders in the electronic FLEX Auctions as set forth in proposed Rule 5.72(e). Therefore, a FLEX Trader must ensure it complies with another exemption, such as the ''Effect vs. Execute'' exemption, when submitting proprietary FLEX Orders for electronic execution.

The ''Effect vs. Execute'' exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To

[147] *See* Rule 6.53 in the current Rulebook and Rule 5.6 in the shell Rulebook.

[148] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[149] 15 U.S.C. 78k(a)(1)(A).

[150] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[151] 17 CFR 240.11a2–2(T).

comply with Rule 11a2–2(T)'s conditions, a member: (a) Must transmit the order from off the exchange floor; (b) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[152] (c) may not be affiliated with the executing member; and (d) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that TPHs entering orders into an electronic FLEX Auction would satisfy the requirements of Rule 11a2–2(T).

The Exchange believes the electronic platform component of the electronic FLEX Auction will place all users—both TPHs and non-TPHs on the ''same footing'' as intended by Rule11a2–2(T). Given the automated matching and execution at the conclusion of an electronic FLEX Auction, no TPH would enjoy any special control over the time of execution or special order handling advances for orders executed electronically following an electronic FLEX Auction, because such orders would be centrally processed for execution by computer, as compared to being handled by a member through bids and offers on the trading floor. Because the electronic trading platform components are designed to prevent any TPHs from gaining any time and place advantages, the Exchange believes the proposed electronic FLEX Auction satisfies the four components of the ''Effect vs. Execute'' rule as well as the general policy objectives of Section 11(a) of the Act.

In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from off the floor directly to the Exchange by electronic means.[153] Because the Exchange's electronic FLEX Auction receives, and will continue to receive, orders from FLEX Traders electronically through remote terminals or computer-to-computer interfaces, the Exchange believes that orders submitted to an electronic FLEX Auction from off the Exchange's trading floor will satisfy the off-floor transmission requirement.

The second condition of Rule 11a2–2(T) requires that neither a member nor an associated person of such member participate in the execution of its order. The Exchange represents that, upon submission to an electronic FLEX Auction, an order or FLEX response will be executed automatically pursuant to the Rules set forth for electronic FLEX Auctions. In particular, execution of a FLEX Order or FLEX response sent to the electronic FLEX Auction depends not on the FLEX Trader entering the FLEX Order or FLEX response, but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of a FLEX Order or FLEX response is a FLEX Trader or associated person of such FLEX Trader able to acquire control or influence over the result or timing of order or response execution.[154] Once the FLEX Order or FLEX response, as applicable, has been transmitted, the FLEX Trader that submitted the order or response, respectively, will not participate in its execution. No FLEX Trader, including the Submitting FLEX Trader, will see a FLEX response submitted into an electronic FLEX Auction, and therefore and will not be able to influence or guide the execution of their FLEX Orders or FLEX responses, as applicable.

Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the electronic FLEX Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[155] The Exchange represents that the electronic FLEX Auction is designed so that no FLEX Trader has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

A TPH (not acting in a market-maker capacity) could submit an order for a covered account from off of the Exchange's trading floor to an unaffiliated Floor Broker for submission for execution in the FLEX Auction from the trading floor and satisfy the ''Effect vs. Execute'' exemption (assuming the other conditions are satisfied).[156] However, a TPH could not submit an order for a covered account to its ''house'' Floor Broker on the trading floor for execution and rely on this exemption. Because a TPH may not rely on the ''G'' exemption when submitting a FLEX Order to an electronic FLEX Auction,[157] it would need to ensure another exception applies in this situation.

Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[158] The Exchange

[152] The member may, however, participate in clearing and settling the transaction.

[153] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[154] Submitting FLEX Traders may modify or cancel their FLEX Orders, and all FLEX Traders may modify or cancel their responses, after being submitted to an electronic FLEX Auction. The Exchange notes that the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'').

[155] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[156] Orders for covered accounts that rely on the ''Effect vs. Execute'' exemption in this scenario must be transmitted from a remote location directly to the Floor Broker on the trading floor by electronic means.

[157] *See* proposed Rule 5.72(e).

[158] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services

recognizes that FLEX Traders relying on Rule 11a2–2(T) for transactions effected through the electronic FLEX Auction must comply with this condition of the Rule, and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

Therefore, Exchange believes that the instant proposal is consistent with Rule 11a2–2(T), and that therefore the exception should apply in this case. Therefore, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all FLEX Orders submitted for electronic or open outcry execution. The trading of FLEX Auctions, and the use of either of the proposed FLEX Auctions, are voluntary for TPHs to use and will be available to all TPHs that register with the Exchange as FLEX Traders. As discussed above, the Exchange believes the proposed rule change should encourage FLEX Traders to compete amongst each other by responding with their best price and size for a particular auction. Because bids and offers in response to an Auction (whether electronic or open outcry) will have the same opportunity to execute against the FLEX Order (which is allocated in a pro-rata manner against bids and offers at the same price), a FLEX Trader will be encouraged to respond to FLEX Auctions with bids and offers at the best and most aggressive prices. The Exchange believes the proposed rule change will encourage FLEX Traders to compete vigorously to provide the opportunity for price improvement for FLEX Orders in a competitive auction process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. The proposed rule change simplifies the FLEX trading principles, and harmonizes the FLEX auction trading procedures with the non-FLEX trading. The Exchange believes aligning FLEX trading processes with non-FLEX trading processes with which FLEX Traders are familiar may further encourage FLEX trading on the Exchange. The Exchange believes this is a further improved and comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform and making it similar to trading procedures in non-FLEX options, with which market participants are generally more familiar, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [159] and Rule 19b–4(f)(6) thereunder.[160]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [161] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [162] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative prior to the proposed Exchange's system migration on October 7, 2019, in order to permit the Exchange to provide FLEX trading functionality to market participants on an uninterrupted basis. In support of its waiver request, the Exchange cites to similarities between its proposed rule and the rules for non-FLEX transactions pursuant to the Exchange's standard auction process.[163] In addition, the Exchange notes similarities to certain functionalities already in place on other exchanges.[164] Additionally, the Exchange states that the proposal relocates certain rules from the current Rulebook to the shell Rulebook, including flexible terms and fungibility provisions, and makes only non-substantive changes to such provisions, which the Exchange believes will have no impact on FLEX trading. The Exchange further notes that it has provided market participants with notice of this change in advance of the system migration.[165] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[166]

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.

rendered to effect such transactions. *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[159] 15 U.S.C. 78s(b)(3)(A).

[160] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[161] 17 CFR 240.19b–4(f)(6).

[162] 17 CFR 240.19b–4(f)(6)(iii).

[163] *See, e.g.,* Rule 5.33(d) and Rule 5.85(a) of the shell Rulebook.

[164] *See supra* note 146.

[165] *See supra* note 6.

[166] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–084 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[167]

Jill M. Peterson,

Assistant Secretary.

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[167] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87233; File No. SR–PEARL–2019–27]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

October 4, 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 20, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to establish one-time membership application fees for MIAX PEARL Members.[3]

The Exchange previously filed to establish one-time membership application fees on June 28, 2019 (SR–PEARL–2019–22).[4] That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR–PEARL–2019–27).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish one-time membership application fees based upon the applicant's status as either an Electronic Exchange Member[5] (''EEM'') or as a Market Maker.[6] MIAX PEARL commenced operations as a national securities exchange registered under Section 6 of the Act[7] on February 6, 2017.[8] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–PEARL–2017–10.[9] In that filing, the Exchange expressly waived the one-time membership application fees to provide an incentive to prospective EEMs and Market Makers to become Members of the Exchange. At that time, the Exchange waived one-time membership application fees for the Waiver Period[10] and stated that it would provide notice to market participants when the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 86363 (July 12, 2019), 84 FR 34445 (July 18, 2019) (SR–PEARL–2019–22) (the ''Second Proposed Rule Change'').

[5] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100. *See* the Definitions Section of the Fee Schedule.

[6] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* Exchange Rule 100. *See* the Definitions Section of the Fee Schedule.

[7] 15 U.S.C. 78f.

[8] *See* Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10–227) (order approving application of MIAX PEARL, LLC for registration as a national securities exchange).

[9] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[10] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

Exchange intended to terminate the Waiver Period.

On March 14, 2019, the Exchange issued a Regulatory Circular that the Exchange would be ending the Waiver Period for one-time membership application fees, among other non-transaction fees, beginning on April 1, 2019.[11] The Exchange initially filed the proposal on March 27, 2019, designating the proposed fees effective April 1, 2019.[12] The First Proposed Rule Change was published for comment in the **Federal Register** on April 12, 2019.[13] The proposed fees remained in effect until the Exchange withdrew the First Proposed Rule Change on May 20, 2019.[14] The First Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.[15]

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.[16] The Second Proposed Rule Change was published for comment in the **Federal Register** on July 18, 2019.[17] The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.[18] The Second Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.[19] The Exchange is now re-filing the proposal to establish one-time membership application fees for EEMs and Market Makers. The Exchange will file separate proposals to establish certain other non-transaction fees and to terminate the New Member Non-Transaction Fee Waiver and Waiver Period.

MIAX PEARL Membership Application Fee

The Exchange proposes to assess a one-time membership application fee based upon the applicant's status as either an EEM or as a Market Maker. The Exchange proposes that applicants for MIAX PEARL Membership as an EEM will be assessed a one-time application fee of $500. The Exchange proposes that applicants for MIAX PEARL Membership as a Market Maker will be assessed a one-time application fee of $1,500. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange. MIAX PEARL's proposed one-time membership application fees are similar to and generally lower than one-time application fees in place at the Cboe Exchange, Inc. (''Cboe'') ($3,000 for an individual applicant and $5,000 for an applicant organization)[20] and at Nasdaq ISE, LLC (''Nasdaq ISE'') ($7,500 per firm for a primary market maker, $5,500 per firm for a competitive market maker, and $3,500 per firm for an electronic market maker).[21] Below is the table for the proposed one-time membership application fee for MIAX PEARL:

Type of membership	Application fee
Electronic Exchange Member	$500.00
Market Maker	1,500.00

MIAX PEARL will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX PEARL membership is finally denied.

Applicability to and Impact on Participants

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[22]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share.[23] Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had an approximately 5.30% market share of executed volume of multiply-listed equity and exchange traded fund (''ETF'') options.[24] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).[25] The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The proposed adoption of a one-time membership application fee applicable to EEMs and Market Markers would be applied uniformly to each of these market participants. Further, as there are currently 16 registered options exchanges competing for order flow with no single exchange accounting for more than approximately 16% of market share, the Exchange cannot predict with certainty whether any participant is planning to become a Member and thus would be subject to the proposed fees.

[11] *See* MIAX PEARL Regulatory Circular 2019–09 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.*

[12] *See* Securities Exchange Act Release No. 85541 (April 8, 2019), 84 FR 14983 (April 12, 2019) (SR–PEARL–2019–12) (the ''First Proposed Rule Change'').

[13] *See id.*

[14] *See* Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

[15] *See supra* note 12.

[16] *See supra* note 4.

[17] *See id.*

[18] *See* Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

[19] *See supra* note 4.

[20] *See* Cboe Fees Schedule, p. 12, Cboe Trading Permit Holder Application Fees.

[21] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application.

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[23] The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[24] *See id.*

[25] *See* Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR–PEARL–2018–21).

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [26] in general, and furthers the objectives of Section 6(b)(4) of the Act [27] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to adopt a one-time membership application fee applicable to EEMs and Market Markers as described above is reasonable in several respects. First, the Exchange is subject to significant competitive forces in the market for options transaction and non-transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.[29] Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had approximately a 5.30% market share of executed volume of multiply-listed equity and ETF options.[30]

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).[31] The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the elimination of the fee waiver for one-time membership application fees will uniformly apply to all EEMs and Market Makers seeking to become Members of the Exchange. Additionally, The [sic] Exchange believes its proposal for a one-time membership application fees applicable to EEMs and Market Markers is reasonable and well within the range of fees assessed among other exchanges, including the Exchange's affiliate, MIAX.[32]

The Exchange believes its one-time membership application fees are reasonable, equitable and not unfairly discriminatory. As described above, the one-time application fees are similar to the application fees in place at other options exchanges,[33] and are associated with the time and resources of processing of such applications. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Maker applicants are charged slightly more than EEM applicants because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL 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.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX PEARL in the assessment of one-time membership application fees will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX PEARL's proposed one-time membership application fees, as described herein, are comparable to fees charged by other options exchanges

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4) and (5).

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[29] The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[30] *See id.*

[31] *See* Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR–PEARL–2018–21).

[32] *See* the MIAX Options Fee Schedule.

[33] *See supra* notes 20 and 21.

for the same or similar services, including those fees assessed by its affiliate, MIAX.[34]

The Exchange believes that the proposed one-time membership application fees do not place certain market participants at a relative disadvantage to other market participants because the pricing is associated with the Exchange's time and resources to process such applications. The proposed one-time membership application fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for reviewing and processing Market Maker and EEM membership applications. Accordingly, the proposed one-time membership application fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Further, the Exchange believes that the proposed rule change will promote transparency by making it clear to EEMs and Market Makers the fees that MIAX PEARL will assess for Membership application to MIAX PEARL. This will permit EEMs and Market Makers to more accurately anticipate and account for the costs of one-time membership application in order to become Members of the Exchange, which promotes consistency.

Inter-Market Competition

The Exchange believes the proposed one-time membership application fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive.[35] Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share [36] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[37] and Rule 19b–4(f)(2) [38] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–27 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22143 Filed 10–9–19; 8:45 am]

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[34] *See* the MIAX Options Fee Schedule.

[35] *See supra* note 23.

[36] *Id.*

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

[38] 17 CFR 240.19b–4(f)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87234; File No. SR–FICC–2019–801]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of No Objection To Advance Notice To Amend the GSD Rulebook To Establish a Process To Address Liquidity Needs in Certain Situations in the GCF Repo and CCIT Services and Make Other Changes

October 4, 2019.

On August 9, 2019, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2019–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

Exchange Act of 1934 (''Exchange Act'') [3] to make changes to how FICC processes tri-party repo market transactions, specifically GCF Repo transactions and CCIT transactions. The Advance Notice was published for public comment in the **Federal Register** on September 10, 2019,[4] and the Commission has received no comments regarding the changes proposed in the Advance Notice.[5] This publication serves as notice of no objection to the Advance Notice.

I. The Advance Notice

The proposals reflected in the Advance Notice would make changes to how FICC's Government Securities Division (''GSD'') processes tri-party repo transactions, specifically GCF Repo transactions [6] and CCIT transactions.[7] First, the proposals would establish new deadlines and associated late fees for FICC members to satisfy their obligations in connection with such transactions, *i.e.,* to deliver cash or securities. Second, the Advance Notice would establish a process for FICC to access liquidity in situations where a member with a net cash delivery obligation in GCF Repo/CCIT activity, that is otherwise in good standing,[8] is either (1) delayed in satisfying its cash delivery obligation or (2) unable to satisfy, in whole or in part, such obligation. More specifically, this process would allow FICC to access liquidity from either (i) the GCF Clearing Agent Bank [9] in the form of overnight financing, which would be subject to the GCF Clearing Agent Bank's discretion, and/or (ii) end-of-day borrowing of Clearing Fund cash,[10] subject to specified limits. Further, if those liquidity sources are insufficient to cover the affected member's outstanding cash delivery obligations, the proposal would enable FICC to obtain additional liquidity by entering into overnight repos with those members to whom cash is owed by the member with the unsatisfied net cash delivery obligations. Third, the Advance Notice would make a clarification and several technical changes and corrections to FICC's rules.[11]

A. New Deadlines and Late Fees for Satisfaction of Obligations in GCF Repo and CCIT Transactions

1. Securities Delivery Obligations

Under FICC's current Rules, a Netting Member must meet its securities delivery obligations in connection with its GCF Repo and/or CCIT transactions within the timeframes established by FICC.[12] Currently, FICC has set two deadlines by which Netting Members are required to meet their securities delivery obligations: 4:30 p.m. and 6:00 p.m.[13] If a Netting Member fails to satisfy a securities delivery obligation by 4:30 p.m., it is subject to a late fee of $500.[14] If the Netting Member delivers the securities after the 6:00 p.m. deadline, no additional late fee applies, but FICC cannot guarantee that it would be able to settle the transaction. Instead, FICC will only process such late transactions if FICC is able to contact both affected Netting Members and they agree to settle the transaction.

In the Advance Notice, FICC proposes to eliminate the 6:00 p.m. deadline. The 4:30 p.m. deadline would remain in place. If a Netting Member fails to satisfy a securities delivery obligation by 4:30 p.m., it would remain subject to the $500 late fee. But if the Netting Member delivers the securities after 4:30 p.m., FICC would only process the transaction if it is able to contact both affected Netting Members and they agree to settle the transaction.

2. Cash Delivery Obligations

FICC's Rules do not currently contain a deadline for a Netting Member's or CCIT Member's satisfaction of cash delivery obligations in the GCF Repo and CCIT Services. FICC proposes to establish 4:30 p.m., or, if later, one hour after the close of the Fedwire Securities Service reversals, as the deadline for a ''Net Funds Payor'' [15] to satisfy its cash delivery obligations. FICC also proposes to establish late fees, subject to progressive increases. Specifically, the late fees would apply as follows for occurrences within the same 30 calendar day period: (a) $500 for the first occurrence, (b) $1,000 for the second occurrence, (c) $2,000 for the third occurrence, and (d) $3,000 for the fourth occurrence or additional occurrences. The late fee would not apply if FICC determines that failure to meet this timeframe is not the fault of the Net Funds Payor.[16]

In addition, FICC proposes to establish additional late fees that would be imposed on Net Funds Payors that fail to meet their cash delivery obligation by the close of the Fedwire Funds Service.[17] These fees would be in addition to the late fees described in the preceding paragraph, and FICC would impose both fees in the event that a Net Funds Payor did not satisfy its cash delivery obligations by the close of the Fedwire Funds Service. Specifically,

[3] 15 U.S.C. 78a *et seq.*

[4] Securities Exchange Act Release No. 34–86876 (September 5, 2019), 84 FR 47618 (September 10, 2019) (File No. SR–FICC–2019–801) (''Notice of Filing''). On August 9, 2019, FICC also filed a related proposed rule change (SR–FICC–2019–004) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (''Proposed Rule Change''). *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 respectively. In the Proposed Rule Change, which was published in the **Federal Register** on August 29, 2019, FICC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 86745 (August 23, 2019), 84 FR 45608 (August 29, 2019). The comment period for the related Proposed Rule Change filing closed on September 19, 2019, and the Commission received no comments.

[5] As the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the proposed rule change or the Advance Notice.

[6] ''GCF Repo transactions'' are tri-party repo transactions through FICC's general collateral finance repo (''GCF Repo'') service (''GCF Repo Service''). The GCF Repo Service enables dealers to trade general collateral repos, based on rate, term, and underlying product, throughout the day without requiring intra-day, trade-for-trade settlement on a Delivery-versus-Payment basis. *See generally* GCF Repo (DTCC description of the service), *available at http://www.dtcc.com/clearing-services/ficc-gov/gcf-repo* (last visited August 13, 2019).

[7] ''CCIT'' means Centrally Cleared Institutional Triparty. ''CCIT transactions'' are tri-party repo transactions in GCF Repo securities between members that participate in the GCF Repo Service and CCIT members, which are institutional counterparties (other than registered investment companies (''RICs'') under the Investment Company Act of 1940, as amended) and are the cash lenders in the transactions. *See generally* Securities Exchange Act Release No. 80361 (April 3, 2017), 82 FR 17053, 17054 (April 7, 2017) (SR–FICC–2017–803) (notice of filing of the advance notice regarding creating the CCIT service).

[8] A member in good standing is a member for which FICC has not ceased to act for the member (in which case FICC's close-out rules would apply) or has not restricted the member's access to services.

[9] The GCF Clearing Agent Bank settles the repo transaction on its books. Currently, the only GCF Clearing Agent Bank is The Bank of New York Mellon.

[10] The Clearing Fund is an aggregate of all members' margin deposits to FICC designed to account for the costs associated with a member defaulting to FICC.

[11] The FICC GSD Rulebook (''Rules'') is *available at http://www.dtcc.com/legal/rules-and-procedures.* Capitalized terms not defined herein are defined in the Rules.

[12] Rule 20, Section 3, *supra* note 11.

[13] The close of the Fedwire Funds Service at 6:30 p.m. is the final cutoff point at which a Netting Member's failure to deliver securities would be deemed by FICC to result in a failed transaction. In that scenario, the Netting Member would not be entitled to receive the funds borrowed, and would instead owe interest on the funds.

[14] Fee Structure, *supra* note 11.

[15] FICC's proposal would add ''Net Funds Payor'' as a new defined term, meaning a Netting Member or CCIT Member with cash delivery obligations.

[16] This determination would be made by FICC Product Management based on input from the GCF Clearing Agent Bank, internal FICC Operations staff and the Netting Member.

[17] *See* Fedwire Services Operating Hours, *available at https://www.frbservices.org/resources/financial-services/wires/operating-hours.html* (last visited September 2, 2019).

these late fees would apply as follows for occurrences within the same 90 calendar day period: (a) 100 basis points on the unsatisfied cash delivery obligation amount for the first occurrence,[18] (b) 200 basis points on the unsatisfied cash delivery obligation amount for the second occurrence, (c) 300 basis points on the unsatisfied cash delivery obligation amount for the third occurrence, and (d) 400 basis points on the unsatisfied cash delivery obligation amount for the fourth occurrence or any additional occurrences. The late fees would not apply if FICC determines that the failure to meet this timeframe is not primarily the fault of the Net Funds Payor.[19]

B. Proposed Process To Provide Liquidity

The Advance Notice would establish a process for FICC to access liquidity in situations where a Member with a net cash delivery obligation in GCF Repo/CCIT activity (*i.e.,* Net Funds Payor), that is otherwise in good standing, is either (1) delayed in satisfying its cash delivery obligation or (2) unable to satisfy, in whole or in part, such obligation.[20] Unless FICC has ceased to act for the Member (in which case FICC's close-out rules would apply) or has restricted the Member's access to services,[21] the Net Funds Payor shall be permitted to continue to submit additional tri-party repo transactions for clearing to FICC during this process.

Pursuant to the proposal, once FICC determines that a Net Funds Payor is in good standing with GSD but is experiencing an issue, such as an operational issue, that may result in a late payment, partial payment or non-payment of its cash delivery obligation on the settlement date, the following process would occur. First, in the case where the Net Funds Payor only satisfies part of its cash delivery obligation, the GCF Clearing Agent Bank would settle the cash it received pursuant to such GCF Clearing Agent Bank's settlement algorithm (as is done today).

Next, FICC would consider whether it would seek liquidity to cover any of the Net Funds Payor's delivery shortfall amounts in one of the two forms discussed. The two potential forms of liquidity would be (i) end-of-day borrowing of Clearing Fund cash (''EOD Clearing Fund Cash'') and/or (ii) GCF Clearing Agent Bank loans.[22] The cash amount that FICC would be able to access via the EOD Clearing Fund Cash and/or GCF Clearing Agent Bank loans would then be applied to the unsatisfied cash delivery obligations due to the Net Funds Receivers on a pro rata basis, based upon the percentage due to each Net Fund Receiver out of the total amount of all unsatisfied obligations.

If FICC were to use GCF Clearing Agent Bank loans to provide liquidity, any overnight financing from the GCF Clearing Agent Bank would be subject to the GCF Clearing Agent Bank's discretion because FICC's overnight financing arrangements with its GCF Clearing Agent Bank are uncommitted. As such, the financing would be secured by FICC's pledge of Clearing Fund securities subject to the GCF Clearing Agent Bank's current haircut schedule.[23] If FICC were to use EOD Clearing Fund Cash to provide liquidity, such use would be subject to certain internal limitations. Specifically, GSD would establish a cap on the amount of EOD Clearing Fund Cash that may be used for this purpose to the lesser of $1 billion or 20 percent of available Clearing Fund Cash. Any resulting costs incurred by FICC in accessing EOD Clearing Fund Cash and/or GCF Clearing Agent Bank loans would be debited from the Net Funds Payor whose shortfall caused the liquidity need.

Finally, to the extent that the amount of liquidity FICC obtains via the Clearing Fund cash and overnight financing arrangement (if any) is insufficient to cover the outstanding cash delivery obligations, the relevant Net Funds Receivers would be required under FICC's Rules to enter into overnight repurchase agreements with FICC on the Generic CUSIP Number for which such Net Funds Payor failed to fulfill its cash delivery obligation. This arrangement would be done pursuant to the ''GCF Repo Allocation Waterfall MRA,'' which is a committed financing arrangement that would be added as part of this proposal to the binding terms of FICC's rulebook.[24] The amount FICC would seek to obtain via this committed facility would be the remaining unsettled amount per Net Funds Receiver, thus satisfying the outstanding amount of the Net Funds Payor's cash delivery obligations.[25] The associated overnight interest of the reverse repurchase agreement would be debited from the Net Funds Payor that did not satisfy its cash delivery obligation and credited to the affected Net Funds Receivers in the funds-only settlement process as a Miscellaneous Adjustment Amount.[26]

Any resulting costs, such as financing costs, incurred by the Net Funds Receivers would be debited from the Net Funds Payor whose shortfall caused the need for the reverse repurchase agreement. A Net Funds Receiver requesting compensation in this regard would need to submit a formal claim to FICC. Upon review and approval by FICC, the Net Funds Receiver would receive a credit that would be processed in the funds-only settlement process as a Miscellaneous Adjustment Amount.[27]

[18] The late fee is based on the ACT/360 day count convention, where ''ACT'' represents the actual number of days in the period. For example, assuming a first occurrence unsatisfied cash delivery obligation of $100 million, the late fee would be $100 million * 100/3600000 = $2,777.78. This example uses the first occurrence amount. This calculation would apply to the rest of the proposed late fees in this section.

[19] The determination would be made by FICC Product Management based on input from the GCF Clearing Agent Bank, internal FICC Operations staff and the Netting Member.

[20] Such delay could, for example, be due to operational issues experienced by the Net Funds Payor. If a Netting Member with a collateral obligation does not deliver its securities, FICC considers it a fail. However, if a Netting Member or CCIT Member with a cash delivery obligation is unable to deliver its cash (and is in good standing), FICC has represented that it intends to employ the proposed process. Notice of Filing, *supra* note 4 at 47620.

[21] *See* Rule 22A, *supra* note 11. FICC has represented that, before it uses the proposed process, it would first evaluate whether to recommend to the Board's Risk Committee that FICC cease to act for such Net Funds Payor. FICC would consider, but would not be limited to, the following factors in its evaluation: (i) The Net Funds Payor's current financial position, (ii) the amount of the outstanding payment, (iii) the cause of the late payment, (iv) current market conditions, and (v) the size of the potential overnight reverse repurchase agreements under the GCF Repo Allocation Waterfall MRAs (as defined below) on the GSD membership. Notice of Filing, *supra* note 4 at 47620. FICC already has the authority to cease to act for a member that does not fulfill an obligation to FICC and will continually evaluate throughout the proposed process whether FICC will cease to act. *Id.*

[22] FICC has represented that it would not prioritize accessing these two sources of potential liquidity because FICC's decision to use either or both sources would be considered on a case-by-case basis, taking into consideration factors such as the specific circumstances at issue (*i.e.,* the time of day and the size of the shortfall), availability of a bank loan, market conditions (*i.e.,* whether there are stress events occurring in the market), commercial considerations (*i.e.,* the current loan rates), and ease of operational execution. Notice of Filing, *supra* note 4 at 47620.

[23] *See* Rule 4, Section 5, *supra* note 11.

[24] Such reverse repurchase agreements would be entered into pursuant to the terms of a 1996 SIFMA Master Repurchase Agreement (*available at http://www.sifma.org/services/standard-forms-and-documentation/mra,-gmra,-msla-and-msftas/),* which would be incorporated into the Rules, subject to specific changes set forth in the Rules.

[25] FICC represents that these reverse repurchase agreements would be at a market rate, which would be the overnight par weighted average rate at the Generic CUSIP Number level. Notice of Filing, *supra* note 4 at 47621.

[26] *See* Rule 13, Section 1(m) and Rule 3B, Section 13(a)(ii), *supra* note 11.

[27] *Id.*

The debit of the Net Funds Payor would be processed in the same way.

C. Clarification, Technical Changes and Corrections

FICC also proposes to make certain clarifying, technical changes, and corrections both to reflect the changes proposed in this Advance Notice and to revise certain aspects of the Rules that FICC has determined to be inaccurate or incorrect as related to the GCF Repo Service. These changes include adding particular parentheticals, changes to titles of sections, corrections to refer to the title of the Fedwire Securities Service, updating references and descriptions, adding new defined terms, and updating certain defined terms. These changes are described in detail in the Notice of Filing.[28]

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[29]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[30] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a): [31]

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.[32]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[33] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[34] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[35] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(7).[36]

A. Consistency With Section 805(b) of the Clearing Supervision Act

For the reasons discussed immediately below, the Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.

1. New Deadlines and Late Fees for Satisfaction of Obligations in GCF Repo and CCIT Transactions

FICC has represented that Netting Members generally meet their securities delivery obligations by the current 4:30 p.m. securities allocation deadline. However, according to FICC, because of the interconnectivity between the GCF Repo market within FICC and the tri-party repo market outside of FICC, in which obligations to deliver securities collateral typically occur after collateral allocations at FICC, the securities collateral that is used to settle GCF Repo positions may subsequently be used by Netting Members to complete tri-party repo transactions. Therefore, settling GCF Repo Service transactions earlier in the day reduces the likelihood that an operational issue may result in a failed or incomplete tri-party repo transaction outside of FICC. When a Netting Member depends on the proceeds from the GCF Repo Service transaction to satisfy its cash obligations in its tri-party repo transactions outside of FICC, the Netting Member could default on its obligations and transmit losses to other market participants. Accordingly, the Commission believes that these measures would be consistent with reducing systemic risks and supporting the stability of the broader financial market by requiring GCF Repo obligations to be satisfied earlier in the day and thus helping to reduce the potential operational risk of incomplete tri-party repo transactions outside of FICC.

Additionally, the Commission believes that the proposed new deadlines (*i.e.,* 4:30 p.m. for securities delivery obligations, and 4:30 p.m., or one hour after the close of the Fedwire Securities Service, whichever is later, for cash delivery obligations), as well as the associated late fees, should lower the potential operational risk that could arise from delayed GCF Repo settlements and should help FICC manage the risk of delayed settlement. The Commission believes that these measures should incentivize Netting Members and CCIT Members to meet their cash delivery obligations on a timely basis, which, in turn, should help FICC reduce its overall settlement risk. As such, the Commission believes that the proposed deadlines and late fees would be consistent with promoting robust risk management and safety and soundness.

2. Proposed Process To Provide Liquidity

The Commission believes that the proposed changes to establish a process for FICC to access liquidity in situations where a Member with a cash delivery obligation in GCF Repo/CCIT activity, that is otherwise in good standing, is either (1) delayed in satisfying its cash delivery obligation or (2) unable to satisfy, in whole or in part, such obligation, should help FICC to better manage its liquidity risk and to mitigate the related settlement risk. Specifically, the Commission believes that establishing a process for FICC to access liquidity in these particular circumstances is designed to provide FICC with additional sources of liquidity and, therefore, an improved ability to manage its liquidity risk in the event that a Netting Member cannot meet its cash delivery obligations. As such, the Commission believes that this proposed process is consistent with promoting robust risk management and safety and soundness.

[28] Notice of Filing, *supra* note 4 at 47622.

[29] *See* 12 U.S.C. 5461(b).

[30] 12 U.S.C. 5464(a)(2).

[31] 12 U.S.C. 5464(b).

[32] 12 U.S.C. 5464(c).

[33] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. FICC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[34] 17 CFR 240.17Ad–22.

[35] 12 U.S.C. 5464(b).

[36] 17 CFR 240.17Ad–22(e)(7).

In addition, the proposed process for FICC to access liquidity in these particular circumstances should help decrease the risk of unsettled obligations and belated settlement due to a lack of liquidity and, therefore, minimize the potential impact that a sudden liquidity demand could have on FICC and its Members. As such, the Commission believes that these changes are consistent with reducing systemic risk and supporting the stability of the broader financial system by aiming to avoid potential market disruption that could occur if FICC cannot settle.

3. Clarification, Technical Changes and Corrections

The Commission believes that the proposed clarifications, technical changes, and corrections are consistent with promoting safety and soundness. The changes are designed to provide clear and coherent Rules regarding GCF Repo transactions for Netting Members and CCIT Members. The Commission believes that clear and coherent Rules would help enhance the ability of FICC and its Netting Members and CCIT Members to more effectively plan for, manage, and address the risks related to GCF Repo and CCIT transactions. As such, the Commission believes that the conforming and technical changes are designed to promote both robust risk management and safety and soundness.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[37]

B. Consistency With Rule 17Ad–22(e)(7)(i)

Rule 17Ad–22(e)(7) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. Specifically, Rule 17Ad–22(e)(7)(i) requires policies and procedures for maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[38]

As described above, the proposed process for FICC to access liquidity in the event that Netting Members will be delayed in satisfying or cannot satisfy their cash delivery obligations is designed to help ensure that FICC has sufficient liquid resources available in such circumstances. Moreover, for any outstanding liquidity obligations after the utilization of EOD Clearing Fund cash and/or overnight financing with the GCF Clearing Agent Bank, any transactions pursuant to the GCF Repo Allocation Waterfall MRA would be sized based on the actual liquidity need presented in a particular situation, which would help FICC maintain sufficient liquid resources to settle the cash delivery obligations of a Netting Member. Therefore, the Commission believes that adoption of the proposed changes is consistent with Rule 17Ad–22(e)(7)(i).[39]

C. Consistency With Rule 17Ad–22(e)(7)(ii)

Rule 17Ad–22(e)(7)(ii) requires policies and procedures for holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under 17Ad–22(e)(7)(i) in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[40] Rule 17Ad–22(a)(14) defines qualifying liquid resources to include, among other things, assets that are readily available and convertible into cash through prearranged funding arrangements, such as committed arrangements without material adverse change provisions, including repurchase agreements.[41]

As described above, the proposed process for FICC to access liquidity in the event that Netting Members will be delayed in satisfying or cannot satisfy their cash delivery obligations includes, in part, the GCF Repo Allocation Waterfall MRA. This agreement would be a committed arrangement that is a repurchase agreement and all transactions entered into pursuant to the GCF Repo Allocation Waterfall MRA are designed to be readily available to meet the cash delivery obligations owed to Netting Members. This arrangement therefore constitutes a qualifying liquid resource, as defined in Rule 17Ad–22(a)(14), and the Commission believes, therefore, that adoption of the proposed changes is consistent with Rule 17Ad–22(e)(7)(ii).[42]

D. Consistency With Rule 17Ad–22(e)(7)(viii)

Rule 17Ad–22(e)(7)(viii) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, addressing foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[43]

The proposed process for FICC to access liquidity when Netting Members are delayed in satisfying or cannot satisfy their cash delivery obligations provides FICC with a process to address liquidity shortfalls which may arise in such circumstances and allow FICC to complete settlement on a timely basis. Therefore, this proposed process should help to avoid unwinding, revoking, or delaying same-day settlement obligations. The Commission believes, therefore, that adoption of the proposed changes are consistent with Rule 17Ad–22(e)(7)(viii).[44]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–FICC–2019–801) and that FICC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–FICC–2019–004, whichever is later.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22147 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

[37] 12 U.S.C. 5464(b).

[38] 17 CFR 240.17Ad–22(e)(7)(i).

[39] *Id.*

[40] 17 CFR 240.17Ad–22(e)(7)(ii).

[41] 17 CFR 240.17Ad–22(a)(14).

[42] 17 CFR 240.17Ad–22(e)(7)(ii).

[43] 17 CFR 240.17Ad–22(e)(7)(viii).

[44] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87227; File No. SR–CBOE–2019–067]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Move Rule 10.2 and the Rules in Chapter XVI of the Currently Effective Rulebook, Which Governs the Summary Suspension of Trading Permit Holders, to Proposed Chapter 12 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 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 September 25, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to move Rule 10.2 and the Rules in Chapter XVI of the currently effective Rulebook (''current Rulebook''), which governs the summary suspension of Trading Permit Holders (''TPHs''), to proposed Chapter 12 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate current Rule 10.2 and current Chapter XVI, which govern the summary suspension of TPHs, to proposed Chapter 12 in the shell Rulebook. The Exchange notes that in addition to relocating the summary suspension rules to proposed Chapter 12 in the shell Rulebook, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

Current rule	Proposed rule
Rule 16.1 (Imposition of Suspension)	Rule 12.1 (Imposition of Suspension).
Rule 16.2 (Investigation Following Suspension)	Rule 12.2 (Investigation Following Suspension).
Rule 16.3 (Reinstatement)	Rule 12.3 (Reinstatement).
Rule 16.4 (Failure to Obtain Reinstatement)	Rule 12.4 (Failure to Obtain Reinstatement).
Rule 16.5 (Termination of Rights by Suspension)	Rule 12.5 (Termination of Rights by Suspension).
Rule 10.2 (Contracts of Suspended Trading Permit Holders)	Rule 12.6 (Contracts of Suspended Trading Permit Holders).

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their rule numbers, conform paragraph structure and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change 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, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive change, but rather, seeks to make non-substantive rule changes in relocating the rules and updating cross-references to shell rules in anticipation of the October 7, 2019 technology migration. The Exchange also does not believe that the proposed rule change will impose any undue burden on competition because the relocated rule text is exactly the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

[7] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed rule change at the time of its anticipated October 7, 2019 system migration. The Exchange notes that the proposed rule change makes no substantive changes to any of the rules, and therefore has no impact on trading on the Exchange, the operation of the Exchange, or TPH requirements. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues and makes only non-substantive changes to the rules. Therefore, the Commission hereby waives the prefiling requirement and the operative delay and designates the proposal as operative upon filing.[12]

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Because this proposal does not make any substantive changes to the rules but only moves them into the shell Rulebook, the Commission designates a shorter time under Rule 19b–4(f)(6)(iii) by waiving the five business day prefiling period for this proposal.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–067. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–067, and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87228; File No. SR–CBOE–2019–070]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules in Connection With Market-Makers in the Shell Rulebook

October 4, 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 September 26, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend certain rules in connection with Market-Makers in the shell Rulebook.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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 September 6, 2019, the Exchange filed a rule filing, SR–CBOE–2019–059,[5] operative upon the October 7, 2019 technology migration.[6] This rule filing amended the Exchange rules related to its Market-Maker program, including Market-Maker registration, appointments, and obligations. Pursuant to SR–CBOE–2019–059, the updated Market-Maker rules reside in the Exchange's shell Rulebook, and, upon migration, the rules in shell Rulebook will take effect and the Market-Maker rules in the currently effective Rulebook will be deleted.[7] Specifically, under SR–CBOE–2019–059, Rule 5.50 will govern appointment costs (or ''weights'', as amended by SR–CBOE–2019–059) and Rule 7.6 will govern the identification of securities accounts of Market-Makers. In SR–CBOE–2019–059, the Exchange inadvertently neglected to update the Global Trading Hours (''GTH'') appointment weights in light of the amended rules which will apply a Market-Maker's selected class appointments across the entire trading day (*i.e.,* both GTH and Regular Trading Hours (''RTH'')), and inadvertently neglected to update some instances in which the rules refer to appointment costs. It also inadvertently did not include language specific to Cboe Options when conforming Rule 7.6 to the corresponding rules of its affiliated exchanges, C2, EDGX Options, and BZX Options (collectively, the ''Affiliated Options Exchanges''). The proposed changes intended to remedy the aforementioned are described in greater detail below. In order to coincide with the effective date of SR–CBOE–2019–059 and the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges,[8] the Exchange also intends to implement this proposed rule change on October 7, 2019.

In particular, SR–CBOE–2019–059 updated Rule 5.50(g) in the shell Rulebook to reflect the manner in which appointment weights will function upon migration. SR–CBOE–2019–059 also updated the rules to allow a Market-Maker to select class appointments that will apply to classes during all trading sessions beginning October 7, 2019.[9] In removing separate class appointments between the two trading sessions, the Exchange inadvertently failed to remove the separate appointment weights for options classes during GTH. Therefore, the Exchange now proposes to remove separate appointment weights for the GTH trading session from the appointment weight table under Rule 5.50(g). In addition to this, SR–CBOE–2019–059 updated the term appointment costs to appointment weights, but inadvertently failed to update all such references throughout updated Rule 5.50(g). The Exchange now proposes to update the remaining references to appointment costs in Rule 5.50(g) to appointment weights.

SR–CBOE–2019–059 also conformed Rule 7.6 in the shell Rulebook to the corresponding rules of the Affiliated Options Exchanges. Rule 7.6 governs the identification of a Market-Maker's securities accounts. In conforming this rule to the Affiliated Options Exchanges' corresponding rules, the Exchange inadvertently did not

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 87024 (September 19, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges) (SR–CBOE–2019–059).

[6] Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges (*i.e.,* together with Cboe Options, C2 Exchange, Inc. (''C2''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'')) which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

[7] *See id.*

[8] *Id.*

[9] *See* Rule 5.50(a) in the shell Rulebook.

maintain the language which provides that, in a manner prescribed by the Exchange, ''upon request'' each Market-Maker must file with the Exchange a list identifying all accounts enumerated in the same provision. This specification is not currently in the corresponding rules of the Affiliated Options Exchanges, but the Exchange intends to maintain this provision for post-migration. Therefore, the Exchange now proposes to include the existing language in currently effective Rule 8.9 into shell Rule 7.6(a) in order to continue this account identification process for Market-Makers post-migration. The proposed change to include the Exchange request provision will simply allow Market-Makers to continue to identify accounts in the manner to which they are accustomed and currently adhere, instead of taking on a potential additional compliance burden in identifying all accounts to the Exchange notwithstanding an Exchange request.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change to remove separate appointment weights for the GTH trading session under Rule 5.50(g) will foster cooperation and coordination with persons facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will mitigate any potential confusion for Market-Makers upon migration when they will be able to select class appointments that apply to classes across all trading sessions. The proposed change protects investors by aligning the term appointment weight and the appointment weight table with the correct term that will be used, and the class appointment process that will be in place, post-migration. Additionally, the proposed change to incorporate the Cboe Options-specific request language into the rule governing identification of Market-Maker accounts is substantively the same as the manner in which the current account identification process works today. The proposed change is intended to correct an inadvertent omission from Rule 7.6(a) in the shell Rulebook that currently applies to Market-Makers and does not alter the manner in which the current rule functions. Instead, it will remove impediments to and protect the mechanism of a free and open market and national market system by allowing Market-Makers to continue to identify accounts upon the request of the Exchange, without taking on any potential additional compliance burden notwithstanding an Exchange request.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended as a competitive filing, but merely aligns the appointment weight table with the appointment process that will be in effect upon the October 7, 2019 migration. Additionally, the proposed change amends the rules to continue to allow for Market-Makers to identify accounts upon Exchange request post-migration, consistent with the process currently in place. The Exchange also notes that, as stated above, the proposed change is intended mitigate any potential compliance burden on Market-Makers by continuing to allow for account identification upon Exchange request. The Exchange notes that neither the GTH appointment weights (because they will not be relevant to the post-migration class appointment structure and just provides Market-Makers with uniform quoting ability per appointment across the trading day[13]) nor the account identification procedures have any impact on trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement this proposed rule change to make additional changes to conform to changes it recently adopted in SR–CBOE–2019–059 and have both sets of changes operative for its anticipated October 7, 2019 system migration. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[18]

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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] *See supra* note 9.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–070. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–070, and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22146 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87229; File No. SR–CBOE–2019–088]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Minor Updates and Consolidate Various Exchange Rules in Connection With Trading Permit Holder Registration and With Doing Business With the Public, and Move Those Rules From the Currently Effective Rulebook to Proposed Chapter 9 and, in Part, Chapter 3 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 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 October 3, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to make minor updates and consolidate various Exchange Rules in connection with Trading Permit Holder (''TPH'') registration and with doing business with the public, and move those Rules from the currently effective Rulebook (''current Rulebook'') to proposed Chapter 9 and, in part, Chapter 3 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to consolidate current Chapter 9 in connection with doing business with the public and TPH registration into proposed Chapter 9 (Doing Business With the Public), as well as proposed Section B of Chapter 3 (TPH Registration), in the shell Rulebook. The Exchange notes that in addition to consolidating and moving the various rules related to doing business with the public to proposed Chapter 9 and those related to TPH registration to proposed Section B of Chapter 3, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change moves and, where applicable, consolidates the rules as follows:

Shell rule	Current rule
Chapter 3. TPH Membership, Registration, and Participants Section B. TPH Registration	
3.33 Continuing Education for Registered Persons:	
3.33(a)–(c)	9.3A Continuing Education for Registered Persons.
3.33(d)	9.3A.01.
3.33(e)	9.3A.02.
3.33(f)	9.3A.03.
3.33(g)	9.3A.04.
3.35 Exchange Approval	9.1 Exchange Approval; 21.19A Doing Business with the Public (government securities options, provision in connection with Rule 9.1).
3.36 Registration of Options Principals:	
3.36(a)	9.2 Registration of Options Principals; 21.19A Doing Business with the Public (government securities options, provision in connection with Rule 9.2).
3.36(b)	9.2.01.
3.36(c)	9.2.02.
3.37 Registration and Termination of Representatives:	
3.37(a)–(c)	9.3 Registration and Termination of Representatives.
3.37(d)	9.3.01.
3.37(e)	9.2.02.
3.38 Other Affiliations of Registered Associated Persons	9.4 Other Affiliations of Registered Associated Persons.
3.39 Discipline, Suspension, Expulsion of Registered Persons	9.5 Discipline, Suspension, Expulsion of Registered Persons.
3.40 Branch Offices of TPH Organizations:	
3.40(a)–(b)	9.6 Branch Offices of TPH Organizations.
3.40(c)–(g)	9.6.01.
Chapter 9. Doing Business With the Public	
9.1 Opening of Accounts:	
9.1(a)–(f)	9.7 Opening of Accounts.
9.1(b)(1)	9.7.01.
9.1(b)(2)	9.7.02.
9.1(c) last sentence in paragraph	9.7.03.
9.1(g)	9.7.04.
9.1(h)	21.19A Doing Business with the Public (government securities options, provision in connection with Rule 9.7).
9.2 Supervision of Accounts:	
9.2(a)–(h)	9.8 Supervision of Accounts.
9.2(g), included as last sentence	9.8.03.
9.2(i)–(j)	9.8.01–.02.
9.2(k)	21.19A Doing Business with the Public (government securities options, provision in connection with Rule 9.8).
9.3 Suitability of Recommendations:	
9.3(a)–(b)	9.9 Suitability of Recommendations.
9.3(c)	9.9.01.
9.4 Discretionary Accounts:	
9.4(a)–(e)	9.10 Discretionary Accounts.
9.4(f)	9.10.01.
9.5 Confirmation to Customers	9.11 Confirmation to Customers.
9.6 Statements of Accounts to Customers:	
9.6(a)	9.12 Statements of Accounts to Customers.
9.6(b)	9.12.01.
9.7 Statements of Financial Condition to Customers	9.13 Statements of Financial Condition to Customers.
9.8 Addressing of Communications to Customers	9.14 Addressing of Communications to Customers.
9.9 Delivery of Current Options Disclosure Documents	9.15 Delivery of Current Options Disclosure Documents.
9.10 Restrictions on Pledge and Lending of Customers' Securities	9.16 Restrictions on Pledge and Lending of Customers' Securities.
9.11 Transactions of Certain Customers	9.17 Transactions of Certain Customers.
9.12 Prohibition Against Guarantees and Sharing in Accounts	9.18 Prohibition Against Guarantees and Sharing in Accounts.
9.13 Assuming Losses	9.19 Assuming Losses.
9.14 Transfer of Accounts:	
9.14(a)–(g)	9.20 Transfer of Accounts.
9.14(h)–(i)	9.20.01–.02.

Shell rule	Current rule
9.15 Options Communications:	
9.15(a)–(e)	9.21 Options Communications.
9.15(e)(3)	9.21.01.
9.15(f)	9.21.02.
9.15(g)	9.21.03.
9.15(h)	9.21.04.
9.16 Brokers' Blanket Bonds	9.22 Brokers' Blanket Bonds, and introductory language to 9.22.01.
9.16(a)	9.22.01(a).
9.16(b)	9.22.01(b).
9.16(c)	9.22.01(c).
9.16(d)	9.22.01(d).
9.16(e)	9.22.01(e).
9.17 Customer Complaints	9.23 Customer Complaints.
9.18 Telemarketing:	
9.18(a)–(n)	9.24 Telemarketing.
9.18(o)	9.24.01–.02.
9.19 Borrowing From or Lending to Customers	9.25 Borrowing from or Lending to Customers.

The proposed rule changes make only non-substantive changes to the rules in order to update headings that better flow with the consolidated rules, update cross-references to other rule text that will be implemented upon migration, update certain technical text formatting that will be used in the Rules upon migration (*e.g.,* using words for numbers below 10 in the text and numerals for numbers above 10 in the text), incorporate defined terms, and reformat the paragraph lettering and numbering. The proposed change removes an expired clause under current Rule 9.3A(a)(3) (proposed Rule 3.33(a)(3)) which currently states that, until January 4, 2016, the Exchange will offer the S501 Series 56 Proprietary Trader Continuing Education Program for Series 56 registered persons, and the S101 General Program for Series 7, Series 57, and all other registered persons. The proposed rule also makes non-substantive changes in connection with removing a redundant rule. The proposed rule change removes Rule 28.13 which states that the rules in Chapter 9 have a parallel application to Corporate Debt Security options, as this is redundant of the Chapter itself and its applicability to all options trading on the Exchange. It also removes the language under current Rule 21.19A regarding current Rule 9.15, which states that Rule 9.15 requires delivery of the current options disclosure document, because this is redundant of Rule 9.15 itself.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change does not make any substantive changes to the rules and is merely intended to consolidate, reorganize, and make non-substantive updates to the Exchange's rules in anticipation of the technology migration on October 7, 2019. The Exchange believes that the non-substantive proposed changes, which update technical text and formatting (*e.g.,* paragraph headings and number-related references), update rule cross-references, consolidate and reorganize rules and rule paragraphs and/or Interpretations and Policies, and remove an expired clause and a redundant rule that is integrally provided for in the Chapter in which it references, will foster cooperation and coordination with those facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system by simplifying the Exchange Rules and Rulebook as a whole, and making its Rules easier to follow and understand, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of a technology migration of the Cboe Affiliated Exchanges, and not as a competitive filing. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it does not make any substantive changes to the current Exchange Rules. The proposed rule change merely intends to provide consolidated rules upon migration and are consistent with the technical text and formatting in the shell Rulebook that will be in place come October 7, 2019. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition because the proposed rules are the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed rule change at the time of its anticipated October 7, 2019 system migration. The Exchange believes that waiver of the operative delay is appropriate because, as the Exchange discussed above, its proposal does not make any substantive changes to the Exchange's rules. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues and makes only non-substantive changes to the rules. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–088 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22139 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87223; File No. SR–NYSEArca–2019–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 8.700–E and To List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF

October 4, 2019.

I. Introduction

On August 7, 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 proposal to: (1) Amend NYSE Arca Rule 8.700–E to add futures contracts and swaps on the Cboe Volatility Index (''VIX'' or ''VIX Index'') to the financial instruments that an issue of Managed Trust Securities [3] may hold; and (2) to list and trade shares (''Shares'') of the Dynamic Short Short-Term Volatility Futures ETF (''Fund''), a

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Managed Trust Security means a security that is registered under the Securities Act of 1933 (15 U.S.C. 77a), as amended (the ''Securities Act''), and (i) is issued by a trust (''Trust''), or any series thereof, that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, is not registered or required to be registered as an investment company under the Investment Company Act of 1940, as amended, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts and/or swaps selected by the Trust's advisor consistent with the Trust's investment objectives, which will only include exchange-traded futures contracts involving commodities, commodity indices, currencies, currency indices, stock indices, the EURO STOXX 50 Volatility Index (VSTOXX), fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, and/or swaps on stock indices, fixed income indices, commodity indices, VSTOXX, commodities, currencies, currency indices, or interest rates, each as disclosed in the Trust's prospectus as such may be amended from time to time, and cash and cash equivalents; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value. *See* NYSE Arca Rule 8.700–E(c)(1).

series of Dynamic Shares Trust (''Trust'') under proposed amended NYSE Arca Rule 8.700–E. The proposed rule change was published for comment in the **Federal Register** on August 26, 2019.[4] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Summary of the Proposed Rule Change[5]

A. Proposed Amendments to NYSE Arca Rule 8.700–E

NYSE Arca Rule 8.700–E governs the listing and trading of Managed Trust Securities. The Exchange proposes to amend NYSE Arca Rule 8.700–E(c)(1) by expanding the definition of ''Managed Trust Securities.'' Currently, the definition of Managed Trust Securities specifies (among other things) that the trust that issues Managed Trust Securities may hold futures and swaps overlying certain types of reference assets, in addition to certain currency forwards.[6] The proposed rule change would add the VIX Index to the list of permitted reference assets underlying such futures and swaps.

The Exchange states the following regarding the VIX Index.[7] The VIX Index is an up-to-the-minute market estimate of expected volatility that is calculated by using real-time prices of options on the S&P 500® Index (''SPX options'') listed on Cboe Exchange, Inc. (''Cboe''). It is designed to reflect investors' consensus view of future (30-day) expected stock market volatility. Only SPX options with Friday expirations are used to calculate the VIX Index. The VIX Index is calculated between 2:15 a.m. Central Time (''C.T.'') and 8:15 a.m. C.T. and between 8:30 a.m. C.T. and 3:15 p.m. C.T. The VIX Index is calculated by using the midpoints of real-time SPX option bid/ask quotes. Only SPX options with more than 23 days and less than 37 days to the Friday SPX expiration are used to calculate the VIX Index. These SPX options are then weighted to yield a constant, 30-day measure of the expected volatility of the S&P 500 Index. VIX levels are calculated by Cboe and disseminated at 15-second intervals to market information vendors via the Options Price Reporting Authority.

The Exchange states the following regarding futures on the VIX Index (''VIX Futures'' or ''VIX Futures Contracts'').[8] The Cboe Futures Exchange (''CFE'') began listing and trading VIX Futures'' on March 26, 2004 under the ticker symbol VX. VIX Futures reflect the market's estimate of the value of the VIX Index on various expiration dates in the future. According to the Registration Statement,[9] the value of a VIX Futures Contract is based on the expected reading of the VIX Index at the expiration of such VIX Futures, and therefore represents forward implied volatility of the S&P 500 over the 30-day period following the expiration of the VIX Futures. As a result, a movement in the VIX Index today will not necessarily result in a corresponding movement in the price of VIX Futures. VIX Futures, which trade only on CFE, trade between the hours of 8:30 a.m.–3:15 p.m. C.T. The CFE is a member of the Intermarket Surveillance Group (''ISG''). Monthly and weekly expirations in VIX Futures are available and trade nearly 24 hours a day, five days a week. VIX Weekly futures began trading on CFE in 2015.

B. Listing and Trading of the Shares

The Exchange proposes to list and trade the Shares under proposed amended NYSE Arca Rule 8.700–E. The Exchange states the following regarding the Fund. The Trust's sponsor, Dynamic Shares LLC (''Sponsor''), will serve as its commodity pool operator upon its registration with the Commodity Futures Trading Commission and is not registered or affiliated with a broker-dealer. Wilmington Trust Company is the sole ''Trustee'' of the Trust. The Nottingham Company will be the ''Administrator'' for the Fund. Nottingham Shareholder Services, LLC will serve as the ''Transfer Agent'' for the Fund for ''Authorized Participants.'' Capital Investment Group, Inc. will serve as the ''Distributor'' for the Fund. The Fund will seek to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market. Such exposure will be for one full trading day. The Fund will be actively managed and will not be benchmarked to the VIX Index.[10] The pursuit of the Fund's daily investment objective means that the Fund's return for a period longer than a full trading day will be the product of the series of daily returns, with daily repositioned exposure, for each trading day during the relevant period. As a consequence, the return for investors that invest for periods less than a full trading day or for a period different than a trading day will not be the product of the return of the Fund's stated daily inverse investment objective. Under normal market conditions,[11] the Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of short positions in VIX Futures Contracts with monthly expirations. The Fund expects to primarily take short positions in VIX Futures by shorting the next two near term VIX Futures and rolling the nearest month VIX Futures Contract to the next month on a daily basis. As such, the Fund expects to have a constant one-month rolling short position in first and second month VIX Futures. The Fund also may hold cash and cash equivalents, including U.S. Treasury securities. The Fund will seek to dynamically manage its notional exposure to VIX Futures. For example, when the VIX Index is below its historical average, the Fund's notional exposure will be lower than a traditional short VIX short term futures ETF, which may maintain a fixed notional exposure every day. When the VIX Index is going up, the Fund will gradually increase its notional exposure, up to a ceiling of -0.5 times its net asset value (''NAV''). The Fund expects that its notional exposure will not exceed -0.5 times its NAV, but that its notional exposure may exceed -0.5 times its NAV during intraday trading before recalibration.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[4] *See* Securities Exchange Act Release No. 86714 (August 209, 2019), 84 FR 44642 (''Notice'').

[5] For a complete description of the Exchange's proposal, *see* Notice, *supra* note 3.

[6] *See supra* note 3

[7] *See* Notice, *supra* note 4, 84 FR at 44644.

[8] *See id.* at 44644.

[9] On June 5, 2019, the Trust submitted to the Commission its draft registration statement on Form S–1 under the Securities Act.

[10] The Fund does not seek to track the performance of the VIX Index or the S&P 500® and can be expected to perform very differently from the VIX Index over all periods of time.

[11] Normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

[12] 15 U.S.C. 78f.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

A. Exchange's Proposal To Amend Rule 8.700–E

The Commission believes that the proposal to amend NYSE Arca Rule 8.700–E(c)(1) to add futures contracts and swaps on the VIX Index to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions is consistent with Section 6(b)(5) of the Act. The Commission notes that it has previously approved: (1) The addition of VIX Futures to the definition of Futures Reference Assets applicable to ''Futures-Linked Securities'' in NYSE Arca Rule 5.2–E(j)(6) (Index-Linked Securities); [16] (2) the listing and trading on the Exchange of series of Trust Issued Receipts that reference VIX Futures; [17] and (3) an earlier expansion of NYSE Arca Rule 8.700–E to add the VSTOXX as a permitted reference asset to the futures contracts and swaps that may be held by trusts that issue Managed Trust Securities.[18]

The existing initial and continued listing criteria applicable to Managed Trust Securities would continue to apply, and the continued listing standards require, among other things, that: (1) The Disclosed Portfolio (as defined in NYSE Arca Rule 8.700–E(c)(2) be disseminated at least daily and to all market participants at the same time; (2) an intraday indicative value (''IIV'') be calculated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session; and (3) following the initial 12-month period after the commencement of trading of an issue of Managed Trust Securities, (a) the trust must have 50,000 or more Managed Trust Securities issued and outstanding, (b) the market value of all Managed Trust Securities issued and outstanding must be $1,000,000 or more, and (c) there must be 50 or more record and/or beneficial holders.[19]

Further, the Commission notes that the Exchange has represented that its surveillance procedures are adequate to deter and detect violations of Exchange rules.[20]

B. Exchange's Proposal To List and Trade the Shares

The Commission believes that the proposal to list and trade the Shares is consistent with Section 11A(a)(1)(C)(iii) of the Act. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Additionally, 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.

The Commission also believes that the proposal to list and trade the Shares is consistent with Section 6(b)(5) of the Act. The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Trust's NAV and the NAV per Share will be calculated and disseminated daily. The Exchange will disseminate for the Trust on a daily basis by means of the CTA high-speed line information with respect to the most recent NAV per Share, and the number of Shares outstanding. The Exchange also will make available on its website daily trading volume, closing prices and the NAV per Share. The IIV for the Shares will be calculated and disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On a daily basis, the Trust will disclose on its website (*www.dynamicsharesetf.com*) for all of the assets held by the Fund the following information: Name; ticker symbol (if applicable); CUSIP or other identifier (if applicable); description of the holding; with respect to derivatives, the identity of the security, commodity, index or other underlying asset; the quantity or aggregate amount of the holding as measured by par value, notional value or amount, number of contracts or number of units (if applicable); maturity date; coupon rate (if applicable); effective date or issue date (if applicable); market value; percentage weighting in the Disclosed Portfolio; and expiration date (if applicable). The Trust's website information will be publicly available at no charge. Pricing for VIX, VIX Futures, as well as the underlying SPX options, will be available from major market data vendors. Pricing for VIX Futures will also be available from CFE. Pricing for SPX options is also available from Cboe. Price information for cash equivalents is available from major market data vendors.

The Exchange will obtain a representation from the Trust that the NAV and the NAV per Share will be calculated daily and that the NAV, the NAV per Share, and the composition of the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to NYSE Arca Rule 7.12–E and 8.700–E(e)(2)(D), which set forth circumstances under which trading in the Shares may be halted. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

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. The Commission notes that the Exchange has represented that its surveillance procedures are adequate to continue to properly monitor the Exchange trading of the Shares in all trading sessions.[21]

Additionally, the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[22] The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees.

In support of this proposal, the Exchange has made the following representations:

1. The Trust will be subject to the criteria in NYSE Arca Rule 8.700–E for

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] *See* Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR–NYSEArca–2008–111).

[17] *See* Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR–NYSEArca–2008–111).

[18] *See* Securities Exchange Act Release No. 82066 (November 13, 2007), 82 FR 54434 (November 17, 2017) (SR–NYSEArca–2017–85). The VSTOXX is designed to reflect market expectations of near-term to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration. *See* id. at 54434.

[19] *See* NYSE Arca Rule 8.700–E(e)(2).

[20] *See* Notice, *supra* note 4, at 44647.

[21] *See* Notice, *supra* note 4, at 44647.

[22] *See* NYSE Arca Rule 8.700–E(c)(2)(B)(ii).

initial and continued listing of the Shares.[23]

2. In the event (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor 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 its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Disclosed Portfolio.[24]

3. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[25]

4. Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, and 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 applicable federal securities laws.[26]

5. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and VIX Futures with other markets or 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 the Shares and VIX Futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares and VIX Futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.[27]

6. Prior to the commencement of trading, the Exchange will inform its ETP 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 (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (5) the risks involved in trading the Shares during the opening and late trading sessions when an updated IOPV will not be calculated or publicly disseminated; and (6) trading information.[28]

7. The Exchange represents that, for the initial and continued listing of the Shares, the Trust must be in compliance with NYSE Arca Rule 5.3–E and Rule 10A–3 under the Act.[29]

8. A minimum of 100,000 Shares will be outstanding at the start of trading on the Exchange.[30]

9. All statements and representations made in this filing regarding (a) the description of the portfolio of the Fund, (b) limitations on portfolio of the Fund, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.[31]

10. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).[32]

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act[33] the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSEArca–2019–55), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22137 Filed 10–9–19; 8:45 am]

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[23] *See* Notice, *supra* note 4, at 44647.

[24] *See id.* at 44644.

[25] *See id.* at 44647.

[26] *See id.* at 44647.

[27] *See id.* at 44647.

[28] *See id.* at 44647–44648.

[29] *See id.* at 44647.

[30] *See id.* at 44647.

[31] *See id.* at 44647.

[32] *See id.* at 44647.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 19b–4 and Form 19b–4 Filings with Respect to Proposed Rule Changes, Securities-Based Swap Submissions, and Advance Notices by Self-Regulatory Organizations and the Security-Based Swap Stay of Clearing Requirement; SEC File No. 270–38, OMB Control No. 3235–0045.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the of the previously approved collection of information provided for in Rule 19b–4 (17 CFR 240.19b–4), under the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*).

Section 19(b) of the Act (15 U.S.C. 78s(b)) requires each self-regulatory organization (''SRO'') to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are subject to the filing requirement set forth in Section 19(b). Rule 19b–4(n) requires a designated clearing agency to provide the Commission advance notice (''Advance Notice'') of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by such clearing agency. Rule 19b–4(o) requires a registered clearing agency to submit for a Commission determination any security-based swap, or any group,

category, type, or class of security-based swaps it plans to accept for clearing (''Security-Based Swap Submission''), and provide notice to its members of such submissions.

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved, disapproved, suspended, or if proceedings should be instituted to determine whether to approve or disapprove the proposed rule change.

The respondents to the collection of information are SROs (as defined by Section 3(a)(26) of the Act),[1] including national securities exchanges, national securities associations, registered clearing agencies, notice registered securities future product exchanges, and the Municipal Securities Rulemaking Board.

In calendar year 2018, each respondent filed an average of approximately 39 proposed rule changes. Each filing takes approximately 41 hours to complete on average. Thus, the total annual reporting burden for filing proposed rule changes with the Commission is 67,158 hours (39 proposals per year × 42 SROs × 41 hours per filing) for the estimated future number of 42 SROs.[2] In addition to filing their proposed rule changes with the Commission, the respondents also are required to post each of their proposals on their respective websites, a process that takes approximately four hours to complete per proposal. Thus, the total annual reporting burden on respondents to post the proposals on their websites is 6,552 hours (39 proposals per year × 42 SROs × 4 hours per filing) for the estimated future number of 42 SROs. Further, the respondents are required to update their rulebooks, which they maintain on their websites, to reflect the changes that they make in each proposal they file. The total annual reporting burden for updating online rulebooks is 5,579 hours ((1,638 filings per year − 240 withdrawn filings[3] − 3 disapproved filings[4]) × 4 hours). Finally, a respondent is required to notify the Commission if it does not post a proposed rule change on its website on the same day that it filed the proposal with the Commission. The Commission estimates that SROs will fail to post proposed rule changes on their websites on the same day as the filing 16 times a year (across all SROs), and that each SRO will spend approximately one hour preparing and submitting such notice to the Commission, resulting in a total annual burden of 16 hours (16 notices × 1 hour per notice).

Designated clearing agencies have additional information collection burdens. As noted above, pursuant to Rule 19b–4(n), a designated clearing agency must file with the Commission an Advance Notice of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by such designated clearing agency. The Commission estimates that four designated clearing agencies will each submit five Advance Notices per year, with each submission taking 90 hours to complete. The total annual reporting burden for filing Advance Notices is therefore 2,250 hours (5 designated clearing agencies × 5 Advance Notices per year × 90 hours per response).

Designated clearing agencies are required to post all Advance Notices to their websites, each of which takes approximately four hours to complete. For five Advance Notices, the total annual reporting burden for posting them to respondents' websites is 100 hours (5 designated clearing agencies × 5 Advance Notices per year × 4 hours per website posting). Respondents are required to update the postings of those Advance Notices that become effective, each of which takes approximately four hours to complete. The total annual reporting burden for updating Advance Notices on the respondents' websites is 100 hours (5 designated clearing agencies × 5 Advance Notices per year × 4 hours per website posting).

Pursuant to Rule 19b–4(n)(5), the respondents are also required to provide copies of all materials submitted to the Commission relating to an Advance Notice to the Board of Governors of the Federal Reserve System (''Board'') contemporaneously with such submission to the Commission, which is estimated to take two hours. The total annual reporting burden for designated clearing agencies to meet this requirement is 50 hours (5 designated clearing agencies × 5 Advance Notices per year × 2 hours per response).

The Commission estimates that three security-based swap clearing agencies will each submit 20 Security-Based Swap Submissions per year, with each submission taking 140 hours to complete resulting in a total annual reporting burden of 8,400 hours (3 respondent clearing agencies × 20 Security-Based Swap Submissions per year × 140 hours per response). Respondent clearing agencies are required to post all Security-Based Swap Submissions to their websites, each of which takes approximately four hours to complete. For 20 Security-Based Swap Submissions, the total annual reporting burden for posting them to the three respondents' websites is 240 hours (3 respondent clearing agencies × 20 Security-Based Swap Submissions per year × 4 hours per website posting). In addition, three clearing agencies that have not previously posted Security-Based Swap Submissions on their websites may need to update their existing websites to post such filings online. The Commission estimates that each of these three clearing agencies would spend approximately 15 hours updating their existing websites, resulting in a total one-time burden of 45 hours (3 respondent clearing agencies × 15 hours per website update) or 15 hours annualized over three years.

Respondent SROs will also have to provide training to staff members using the Electronic Form 19b–4 Filing System (''EFFS'') to submit Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes electronically. The Commission estimates that one newly-registered national securities exchange, one anticipated national securities exchange, and one anticipated clearing agency will spend approximately 60 hours training all staff members who will use EFFS to submit Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes electronically, or 20 hours annualized over three years. The Commission also estimates that these newly-registered and anticipated SROs will have a one-time burden of 390 hours to draft and implement internal policies and procedures for using EFFS to make these submissions, or 130 hours annualized over three years. The Commission estimates that each of the 42 respondents will spend 10 hours each year training new compliance staff

[1] 15 U.S.C. 78c(a)(26).

[2] In 2018, there were 39 SROs. In May 2019, an additional SRO registered with the Commission (as a national securities exchange). The Commission expects two additional respondents to register during the three-year period for which this Paperwork Reduction Act extension is applicable (one as a registered clearing agency and one as a national securities exchange), bringing the total number of respondents to 42.

[3] For 39 SROs, 223 withdrawn filings equal approximately 5.72 filings per SRO. For 42 SROs, the figure would increase to 240 withdrawn filings.

[4] For 39 SROs, three disapproved filings equal approximately 0.08 filings per SRO. For 42 SROs, the figure would remain at three disapproved filings.

members and updating the training of existing compliance staff members to use EFFS, for a total annual burden of 420 hours (42 respondent SROs × 10 hours).

In connection with Security-Based Swap Submissions, counterparties may apply for a stay from a mandatory clearing requirement under Rule 3Ca–1. The Commission estimates that each clearing agency will submit five applications for stays from a clearing requirement per year and it will take approximately 18 hours to retrieve, review, and submit each application. Thus, the total annual reporting burden for the Rule 3Ca–1 stay of clearing requirement would be 270 hours (3 respondent clearing agencies × 5 stay of clearing applications per year × 18 hours to retrieve, review, and submit the stay of clearing information).

Based on the above, the total estimated annual response burden pursuant to Rule 19b–4 and Form 19b–4 is the sum of the total annual reporting burdens for filing proposed rule changes, Advance Notices, and Security-Based Swap Submissions; training staff to file such proposals; drafting, modifying, and implementing internal policies and procedures for filing such proposals; posting each proposal on the respondents' websites; updating websites to enable posting of proposals; updating the respondents' online rulebooks to reflect the proposals that became effective; submitting copies of Advance Notices to the Board; and applying for stays from clearing requirements, which is 91,300 hours.

Compliance with Rule 19b–4 is mandatory. Information received in response to Rule 19b–4 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22222 Filed 10–9–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87225; File No. SR–ICC–2019–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to Amendments to the ICC Clearing Rules To Address Non-Default Losses

October 4, 2019.

On August 8, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make certain changes to ICC's Clearing Rules. The proposed rule change was published for comment in the **Federal Register** on August 28, 2019.[3] The Commission has received comments regarding the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is October 12, 2019.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules; Exchange Act Release No. 86729 (Aug. 22, 2019); 84 FR 45191 (Aug. 28, 2019) (''Notice'').

[4] *See* letter from Jacqueline Mesa, Chief Operating Officer & Senior Vice President of Global Policy Futures Industry Association, dated September 18, 2019, to Vanessa Countryman, Secretary, Commission, available at *https://www.sec.gov/comments/sr-icc-2019-010/sr-icc-2019-010-6154164-192307.pdf.*

[5] 15 U.S.C. 78s(b)(2).

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider ICC's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)[6] of the Act, and for the reasons discussed above, the Commission designates November 26, 2019, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ICC–2019–010).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22145 Filed 10–9–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87232; File No. SR–FINRA–2019–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Establish a Corporate Bond New Issue Reference Data Service and 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, To Establish a Corporate Bond New Issue Reference Data Service

October 4, 2019.

I. Introduction

On March 27, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 establish a new issue reference data service for corporate bonds. The Commission published notice of filing of the proposed rule change in the **Federal Register** on April 8, 2019.[3] On May 22,

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85488 (April 2, 2019), 84 FR 13977 (''Notice'').

2019, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[4] On July 1, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On October 3, 2019, the Exchange filed partial Amendment No. 2 to the proposed rule change.[7] The Commission received twenty comment letters on the proposal from fourteen commenters.[8] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and is designating a longer period within which to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Proposed Rule Change, as Modified by Amendment No. 2

As described in more detail in the Notice and Amendment No. 2,[9] FINRA proposes to establish a new issue reference data service for corporate bonds. FINRA states that its proposal is in line with a recommendation from the SEC Fixed Income Market Structure Advisory Committee, which recommended that FINRA establish a new issue data service which would contain specified data elements on TRACE-eligible corporate bond new issues.[10]

Specifically, FINRA is proposing to amend Rule 6760 (Obligation to Provide Notice) [11] to require that underwriters subject to Rule 6760 [12] report to FINRA a number of data elements, including some already specified by the rule, for new issues in Corporate Debt Securities.[13] Proposed Rule 6760(b)(2) would require that, in addition to the information required by Rule 6760(b)(1),[14] for a new issue in a Corporate Debt Security, excluding bonds issued by religious organizations or for religious purposes, the following information must be reported, if applicable: (A) The International Securities Identification Number (ISIN); (B) the currency; (C) the issue date; (D) the first settle date; (E) the interest accrual date; (F) the day count description; (G) the coupon frequency; (H) the first coupon payment date; (I) a Regulation S indicator; (J) the security type; (K) the bond type; (L) the first coupon period type; (M) a convertible indicator; (N) a call indicator; (O) the first call date; (P) a put indicator; (Q) the first put date; (R) the minimum increment; (S) the minimum piece/denomination; (T) the issuance amount; (U) the first call price; (V) the first put price; (W) the coupon type; (X) rating (TRACE Grade); (Y) a perpetual maturity indicator; (Z) a Payment-In-Kind (PIK) indicator; (AA) first conversion date; (BB) first conversion ratio; (CC) spread; (DD) reference rate; (EE) floor; and (FF) underlying entity ticker.[15]

FINRA proposes to require underwriters to report all data fields for Corporate Debt Securities prior to the first transaction in the security. FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt.[16] FINRA

[4] *See* Securities Exchange Act Release No. 85911, 83 FR 24839 (May 29, 2019). The Commission designated July 7, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 86256, 84 FR 32506 (July 8, 2019).

[7] Partial Amendment No. 1 was also filed on October 3, 2019 and subsequently withdrawn on the same day due to a non-substantive administrative error and replaced with Amendment No. 2. In Amendment No. 2, the Exchange: (i) Withdrew the proposed fees for receipt of corporate new issue reference data in the current proposal and stated that a separate proposed rule change would be filed to establish fees related to the corporate bond new issue reference data service at a future date prior to implementing the service; (ii) revised the list of data fields to be collected under the proposal to clarify certain proposed data fields and to add six new data fields; and (iii) included additional rationale for the data fields proposed to be collected. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm.*

[8] *See* Letters from: (1) Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019 (''Credit Roundtable Letter''); (2) Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019 (''IHS Markit Letter''); (3) David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019 (''Heritage Letter''); (4) Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019 (''Chamber Letter''); (5) Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019 (''ICE Data Letter''); (6) Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019 (''Healthy Markets Letter''); (7) Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated April 29, 2019 (''Bloomberg Letter''); (8) Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019 (''ICE Bonds Letter''); (9) Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019 (''SIFMA Letter''); (10) Larry Tabb, TABB Group, dated May 15, 2019 (''Tabb Letter''); (11) Larry Harris, Fred V. Keenan Chair in Finance, USC Marshall School of Business, dated May 17, 2019 (''Harris Letter''); (12) John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development, dated May 24, 2019 (''Charles River Letter''); (13) SEC Fixed Income Market Structure Advisory Committee, dated June 11, 2019 (''FIMSAC Letter''); (14) Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 1, 2019 (''Bloomberg Letter II''); (15) John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated July 27, 2019 (''Committee Letter''); (16) Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 29, 2019 (''Bloomberg Letter III''); (17) Christopher B. Killian, Managing Director, SIFMA, dated July 29, 2019 (''SIFMA Letter II''); (18) Tyler Gellasch, Executive Director, Healthy Markets Association, dated July 29, 2019 (''Healthy Markets Letter II''); (19) David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated July 29, 2019 (''Heritage Letter II''); and (20) Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated July 29, 2019 (''Chamber Letter II ''). All comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019-008.htm.*

[9] *See supra* notes 3 and 7.

[10] *See* Fixed Income Market Structure Advisory Committee Recommendation (October 29, 2018) available at: *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-corporate-bond-new-issue-reference-data-recommendation.pdf.*

[11] As part of the proposal, FINRA would amend the title of the Rule to ''Obligation to Provide Notice and Dissemination of Corporate Debt Security New Issue Reference Data.''

[12] As part of the proposal, FINRA would amend Rule 6760(a)(1) to clarify that underwriters subject to the rule must report required information for the purpose of providing market participants in the corporate debt security markets with reliable and timely new issue reference data to facilitate the trading and settling of these securities, in addition to the current purpose of facilitating trade reporting and dissemination in TRACE-Eligible Securities.

[13] In connection with the proposal, FINRA proposes to move the definition of ''Corporate Debt Security,'' which is currently located in FINRA Rule 2232 (Customer Confirmations), into the TRACE Rule Series (specifically Rule 6710 (Definitions)) and to make corresponding technical edits to Rule 2232 to refer to the relocated definition in Rule 6710. In addition, FINRA proposes to make two changes to the definition of ''Corporate Debt Security'' which FINRA states are technical, non-substantive edits that reflect the original intent of the definition and are consistent with current FINRA guidance. *See* Notice, at 13978, n.6. Specifically, FINRA proposes to revise the current definition of Corporate Debt Security to (i) clarify that the definition is limited to TRACE-Eligible Securities, and (ii) update the definition to exclude Securitized Products (in Rule 6710(m)), rather than Asset-Backed Securities (defined in Rule 6710(cc)).

[14] Rule 6760(b), proposed to be renumbered as Rule 6760(b)(1), currently requires the following information to be reported to FINRA: (A) The CUSIP number or if a CUSIP number is not available, a similar numeric identifier (*e.g.,* a mortgage pool number); (B) the issuer name, or, for a Securitized Product, the names of the Securitizers; (C) the coupon rate; (D) the maturity; (E) whether Securities Act Rule 144A applies; (F) the time that the new issue is priced, and, if different, the time that the first transaction in the offering is executed; (G) a brief description of the issue (*e.g.,* senior subordinated note, senior note); and (H) such other information FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-Eligible Security, or if any of items (B) through (H) has not been determined or a CUSIP number (or a similar numeric identifier) is not assigned or is not available when notice must be given, such other information that FINRA deems necessary and is sufficient to identify the security accurately.

[15] In Amendment No. 2, FINRA included its rationale for each data field proposed to be collected for new issue Corporate Debt Securities. *See* Amendment No. 2, *supra* note 7, at Exhibit 3.

[16] FINRA states that under proposed Rule 6760(d), there may be some information collected under the rule for security classification or other

Continued

states that it will submit a separate filing to establish fees related to the new issue reference data service at a future date and will implement the service after those fees are adopted.[17]

If the Commission approves the filing, FINRA proposes to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following publication of the *Regulatory Notice.* The effective date will be no later than 270 days following Commission approval.

III. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 2 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–FINRA–2019–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–008. 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 FINRA. 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–FINRA–2019–008 and should be submitted on or before October 24, 2019.

IV. 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. 2, To Establish a Corporate Bond New Issue Reference Data Service

Section 19(b)(2) of the Act[18] provides that, after initiating 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 filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change 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 April 8, 2019. October 5, 2019 is 180 days from that date, and December 4, 2019 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, as modified by Amendment No. 2, and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[19] designates December 4, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–FINRA–2019–008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22142 Filed 10–9–19; 8:45 am]

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purposes that would not be disseminated. This may include, for example, information about ratings that is restricted by agreement. In addition, CUSIP Global Services' (''CGS'') information would not be disseminated to subscribers that do not have a valid license regarding use of CGS data.

[17] *See* Amendment No. 2, *supra* note 7, at 4.

[18] 15 U.S.C. 78s(b)(2).

[19] *Id.*

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87230; File No. SR–NASDAQ–2019–061]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to the Nasdaq Official Closing Price for Nasdaq-Listed Exchange-Traded Products

October 4, 2019.

On August 8, 2019, The Nasdaq Stock Market LLC (''Nasdaq'') 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 relating to how the Nasdaq Official Closing Price will be determined for a Nasdaq-listed security that is an exchange-traded product. The proposed rule change was published for comment in the **Federal Register** on August 23, 2019.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 7, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 21, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86705 (August 19, 2019), 84 FR 44343.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

rule change (File No. SR–NASDAQ–2019–061).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22140 Filed 10–9–19; 8:45 am]

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[6] 17 CFR 200.30–3(a)(31).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2019–0004]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA).

The matching agreement (agreement) sets forth the terms, conditions, and safeguards under which VA/VBA will provide SSA with information necessary to: (1) Identify certain Supplemental Security Income (SSI) and Special Veterans Benefit (SVB) recipients under Title XVI and Title VIII of the Social Security Act (Act), respectively, who receive VA-administered benefits; (2) determine the eligibility or amount of payment for SSI and SVB recipients; and (3) identify the income of individuals who may be eligible for Medicare cost-sharing assistance through the Medicare Savings Programs (MSP) as part of the agency's Medicare outreach efforts.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register** (FR). The matching program will be applicable on November 11, 2019, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Matthew D. Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* All comments received will be available for public inspection by contacting Mr. Ramsey at this street address.

FOR FURTHER INFORMATION CONTACT: Norma Followell, Supervisory Team Lead, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at Telephone: (410) 966–5855, or send an email to *Norma.Followell@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participatng Agencies

SSA and VA/VBA.

Authority for Conducting the Matching Program

The legal authorities for SSA to conduct this computer matching are sections 806(b), 1144, and 1631(e)(1)(B) and (f) of the Act (42 U.S.C. 1006(b), 1320b-14, and 1383(e)(1)(B) and (f)).

The legal authority for VA to disclose information under this agreement is section 1631(f) of the Act (42 U.S.C. 1383(f)), which requires Federal agencies to provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

Purpose(s)

The agreement establishes the conditions under which VA/VBA will provide SSA with information necessary to: (1) Identify certain SSI and SVB recipients under Title XVI and Title VIII of the Act, respectively, who receive VA-administered benefits; (2) determine the eligibility or amount of payment for SSI and SVB recipients; and (3) identify the income of individuals who may be eligible for Medicare cost-sharing assistance through the MSP as part of the agency's Medicare outreach efforts.

Categories of Individuals

The individuals whose information is involved in this matching program are those individuals who are receiving VA compensation or pension benefits and SSI or SVB benefits.

Categories of Records

VA will provide SSA with electronic files containing compensation and pension payment data. SSA will match the VA data with its SSI/SVB payment information. SSA will conduct the match using the Social Security number, name, date of birth, and VA claim number on both the VA file and the Supplemental Security Income Record and Special Veterans Benefits system of records (SOR).

System(s) of Records

VA will provide SSA with electronic files containing compensation and pension payment data from its SOR entitled the ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA'' (58VA21/22/28), republished with updated name at 74 FR 14865 (April 1, 2009) and last amended at 77 FR 42593 (July 19, 2012). Routine use 20 of 58VA21/22/28 permits disclosure of the subject records for matching purposes.

SSA will match the VA data with SSI/SVB payment information maintained in its SOR entitled ''Supplemental Security Income Record and Special Veterans Benefits'' (60–0103), last fully published on January 11, 2006 (71 FR 1830), and amended on December 10, 2007 (72 FR 69723), July 3, 2018 (83 FR 31250–31251), and November 1, 2018 (83 FR 54969).

[FR Doc. 2019–22158 Filed 10–9–19; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. AB 1290X; Docket No. AB 303 (Sub-No. 52X)]

Wisconsin Rapids Railroad, L.L.C—Discontinuance of Service Exemption—in Wood County, WI; Wisconsin Central Ltd.—Abandonment Exemption—in Wood County, WI

On September 20, 2019, Wisconsin Rapids Railroad, L.L.C. (WRR), and Wisconsin Central Ltd. (WCL) (collectively, Petitioners) filed with the Surface Transportation Board (Board) a joint petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 for WRR to discontinue service over, and WCL to abandon, approximately 1.1 miles of railroad line known as the Biron Lead extending from milepost 0.4 at Plover Road (State Highway 54) north to milepost 1.5 at South Biron Drive in Biron, Wood County, Wis. (the Line).[1] The Line traverses U.S. Postal Service Zip Code 54494.

According to Petitioners, after discontinuance and abandonment, the rail and track materials on the Line will

[1] WRR's lease of the Line from WCL was the subject of a notice of exemption served on August 16, 2019. *Wis. Rapids R.R.—Lease & Operation Exemption—Line of Wis. Cent. Ltd.,* FD 36339 (STB served Aug. 16, 2019).

remain in place and will be transferred to ND Paper Inc. (ND Paper), which owns a paper mill that is the sole rail-served facility on the Line. (Joint Pet. 1–2.) Petitioners state that upon consummation of the discontinuance and abandonment and conveyance of the Line to ND Paper, WCL will continue to handle ND Paper's traffic to Plover Road pursuant to a rail transportation contract, and WRR (or an affiliate) will handle traffic over the Line as a private contract switching carrier for ND Paper. (Joint Pet. 2.) ND Paper supports the joint petition. (Joint Pet., Ex. C.)

According to WCL, the Line does not contain any federally granted rights-of-way and any relevant documentation in WCL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 8, 2020.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must file a formal expression of intent to file an offer by October 21, 2019, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following authorization for abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 30, 2019.[2]

All pleadings, referring to Docket Nos. AB 1290X and AB 303 (Sub-No. 52X), must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on (1) WRR's representative, Michael E. Gray, Watco Companies, LLC, 315 West 3rd Street, Pittsburg, KS 66762 and (2) WCL's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Dr., Suite 800, Chicago, IL 60606. Replies to this petition are due on or before October 30, 2019.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: October 3, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–22195 Filed 10–9–19; 8:45 am]

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[2] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 405X)]

Norfolk Southern Railway Company—Abandonment Exemption—in the City of Cincinnati, Ohio and Hamilton County, Ohio

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon rail service over an approximately 0.64-mile rail line, from milepost CT 3.06 to milepost CT 3.70, including 2,868 feet of unmileposted runaround track located at milepost CT 3.49, in the City of Cincinnati, Ohio, and Hamilton County, Ohio (the Line). The Line traverses U.S. Postal Service Zip Codes 45207 and 45212.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years, and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.7 and 1105.8 (environmental and historic report), have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)[1] has been received, this exemption will be effective on November 9, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by October 18, 2019.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 21, 2019.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 2019, with the Surface

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representatives, William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 15, 2019. The EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing a notice of consummation by October 10, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: October 4, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–22173 Filed 10–9–19; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. EP 757]

Policy Statement on Demurrage and Accessorial Rules and Charges

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Statement of Board Policy.

SUMMARY: The Surface Transportation Board (STB or Board) is issuing this proposed policy statement to provide the public with information on principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges. The Board seeks public comment on this proposed policy statement, and may revise it, as appropriate, after consideration of the comments received.

DATES: Comments on this proposed policy statement are due by November 6, 2019. Reply comments are due by December 6, 2019.

ADDRESSES: Comments and replies may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 757, 395 E Street SW, Washington, DC 20423–0001. Comments and replies will be posted to the Board's website at *www.stb.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Demurrage is subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill national needs related to freight car use and distribution and maintenance of an adequate car supply.[1] Demurrage is a charge that both compensates rail carriers for the expense incurred when rail cars are detained beyond a specified period of time (*i.e.,* ''free time'') for loading and unloading and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network. *See* 49 CFR 1333.1; *see also* 49 CFR pt. 1201, category 106.[2] Accessorial charges are not specifically defined by statute or regulation but are generally understood to include charges other than line-haul and demurrage charges. *See Revisions to Arbitration Procedures,* EP 730, slip op. at 7–8 (STB served Sept. 30, 2016).[3]

This proposed policy statement provides information with respect to certain principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges. It arises, in part, as a result of the testimony and comments submitted in *Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754.[4] The Board commenced that docket by notice served on April 8, 2019, following concerns expressed by users of the freight rail network (rail users)[5] and other stakeholders about recent changes to demurrage and accessorial tariffs administered by Class I carriers, which the Board was actively monitoring.[6]

Specifically, in *Oversight Hearing on Demurrage & Accessorial Charges* (*April 2019 Notice*), EP 754, slip op. at 2 (STB served Apr. 8, 2019), the Board announced a May 22, 2019 public hearing, which was later extended to

[1] The Board notes its authority to regulate demurrage includes, among other things, transportation under the exemptions set forth in 49 CFR 1039.11 (miscellaneous commodities exemptions) and § 1039.14 (boxcar transportation exemptions). *See Savannah Port Terminal R.R.—Pet. for Declaratory Order—Certain Rates & Practices as Applied to Capital Cargo, Inc.,* FD 34920, slip op. at 7–8 (STB served May 30, 2008) (rejecting argument that the Board could not address demurrage dispute because of boxcar and certain commodity exemptions). In *Exclusion of Demurrage Regulation from Certain Class Exemptions,* Docket No. EP 760, served concurrently with this decision, the Board is proposing to revise 49 CFR 1039.10 to make the exemption for the transportation of agricultural commodities (except grain, soybeans, and sunflower seeds, which are already subject to the Board's regulation) consistent with those exemptions.

[2] In *Demurrage Liability* (*Demurrage Liability Final Rule*), EP 707, slip op. at 15–16 (STB served Apr. 11, 2014), the Board clarified that private car storage is included in the definition of demurrage for purposes of the demurrage rules established in that decision. The Board uses the same definition for purposes of this policy statement.

[3] As used in this policy statement, the term ''accessorial charges'' includes charges for diverting a shipment in transit, ordering a railcar but releasing it empty, weighing a railcar, tendering one railroad's car to another railroad without a line-haul move, special train or additional switching services, or releasing a railcar with incomplete or incorrect shipping instructions. Issues relating to accessorial charges may arise in proceedings before the Board in a variety of contexts. *See, e.g., Cent. Valley Ag Grinding, Inc.* v. *Modesto & Empire Traction Co.,* NOR 42159 (STB served July 25, 2018) (involving a challenge to accessorial charges).

[4] Unless otherwise noted, all citations to comments are to material docketed in *Oversight Hearing on Demurrage & Accessorial Charges,* Docket EP 754.

[5] As used in this policy statement, the term ''rail users'' broadly means any person that receives rail cars for loading or unloading, regardless of whether that person has a property interest in the freight being transported. This policy statement uses the terms ''warehousemen'' or ''third-party intermediaries'' to refer to these entities with no property interest in the freight.

[6] In November 2018, the Board sent letters to two Class I carriers, requesting that they examine, from the perspective of reciprocity and commercial fairness, recently announced changes to their policies and practices made in connection with new operating plans they were implementing. After receiving responses from those two carriers, the Board requested each Class I carrier to report its revenues from demurrage and accessorial charges for each quarter of 2018, and, on a going-forward basis, for each quarter of 2019. Because accessorial charges are not uniform among rail carriers, each Class I carrier was asked to identify the specific accessorial items that account for its reported revenues.

include a second day;[7] directed Class I carriers to appear at the hearing; and invited shippers, receivers, third-party logistics providers, and other interested parties to participate. The notice also directed Class I carriers to provide specific information on their demurrage and accessorial rules and charges and required all hearing participants to submit written testimony, both in advance of the hearing. *April 2019 Notice,* EP 754, slip op. at 2–4. Comments were also accepted from interested persons who would not be appearing at the hearing.

The Board received over 90 pre-hearing submissions from interested parties; heard testimony over a two-day period from 12 panels composed of, collectively, over 50 participants; and received 36 post-hearing comments.[8] The Board encourages all carriers, and all shippers and receivers, to work toward collaborative, mutually beneficial solutions to resolve disputes on matters such as those raised in the *Oversight Hearing on Demurrage & Accessorial Charges* proceeding[9] and intends for this proposed policy statement to provide useful guidance to all stakeholders.

Through this proposed policy statement, the Board expects to facilitate more effective private negotiations and problem solving between rail carriers and shippers and receivers on issues concerning demurrage and accessorial rules and charges; to help prevent unnecessary future issues and related disputes from arising; and, when they do arise, to help resolve them more efficiently and cost-effectively. The Board is not, however, making any binding determinations by this proposed policy statement. Nor is the Board promoting complete uniformity across rail carriers' demurrage and accessorial rules and charges; the principles discussed in this proposed policy statement recognize that there may be different ways to implement and administer reasonable rules and charges. When adjudicating specific cases, the Board will consider all facts and arguments presented in such cases.[10]

Historical Overview and General Principles

Historically, the detention of freight rail cars was governed by a uniform code of demurrage rules and charges that became effective for national application in 1910. *See Chrysler Corp.* v. *N.Y. Cent. R.R.,* 234 I.C.C. 755, 759–60 (1939) (recounting history of code's development).[11] The uniform code provided for 48 hours of free time for both loading and unloading, which ran from the first 7 a.m. following placement of the cars. It offered shippers and receivers two alternative methods for computing demurrage (straight demurrage and average demurrage), permitted them to choose the method that best suited their needs, and allowed them to switch to the other method on one month's notice. Straight demurrage applied in the absence of any other arrangement with the rail carrier.[12]

Under the straight demurrage plan, charges were applied and billed on individual cars at daily rates when cars were detained beyond the allowable free time. Saturdays, Sundays, and holidays were excluded unless preceded by at least two chargeable days. Shippers and receivers received no ''credits'' for returning cars early but were not assessed demurrage if severe weather or other circumstances beyond their control—such as the bunching[13] of cars due to the act or omission of any rail carrier involved in the movement—prevented them from returning cars on time. *Exemption of Demurrage from Regulation,* EP 462, slip op. at 1 n.3.

Under the average demurrage plan, shippers and receivers could offset demurrage liability by earning credits for returning cars early but received no relief for bunching. Each car released before the first 24 hours of free time expired earned one credit; a car released during the second 24 hours of free time earned no credit; and cars released after the 48-hour free time period incurred one debit for each excess day. The first four chargeable debit days could be offset by credits earned by early releases. At the end of each month, balances were struck, excess debits were charged at a specified base rate, and excess credits expired. *Car Demurrage Rules, Nationwide,* 350 I.C.C. at 779.

In 1975, railroads obtained approval from the ICC to, among other things, reduce free time for loading to 24 hours based on evidence that it would not impose an unreasonable burden and would promote better equipment utilization and a more adequate car supply. *See generally Car Demurrage Rules, Nationwide,* 350 I.C.C. 777. Subsequently, Congress enacted what is now § 10746 in the Rail Revitalization & Regulatory Reform Act of 1976, Public Law 94–210, 211, 90 Stat. 31 (the 4–R Act), requiring that demurrage charges be computed in a manner that fulfills specified national needs and that the ICC establish rules and regulations relating to such charges. Congress then enacted the Staggers Rail Act of 1980, Public Law 96–448, 94 Stat. 1895 (the Staggers Act), which made broad deregulatory reforms in the rail industry.

Following enactment of the 4–R Act and the Staggers Act, the ICC in 1985 allowed rail carriers to establish individualized demurrage and storage rules and charges that were based on market forces but still generally subject to the statutory requirements for reasonableness under 49 U.S.C. 10702 and demurrage under what is now 49 U.S.C. 10746. *Railroads Per Diem, Mileage, Demurrage & Storage Agreement,* 1 I.C.C.2d 924, 934 (1985) (finding that ''the need for uniform demurrage and storage charges has been overstated'' and that ''a free market approach to such charges will more effectively foster the goals of the national transportation policy''). Later that year, the ICC sought comment in *Exemption of Demurrage from*

[7] *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754, slip op. at 1 (STB served May 3, 2019).

[8] The Appendix to this decision lists the numerous parties that participated in *Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754.

[9] For example, Kansas City Southern Railway Company (KCS) reportedly forgave significant demurrage because the shipper had agreed to spend at least an equal amount to build capacity to store its own cars. KCS Comments 5, May 8, 2019.

[10] Several stakeholders suggested that the Board initiate an investigation into recent tariff changes by Class I carriers. The Board finds that, at this time, rather than conducting an investigation, issuing this proposed policy statement, providing information on broad principles, and soliciting public comment as part of an open process is the more appropriate way to proceed.

[11] The code was adopted by the National Convention of Railway Commissioners, and the Interstate Commerce Commission (ICC), the Board's predecessor, soon thereafter recommended that it be ''made effective on interstate transportation throughout the country.'' *Swift & Co.* v. *Hocking Valley Ry.,* 243 U.S. 281, 283 (1917). One aim of the code was to prescribe rules, to be applied uniformly throughout the country, to help determine what detention was to be deemed reasonable. *Pa. R.R.* v. *Kittanning Iron & Steel Mfg. Co.,* 253 U.S. 319, 323 (1920).

[12] *See generally Exemption of Demurrage from Regulation,* EP 462, slip op. at 1–2 n.3 (STB served Mar. 29, 1996); *Car Demurrage Rules, Nationwide,* 350 I.C.C. 777, 778–79 (1975); *Cleveland Elec. Illuminating Co.* v. *ICC,* 685 F.2d 170 (6th Cir. 1982) (describing historical treatment of demurrage and straight and average demurrage plans).

In 1975, the ICC approved a proposal by rail carriers to reduce the free time for loading from 48 hours to 24 hours. *See Car Demurrage Rules, Nationwide,* 350 I.C.C. 777.

[13] The uniform code defined bunching as ''[w]hen, as the result of the act or neglect of any carrier, cars destined for one consignee, at one point, are bunched at originating point, in transit, or at destination, and delivered by the railroad company in accumulated numbers in excess of daily shipments.'' *Kittanning,* 253 U.S. at 323 n.2 (quoting Rule 8 on bunching). More recently, the Board has described bunching as ''rail car deliveries that are not reasonably timed or spaced.'' *See Demurrage Liability Final Rule,* EP 707, slip op. at 23.

Regulation, Docket No. EP 462, on whether action should be taken under former 49 U.S.C. 10505 (current 49 U.S.C. 10502) to reduce or eliminate the regulation of demurrage. In 1996, the Board ultimately determined not to take further deregulatory action on demurrage, concluding that ''exemption could result in shippers paying unreasonable charges for detention that they did not cause. Thus, there is the potential with such an exemption for an abuse of market power.'' *Exemption of Demurrage from Regulation,* EP 462, slip op. at 3.

In December 2010, the Board issued an advance notice of proposed rulemaking (ANPRM) to address ''when parties should be responsible for demurrage in light of current commercial practices followed by rail carriers, shippers, and receivers.'' *Demurrage Liability* (*2010 ANPRM*), EP 707, slip op. at 1 (STB served Dec. 6, 2010). Among other things, the *2010 ANPRM* noted that there was a need to examine the Board's policies given a split in the federal courts regarding the liability of warehousemen and other third-party intermediaries for railroad demurrage. *Id.* at 2. Under the final rule, issued in 2014, a person receiving rail cars from a rail carrier for loading or unloading that detains those cars beyond the ''free time'' provided in a governing tariff may be held liable for demurrage if that person had actual notice, prior to rail car placement, of the demurrage tariff establishing its liability. *Demurrage Liability Final Rule,* EP 707, slip op. at 1. The rule was based on the theory that responsibility for demurrage should be placed on the party in the best position to expedite the handling of rail cars at origin or destination. *Id.* at 8.[14]

With respect to decisions regarding the reasonableness of demurrage rules and charges in individual cases, the Board has ''tailor[ed] its analysis to the evidence proffered and arguments asserted under a particular set of facts.'' *N. Am. Freight Car Ass'n* v. *BNSF Ry.,* NOR 42060 (Sub-No. 1), slip op. at 8 (STB served Jan. 26, 2007), *aff'd sub nom. N. Am. Freight Car Ass'n* v. *STB,* 529 F.3d 1166 (DC Cir. 2008). General principles recognized in past decisions include: that a rail carrier seeking to collect assessed demurrage charges must provide evidence to establish the dates of actual or constructive car placement and release and to show how the assessed charges were computed;[15] that a rail carrier may not collect demurrage when it is responsible for the delay;[16] and that the shipper or receiver must establish by competent evidence that the assailed charges are unlawful based on the claims it has asserted.[17]

The Board has also recognized that demurrage principles may continue to develop as industry practices and technology change. In *Capitol Materials,* for example, the Board stated that ''[i]n light of the technological advances that have been made with respect to railroad operations in recent years, it might be appropriate for railroads to reconsider some of their longstanding demurrage practices under which delivering railroads charge their customers demurrage regardless of the reasons for delays.'' 7 S.T.B. at 577–78 (noting that the widespread use of computers and sophisticated tracking systems now allows railroads to determine the location of rail cars in the rail system with more precision, and that in-transit delays and other anomalies that could interfere with time-of-delivery expectations also would likely be known). Most recently, in *Utah Central Railway—Petition for Declaratory Order—Kenco Logistic Services, LLC,* FD 36131, slip op. at 12 n.38 (STB served Mar. 20, 2019), the Board noted that it may need to consider future action to ensure that shippers, receivers, and smaller rail carriers are not being forced to bear the burden of delays due to actions not attributable to them.

The overarching purpose of demurrage is to incentivize the efficient use of rail assets (both equipment and track) by holding rail users accountable when their actions or operations use those resources beyond a specified period of time. *See, e.g., Kittanning,* 253 U.S. at 323 (''The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.'').[18] Under this foundational precept, that period of time must be reasonable,[19] and further it is unreasonable to charge demurrage for delays attributable to the rail carrier. *See, e.g., R.R. Salvage & Restoration, Inc.,* NOR 42102 et al., slip op. at 4 (stating ''a shipper is not required to compensate a railroad for delay in returning the asset if the railroad and not the shipper is responsible for the delay''). The Board has also expressed concerns about demurrage charges for delays that a shipper or receiver did not cause. *See, e.g., Utah Central Ry.,* FD 36131, slip op. at 12 n.38; *Exemption of Demurrage from Regulation,* EP 462, slip op. at 4. Where demurrage charges are imposed for circumstances beyond the shipper's or receiver's reasonable control, they do not accomplish their purpose to incentivize behavior to encourage efficiency—the stated rationale for and objective of the rail carriers' demurrage rules and charges[20]—and the purpose of demurrage is not fulfilled. Charges assessed for circumstances beyond the shipper's or receiver's reasonable control would, as a general matter, not fulfill the purpose of demurrage.

The general principles discussed below, which flow from the agency's precedent and governing statutes and are consistent with the purpose of demurrage, can help frame the demurrage reasonableness issues in individual cases, together with the evidence and argument presented in those proceedings.

Free Time

Background. Free time—a major focal point of the May 2019 oversight hearing—is the period of time allowed for a shipper or receiver to finish using rail assets and return them to the railroad before demurrage charges are assessed.[21] Free time is a critical

[14] The regulation, codified at 49 CFR part 1333, provides default rules that govern demurrage in the absence of privately negotiated contracts. *Demurrage Liability Final Rule,* EP 707, slip op. at 25.

[15] *See, e.g., R.R. Salvage & Restoration, Inc.—Pet. for Declaratory Order—Reasonableness of Demurrage Charges,* NOR 42102 et al., slip op. at 6 (STB served July 20, 2010).

[16] *See, e.g., Capitol Materials, Inc.—Pet. for Declaratory Order—Certain Rates & Practices of Norfolk S. Ry.,* 7 S.T.B. 576, 577 (2004).

[17] *See, e.g., Savannah Port Terminal R.R.—Pet. for Declaratory Order—Certain Rates & Practices as Applied to Capital Cargo, Inc.,* FD 34920, slip op. at 8 n.20 (STB served May 30, 2008).

[18] *Accord Increased Demurrage Charges, 1956,* 300 I.C.C. 577, 585 (1957) (''The primary purpose of demurrage regulations is to promote equipment efficiency by penalizing the undue detention of cars.'' (citation omitted)). As acknowledged by one rail carrier in the Docket No. EP 754 proceeding, demurrage charges should not serve as a ''revenue play'' or ''a source of profit.'' Union Pacific Railroad Company (UP) Comments 19, June 6, 2019 (filing ID 247892) (further stating that ''Union Pacific would rather not bill for accessorial and demurrage charges.''). As noted by another rail carrier, ''Congress framed the purposes of demurrage not in terms of cost recovery or a penalty for poor performance, but rather in terms of incentives.'' Canadian National Railway Company (CN) Comments 8, June 6, 2019.

[19] *See, e.g., Kittanning,* 253 U.S. at 323 (stating a shipper is ''entitled to detain the car a reasonable time''); *R.R. Salvage & Restoration, Inc.,* NOR 42102 et al., slip op. at 4 (stating that time period must be reasonable).

[20] *See, e.g.,* citations *infra* note 24.

[21] Tariff provisions typically define the amount of free time provided in terms of 24-hour periods or ''credit days,'' which commonly begin to run at 12:01 a.m. the day following actual or constructive placement. Constructive placement occurs when a rail car is available for delivery but cannot actually be placed at the receiver's destination because of a condition attributable to the receiver (for example, lack of room on the tracks in the receiver's facility). The railroad holds the car and sends notice to the receiver. *See Savannah Port Terminal R.R.,* FD 34920, slip op. at 3 n.6 (citing *Capitol Materials,* 7 S.T.B. 576).

component of demurrage charges, the purpose of which, as noted above, is ''to promote car efficiency by penalizing undue detention of cars.'' *Kittanning,* 253 U.S. at 323 (further noting that ''the duty of loading and of unloading carload shipments rests upon the shipper or consignee. To this end he is entitled to detain the car a reasonable time without any payment in addition to the published freight rate.''). As the Board has explained:

> A railroad has a right to set a reasonable time—free time—for a shipper to finish using rail assets and return them to the railroad. If a shipper keeps an asset for too long (beyond the allocated free time), it should compensate the railroad for the extended use of its asset (rail cars or track)—in other words, for demurrage. However, a shipper is not required to compensate a railroad for delay in returning the asset if the railroad and not the shipper is responsible for the delay.

R.R. Salvage & Restoration, Inc., NOR 42102 et al., slip op. at 4. Free time also helps temper adverse impacts to shippers and receivers of delays arising from service variability.[22]

In addition, free time plays a role in the credit and debit rules and practices of many rail carriers. Free time is often expressed in terms of credit days that are allotted and applied to incoming cars before demurrage charges begin to accrue. Separate from free time, some rail carriers also provide credits for certain problems and delays. Many rail carriers administer rules and practices under which demurrage charges (debits) can be offset by credits that have been allocated to the shipper or receiver.[23]

As described above in the ''Historical Overview,'' the uniform code that historically governed demurrage allowed 48 hours of free time for loading and unloading until 1975, when the ICC approved a reduction of free time for loading to 24 hours. In 1985, the ICC allowed rail carriers to establish individualized demurrage and storage rules and charges. However, until recently, it remained common practice for a rail carrier to provide at least 24 hours of free time (or one credit day) to load rail cars and at least 48 hours of free time (or two credit days) to unload cars. *See generally Portland & W.R.R.—Pet. for Declaratory Order—RK Storage & Warehousing, Inc.,* FD 35406, slip op. at 5 (STB served July 27, 2011) (citing references to tariff provisions providing 48 hours for unloading in demurrage decisions handed down in 2010, 2004, and 2000). Some Class I carriers use alternative rules and practices for private cars in which no credit days are given as a proxy for free time. These alternative rules and practices are also discussed below.

Current Issues. Last fall, the Board became aware that several Class I carriers had implemented or announced significant tariff changes that made or would make, among other things, substantial reductions to the free time allowed to shippers and receivers. At least one rail carrier reduced the number of credit days for loading and unloading private cars, in some circumstances, from two to zero. Some other rail carriers reduced free time for unloading from 48 to 24 hours (or two credit days to one) for both private and railroad-owned cars. After various letter requests to Class I carriers, *see supra* note 6, the Board instituted the proceeding in *Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754. In its *April 2019 Notice,* the Board directed the Class I carriers to submit information on a list of specified subjects, including all tariff changes since January 2016 pertaining to the amount of free time allowed for loading and unloading rail cars and the reason(s) for the change. *April 2019 Notice,* EP 754, slip op. at 2–3.

The rail carriers consistently identified the same objectives and rationales for reductions to free time: To align the behavior of shippers and receivers in order to promote network fluidity to benefit all rail users with improved service reliability and reduced cycle times. Carriers stated that the reductions were made to enable them to optimize network efficiencies and provide better, more reliable service; that the changes were not made to generate revenue; and that their hope is that recent revenue increases generated from demurrage charges will be temporary as shippers and receivers adapt and respond because, in the words of one rail carrier, ''the intention is to improve service, not drive cost increases for our customers.''[24] Rail carriers' post-hearing submissions largely reiterated these points and expressed willingness to work with shippers and receivers to help them align their behavior to better meet the reductions in free time. While the Board recognizes some rail carriers made certain changes and conducted additional outreach following the hearing, many of the broader issues raised before, during, and after the hearing remain.

In comments submitted both prior to and following the hearing, and in testimony at the hearing, interested parties from many industries expressed multiple concerns about the recent reductions in free time. Several stated that they lacked the physical capacity or capital needed to expand their facilities to meet the reduced time periods.[25] Others stated that past investments, as well as infrastructure and operational decisions, had been made based on the standard free time periods previously in place over many years.[26] Many stated that they, or their members, regularly experience bunching or otherwise unreliable service (including missed switches or unpredictable switching times); that bunching is a major obstacle to compliance with the reduced free time periods; and that the recent reductions have made it even more difficult and costly to deal with unreliable service because the free time that has been eliminated had served as an important buffer against irregular and unpredictable railroad performance.[27] To cope with free time reductions, to the extent they could, they reported having to build more track at their facilities, lease track at remote locations, add worker shifts, or resort to other transportation modes (typically trucking).[28]

[22] *See N. Am. Freight Car Ass'n,* NOR 42060 (Sub-No. 1), slip op. at 13 (noting, among other things, that private agricultural hopper car owners were given an average of two days to accept empty private cars without charge, in response to claim that objectionable storage charges were attributable to service variability).

[23] *See Capitol Materials,* 7 S.T.B. at 578 (describing demurrage programs under which credits for cars released before the end of the allowable free time can be used to offset demurrage charges for other cars that are released after the allowable free time has expired).

[24] UP Comments 2, May 8, 2019; *see generally id.* at 1–2; UP Comments 3, June 6, 2019 (filing ID 247876); Norfolk Southern Railway Company (NSR) Comments 2–3, May 8, 2019; CSX Transportation, Inc. (CSXT) Comments 3–5, May 8, 2019. BNSF Railway Company (BNSF) stated that it ''puts a tremendous amount of energy and resources into the area of demurrage and storage for the express purpose of collecting less demurrage revenue.'' BNSF Comments 5, May 8, 2019.

[25] *See, e.g.,* Corn Refiners Association (CRA) Comments 5, May 8, 2019; Agricultural Retailers Association (ARA) Comments 5, May 8, 2019; Consolidated Scrap Resources Inc. (CSR) Comments 4–5, May 8, 2019; Lyondell Chemical Company, Equistar Chemicals LP & Lyondell Basell Acetyls, LLC (LYB) Comments 2, May 8, 2019.

[26] *See, e.g.,* The Fertilizer Institute (TFI) Comments 2, May 8, 2019; Barilla America, Inc. (Barilla) Comments 4, 10, May 8, 2019; MillerCoors LLC (MillerCoors) Comments 16–17, May 8, 2019.

[27] *See, e.g.,* Barilla Comments 9, 11, May 8, 2019; National Industrial Transportation League (NITL) Comments 4–5, May 8, 2019; National Grain and Feed Association (NGFA) Comments 10–11, 22, May 8, 2019; TFI Comments 2–4, May 8, 2019; American Forest & Paper Association Comments 3–5, May 8, 2019; Institute of Scrap Recycling Industries, Inc. (ISRI) Comments 2, 4–5, 8–9, May 8, 2019; International Paper (IP) Comments 2–4, May 7, 2019; Anderson-Dubose Company (Anderson-Dubose) Comments 2–3, May 8, 2019; LYB Comments 2, May 8, 2019; American Chemistry Counsel (ACC) Comments 4, May 8, 2019.

[28] *See, e.g.,* TFI Comments 4–5, May 8, 2019; ISRI Comments 8–9, May 8, 2019; ARA Comments 5,

Shippers that rely on private rail cars expressed additional concerns. Many noted a significant industry shift since the enactment of 49 U.S.C. 10746 from rail carrier ownership of rail cars to private car ownership and described how they had previously been encouraged by rail carriers to use private cars or had been forced to do so because the supply of railroad-owned cars was insufficient.[29] In addition to the types of challenges and experiences described above, private car users objected to recent tariff changes that eliminated credit days previously allotted as free time for private (but not railroad-owned) cars as unreasonable and commercially unfair.[30]

Discussion. Demurrage serves a valuable purpose to encourage the efficient use of rail assets (both equipment and track) by holding shippers and receivers accountable when their actions or operations use those assets beyond a specified period of time. That period of time must be reasonable and consistent with the purpose of demurrage. However, the Board has heard repeatedly, from interested parties in a broad range of industries, that it has become difficult, if not impossible, to avoid demurrage charges following the recent reductions in free time, particularly in light of inconsistencies in rail service.[31] Commenters across a range of industries questioned rail carriers' claims that the changes are reasonable under § 10702 and can be justified as meeting national needs under the standard Congress prescribed in § 10746. Many commenters noted that they had seen no improvement in the reliability or consistency of rail car deliveries upon which their own operations depend, while others stated that bunched deliveries had increased.[32] Rail carriers presented data, generally on a system-wide basis, reflecting recent improvements in some metrics, such as transit time, dwell time, system velocity, and trip plan compliance. However, rail carriers presented limited data on the extent to which changes to their demurrage rules and charges caused reductions in loading and unloading times, as compared to the times prior to the changes.

The Board is troubled by the adverse impacts of reductions in free time to rail users and the potentially negative consequences of providing no credit days for private cars if rail carriers do not have reasonable rules and practices for dealing with, among other things, variability in service and carrier-caused bunching, and for ensuring that shippers and receivers have a reasonable opportunity to evaluate and order incoming cars before demurrage begins to accrue. As noted above, many commenters described the already difficult challenges and adverse impacts caused by bunched deliveries, missed or unpredictable switching times, and other variations in rail service (some of which occur even when rail service is working well). Commenters also explained that, when free time is reduced by 24 hours or more (whether, for example, from two credit days to one credit day for unloading, or to zero credit days for private cars), an important buffer against service inconsistencies and variations in car deliveries is undermined. In addition, commenters explained that eliminating credit days so as to allow no free time for private cars beyond midnight of the constructive placement date could result in demurrage being unavoidable because the receiver would have no reasonable opportunity to evaluate its ability to accept and order the incoming car.

Based on the information presented in the Docket No. EP 754 oversight proceeding, the Board has serious concerns about the reasonableness of reductions in free time that make it more difficult for shippers and receivers to contend with variations in rail service and do not serve to incentivize their behavior to encourage the efficient use of rail assets.[33] The Board is also concerned that, in some circumstances, such reductions may be inconsistent with rail carriers' statutory charge to compute demurrage and establish related rules in a way that fulfills the national needs specified in § 10746 and may be incompatible with the overarching purpose of demurrage—namely, to encourage the efficient use of equipment by penalizing the *undue* detention of cars.[34] Where, for example, carrier-caused circumstances give rise to a situation in which it is beyond the shipper's or receiver's reasonable control to avoid charges, demurrage does not fulfill its purpose.

Such circumstances might include, for example, charging demurrage that accrues as a result of a missed switch (both cars scheduled to be switched and incoming cars impacted by the missed switch); charging demurrage for transit days to move cars from constructive placement in remote locations; or charging demurrage that arises from bunched deliveries substantially in excess of the number of cars ordered until the shipper or receiver has had a reasonable opportunity to process the excess volume of incoming cars. Changes in historical practices on which the shipper or receiver has long relied (*e.g.,* regarding switching frequency or delivery methods that deviate from prior arrangements made by the parties) may also be taken into account.[35]

Lastly, the Board is concerned that, in some circumstances, such reductions in free time may jeopardize important goals of the nation's rail transportation policy by rendering freight rail service less likely to meet the needs of the public and, if other modes are even effectively an option for a rail user, less

May 8, 2019; Brainerd Chemical Co. (Brainerd) Comments 7, May 8, 2019; Lhoist North America (Lhoist) Comments 2, May 7, 2019.

[29] *See, e.g.,* NGFA Comments 6, May 8, 2019; CSR Comments 2–3, 6, May 8, 2019; Ag Processing Inc Comments 1–2, 5, May 8, 2019; MillerCoors Comments 7, May 8, 2019; Lhoist Comments 2, May 7, 2019; ISRI Comments 2, June 6, 2019.

[30] *See, e.g.,* Diversified CPC International, Inc. Comments 5–7, 11, May 8, 2019; Auriga Polymers, Inc./Indorama Comments 2–3, May 8, 2019; ACC Comments 2, 9, May 8, 2019; NGFA Comments 17–18, May 8, 2019; CRA Comments 3–4, May 8, 2019; ISRI Comments 2, June 6, 2019. Among other concerns, these commenters explained that allowing no free time for private cars beyond midnight on the date of constructive placement could result in situations where a shipper could not possibly avoid demurrage charges, because it might have only minutes to evaluate its ability to accept and order the incoming car.

[31] *See, e.g.,* CRA Comments 4, May 8, 2019 (explaining why, ''[f]or all CRA members, whether they have open or closed-gate facilities, their ability to actually accept a rail car with zero free-time is highly dependent upon their consistency of rail service''); NITL Comments 4–5, May 8, 2019 (noting that ''[i]t is not uncommon for carriers to have variation in their deliveries of more than twenty-four hours'' and that reducing free time will only exacerbate the costs and challenges shippers and receivers already bear from delays attributable to the railroads' actions); TFI Comments 5, May 8, 2019 (''inconsistent rail service remains their greatest obstacle to compliance'').

[32] *See, e.g.,* CSR Comments 6, May 8, 2019; Anderson-DuBose Comments 2–3, May 8, 2019; IP Comments 3–4, May 7, 2019; ACC Comments 1–3, June 6, 2019.

[33] Parties are, of course, free to negotiate and enter into contracts that provide for any period of free time (including zero) to which the parties agree. 49 CFR 1333.2; *Demurrage Liability Final Rule,* EP 707, slip op. at 25 (noting that the Board's rules specifically allow parties to enter into contracts pertaining to demurrage). In addition, the Board notes that demurrage programs that do not provide any credit days for private cars could be reasonable if, among other things, they give shippers and receivers a reasonable window of time to accept incoming cars without incurring demurrage charges.

[34] *See supra* note 18; 49 CFR 1333.1 (demurrage ''serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network'').

[35] On the other hand, circumstances within the shipper's or receiver's reasonable control might include, for example, taking reasonable steps to: Ensure that its facility is right-sized for its expected volume of incoming traffic when it receives reliable, consistent service; manage its pipeline to mitigate expected incoming car volumes that exceed its capacity; and order and release cars in the manner specified by reasonable tariff requirements.

competitive with other transportation modes.[36]

The Board recognizes that reductions in free time might be justified if there were evidence to show, by way of example, that (1) advances in technology or productivity, or other changes across the industry, have made compliance with the shorter time frames reasonable to achieve; (2) service improvements resulting from more efficient use of rail assets would facilitate the ability of shippers and receivers to adjust to the reductions; (3) reductions are necessary to address systemic problems with inefficient behavior or practices by shippers or receivers; or (4) rail carriers have implemented tariff provisions or program features, such as credits for bunching, service variabilities, and certain capacity constraints, that place the avoidance of demurrage charges within the reasonable control of a shipper or receiver.

The Board also recognizes that demurrage serves an important purpose, namely, incentivizing the behavior of rail users to encourage the efficient use of rail assets, which benefits rail carriers and users alike. Rail carriers and users have a shared responsibility in this endeavor—rail carriers to implement and administer reasonable rules and charges designed to accomplish this goal, and rail users to recognize and accept responsibility for promoting efficiencies within their reasonable control.

Bunching

The *April 2019 Notice* invited stakeholders to comment on recent experience with demurrage and accessorial charges pertaining to bunching, including bunching that may be attributable to upstream rail carriers. *April 2019 Notice,* EP 754, slip op. at 3. Bunching-related issues were identified as a common problem by rail users across a broad range of industries. Many commenters stated that they regularly experience bunched deliveries of rail cars and are charged demurrage for related backlogs; several reported that unpredictable, bunched deliveries increased in frequency following changes to rail carriers' operating plans.[37] In other words, these commenters contend that recent operating changes and actions by rail carriers may be resulting in rail car deliveries that are not ''reasonably timed or spaced,'' which the shipper or receiver cannot prevent.[38] Commenters also reported that some rail carriers have eliminated tariff provisions that formerly provided demurrage relief for bunching; that rail carriers that do provide relief for bunching often do not do so automatically, instead billing for the charge and requiring the shipper or receiver to apply for a credit or dispute the charge; and that relief for upstream bunching is not available.[39] Some rail carriers stated that they award credits for bunching in some instances, but did not describe with specificity how adjustments are made or otherwise address the concerns expressed by rail users.[40]

Demurrage disputes pertaining to bunching are best addressed in the context of case-specific facts. *See Demurrage Liability Final Rule,* EP 707, slip op. at 23–24. As discussed above, demurrage charges must be designed to incentivize shippers' and receivers' behavior. Where rail carriers' operating decisions or actions result in bunched deliveries and demurrage charges that are not within the reasonable control of the shipper or receiver to avoid, the purpose of demurrage is not fulfilled.[41] When analyzing the appropriateness of demurrage charges, rail carriers should consider these principles both when cars originate with the serving carrier and when cars originate on an upstream carrier. Rail carriers are encouraged to take these considerations into account in their future administration of demurrage rules and charges, particularly in evaluating whether their automatic billing processes sufficiently account for carrier-caused bunching (for cars that originate on their network or upstream, and bunching attributable to missed switches), and in resolving any related disputes. In any future proceeding, the Board expects to take these considerations into account as well, along with any additional evidence and argument the parties may choose to present.

Overlapping Charges

Many participants in the Docket No. EP 754 oversight proceeding voiced concerns about additional charges recently instituted by two Class I carriers for claimed customer-caused congestion or delay. The first, a so-called ''congestion'' charge, was reportedly being assessed by NSR following a determination, in its sole judgment, that an excessive quantity of cars for a given consignee causes material operating problems at an NSR facility.[42] Commenters objected that the $100 per car/per day charge, assessed on five days' notice for all cars destined for the location identified as congested, was arbitrary and unreasonable in its own right, and that it effectively resulted in a double recovery for NSR because it served the same purpose (incentivizing the prompt removal of cars held in railroad yards) as demurrage charges, to which the cars in question were also subject.

Another type of potentially overlapping charge, termed ''not prepared for service,'' was implemented by UP. As initially established, UP reportedly assessed the $400 per car/per occurrence charge when it determined, in its discretion, that it was unable to pull or spot a car due to a customer's

[36] *See* 49 U.S.C. 10101 (stating, in pertinent part, ''[i]n regulating the railroad industry, it is the policy of the United States Government . . . (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense; . . . [and] (14) to encourage and promote energy conservation'').

[37] *See generally, e.g.,* citations *supra* notes 27 & 32, *infra* note 38; ISRI Comments 2, May 8, 2019; International Association of Refrigerated Warehouses (IARW) Comments 1–2, May 8, 2019.

[38] *See, e.g.,* Private Railcar Food and Beverage Association, Inc. (PRFBA) Comments 3–4, May 8, 2019 (''The net impact of this new service model is that railcars get bunched in route while waiting for the next full train to depart. PRFBA has been told by several railroads that the term for this occurrence is no longer called 'bunching'; this negative delivery practice is now referred to as 'train building' in the [Precision Scheduled Railroading (PSR)] world.''). As explained by another industry organization, despite its members' best efforts to regulate the tender of rail cars to arrive over a defined time period, cars may be delayed or held for the railroad's convenience, resulting in a single mass of cars delivered at once. ACC Comments 3–4, May 8, 2019 (also describing other types of carrier-caused bunching and limits to the effectiveness of related credits offered by rail carriers, including that credits are not available for bunching caused by upstream rail carriers); IARW Comments 1–2, May 8, 2019 (bunching is a major contributor to demurrage despite efforts by shippers to appropriately space shipments to warehouses).

[39] *See, e.g.,* NGFA Comments 22–23, 26, May 8, 2019; NITL Comments 5, May 8, 2019; ACC Comments 3–4, May 8, 2019.

[40] In post-hearing comments, CSXT stated that if a customer raises a dispute and ''that customer's demurrage was caused by CSXT bunching traffic, CSXT will provide credits for those days of demurrage.'' CSXT Comments 11–12, June 6, 2019. UP stated that it applied a ''case-by-case process within which customers are credited for carrier-caused bunching,'' and that UP ''takes into account customer choices and actions, the actions of [UP's] interline partners, and [UP's] own actions in determining whether a customer should be charged for bunching-related demurrage.'' UP Comments 10, June 6, 2019 (filing ID 247892). It is unclear whether UP engages in this process automatically or only if a dispute is raised, and UP does not describe what actions it does and does not consider.

[41] As noted above, such circumstances might include, for example, charging demurrage that arises from bunched deliveries substantially in excess of the number of cars ordered until the shipper or receiver has had a reasonable opportunity to process the excess volume of incoming cars.

[42] *See* ACC Comments 5, May 8, 2019; NGFA Comments 19, May 8, 2019; NITL Comments 6–7, May 8, 2019 (referencing NSR Tariff 8002–A, Item 6265).

actions.[43] The applicable tariff item lists various examples of situations—including cars that cannot be spotted due to track being blocked by other cars—that would permit UP to assess the additional charge. Commenters objected to this charge on multiple grounds, including that it could be imposed even when UP could service some (but not all) cars that had been released, and that the charge was often imposed in situations beyond the customer's control.[44] Commenters stated that UP does not commit to a service window to pull released cars; that days may pass before UP arrives to pull released cars; and that shippers are given little or no advance notice of UP's arrival and have insufficient time to move cars that in the interim may be blocking released cars in order to avoid the charge.[45]

Both rail carriers have since responded to these concerns. Specifically, UP announced during the May 2019 hearing that it has abated the ''not prepared for service'' charge by applying it ''per occurrence'' (rather than ''per car''), establishing a threshold trigger of three occurrences per month, and clarifying that where the charge is applied, demurrage would not be assessed. NSR advised the Board that it would no longer assess a ''congestion'' charge as of July 1, 2019.

The Board is encouraged by these actions but nevertheless notes that, when adjudicating specific cases, it would have significant concerns about the reasonableness of any tariff provision that sought to impose a charge, in addition to the otherwise applicable demurrage charge, for congestion or delay that is not within the reasonable control of the shipper or receiver to avoid. Although the Board remains open to evidence and argument that such a charge could in some instance be reasonable, no such information was presented in Docket No. EP 754.

Invoicing and Dispute Resolution

The *April 2019 Notice* invited stakeholders to comment on whether the tools available to manage demurrage and accessorial charges provide adequate data for shippers and receivers to evaluate whether charges are being properly assessed and to dispute the charges when necessary. *April 2019 Notice,* EP 754, slip op. at 3. It also directed Class I carriers to provide information on the procedures and time periods applicable to the process for raising and resolving disputed charges. *Id.* The comments and information received revealed several issues of concern.

Shippers and receivers stated repeatedly that under the programs administered by several rail carriers, demurrage and accessorial charges are difficult, time-consuming, and costly to dispute; that invoices are often inaccurate or lack information needed to assess the validity of the charges; and that erroneous invoices are issued even when the tariff expressly provides for relief or the rail carrier has acknowledged its responsibility for the problem, compelling the shipper or receiver to initiate a protracted dispute resolution process.[46] Commenters also stated that, pursuant to some rail carriers' rules and practices, charges must be disputed within limited time frames, while those carriers are often slow to respond, and disputes are often denied.[47] Some tariffs also have imposed costs or charges that serve as a deterrent to pursuing a dispute or a formal claim.[48]

The Board is deeply troubled by these reports, which came from shippers and receivers in a broad range of industries that are highly dependent on rail service. If rail carrier practices effectively preclude a rail user from determining what happened, then the user would not be able to determine whether it was responsible for the delay; the responsible party would not be incentivized to modify its behavior; and the demurrage charges would not achieve their purpose. Transparency and mutual accountability are important factors in the establishment and administration of reasonable demurrage and accessorial rules and charges. Rail shippers and receivers should be able to review and, if necessary, dispute charges without the need to engage a forensic accountant or expend ''countless hours and extra overhead'' to research charges and seek to resolve disputes.[49]

The Board encourages all Class I carriers (and Class II and Class III carriers to the extent they are capable of doing so), taking into account the principles discussed here, to provide, at a minimum and on a car-specific basis: The unique identifying information of each car; the waybill date; the status of each car as loaded or empty; the commodity being shipped; the identity of the shipper, consignee, and/or care-of party; the origin station and state of the shipment; the dates and times of actual placement, constructive placement (if applicable), notification of constructive placement (if applicable), and release; and the number of credits and debits issued for the shipment (if applicable).[50] The Board also expects rail carriers to bill for demurrage only when the charges are accurate and warranted, consistent with the purpose of demurrage. With respect to the dispute resolution process more broadly, rail shippers and receivers should be given a reasonable time period to request further information and to dispute charges, and the rail carrier likewise should respond within a reasonable time period. Finally, the Board has serious concerns about the reasonableness of costs or charges that could deter shippers and receivers from pursuing a disputed claim.[51] Although the Board remains open to argument and evidence, based on the record in Docket No. EP 754, there is no apparent justification for imposing such costs or charges.

The Board recognizes that some rail carriers may already employ billing practices consistent with the practices described above, and with the principles discussed in this proposed policy statement. The Board intends through this decision to provide information about how it would consider the reasonableness of invoicing and dispute resolution procedures when adjudicating specific cases, along with the consideration of any additional evidence and argument the parties may choose to present. The Board also commends rail carrier commitments to addressing demurrage disputes through arbitration or other streamlined dispute resolution procedures and encourages

[43] *See* NGFA Comments 12–14 (referencing UP Accessorial Tariff 6004, Item 9005).

[44] *See* ISRI Comments 6–7, May 8, 2019; Barilla Comments 8–9, May 8, 2019.

[45] *See* NGFA Comments 12–14, May 8, 2019.

[46] *See, e.g.,* National Coal Transportation Association Comments 8–9, May 8, 2019; NITL Comments 8, May 8, 2019; Packaging Corporation of America (PCA) Comments 4–5,7–8, May 8, 2019; Brainerd Comments 4, May 8, 2019; IP Comments 4, May 7, 2019.

[47] *See, e.g.,* NGFA Comments 26–28, May 8, 2019; ACC Comments 4, May 8, 2019; CSR Comments 4, May 8, 2019.

[48] *See, e.g.,* NGFA Comments 27–28, May 8, 2019 (citing provisions in UP, NSR and KCS tariffs); ACC Comments 4, May 8, 2019 (citing provision in NSR tariff).

[49] IP Comments 4, May 7, 2019; *accord* PCA Comments 4–5, 7–8, May 8, 2019 (describing process that is ''hugely time and resource consuming'').

[50] In *Demurrage Billing Requirements,* Docket No. EP 759, served concurrently with this decision, the Board is proposing to specify certain information that Class I carriers must provide on or with demurrage invoices to enable recipients of those invoices to, among other things, readily verify the validity of the demurrage charges.

[51] The Board notes that NSR has announced that, effective July 1, 2019, disputes for demurrage and storage charges or computations can be submitted without any potential charge.

additional commitments to do so.[52] The Board hopes that such commitments, together with the principles addressed here and the outcome of the proposed rule relating to invoice requirements, will make it unnecessary for the Board to revisit these issues.

Credits

The *April 2019 Notice* directed Class I carriers to provide information on their systems and practices for issuing credits and debits in connection with the assessment of demurrage or accessorial charges and to describe any limits on the amount of credits or debits that may be available or incurred. *April 2019 Notice,* EP 754, slip op. at 3.[53] It also invited all stakeholders to share their perspectives on whether demurrage and accessorial tariffs in effect during the past three years have created balanced and appropriate incentives for both customers and railroads. *Id.* at 4.

With respect to credits, a common concern voiced by shippers and receivers is that limitations imposed by rail carriers' credit and debit rules and practices diminish the utility of credits as a means of offsetting debits that are incurred.[54] At the same time, as noted by one commenter, ''railroad-imposed demurrage and accessorial charges do not 'expire' until paid.'' NGFA Comments 9, June 6, 2019.

The Board is troubled by this lack of reciprocity, particularly where the expiration date of a credit, in effect, undermines the value of a credit or credits that were allocated for a problem or delay that was not within the reasonable control of a shipper or receiver. The Board also recognizes that credits issued for carrier-caused problems and delays serve a different purpose than credits that function as a proxy for free time, and that different types of credits might have different expiration time frames. The Board remains open to argument and evidence in future cases that involve these issues. However, as preliminary guidance based on the information presented in Docket No. EP 754, the Board would evaluate how credit rules and practices are administered in determining the reasonableness of demurrage rules and charges when adjudicating specific cases, including, in particular, whether the shipper or receiver has been afforded a reasonable opportunity to make use of the credits in question, before any expiration date imposed by the rail carrier. The Board would also take into account the credits' purpose and function. The Board also notes that these concerns would be allayed if shippers and receivers were compensated for the value of unused credits at the end of each month, rather than the credits merely expiring.

Notice of Major Tariff Changes

The *April 2019 Notice* requested information on the notice given in connection with recent changes in Class I carrier demurrage and accessorial tariffs, and feedback concerning impacts on shippers, receivers, third-party logistics providers, and short line railroads flowing from those changes. *April 2019 Notice,* EP 754, slip op. at 3–4. Insufficient notice, particularly with respect to changes involving reductions in free time, was identified as a widespread problem in the feedback the Board received.

In the words of one commenter, ''the operational challenges and costs caused by reductions in free time were aggravated by the lack of sufficient notice and coordination that would have allowed rail customers to plan for the change.'' [55] Another commenter explained that its members had designed their operations and infrastructure around the 48-hour standard, and ''suddenly have been forced to redesign everything'' with less than 45 days' notice in many cases.[56] A third commenter noted that rail carriers had many months to adjust their operations to implement PSR but often expected their customers to comply with associated new rules and practices in 45 days.[57]

As a matter of commercial fairness, and consistent with the principles discussed in this proposed policy statement, railroads should provide sufficient notice of major changes to demurrage and accessorial tariffs to enable shippers and receivers to evaluate, plan, and undertake any feasible, reasonable actions to avoid or mitigate new resulting charges. The Board recognizes that a 20-day notice period is statutorily prescribed for changes to common carrier rates and service terms. 49 U.S.C. 11101(c). However, rail carriers themselves recognized that 20 days was not sufficient for many of the changes recently implemented, and generally provided between 45 and 60 days, while other commenters stated that the marginally longer notice periods that were provided were still insufficient.

Rail carriers also described various other actions taken to help shippers and receivers adapt, such as delayed billing and working with those that needed more flexibility.[58] The Board encourages rail carriers to take these and other initiatives to support all rail users facing the financial, operational, or other challenges of adjusting to major tariff changes, to thoughtfully consider the amount of advance notice that should be given, and to be especially cognizant of and accommodating to any unique obstacles a shipper or receiver may face in adapting to demurrage and accessorial tariff changes.

Demurrage Billing to Shippers Instead of Warehousemen

In the Docket No. EP 754 oversight proceeding, several participants expressed concerns about the impact of demurrage on third-party intermediaries who handle goods shipped by rail but have no property interest in them (also commonly known as warehousemen, as noted above) following the Board's adoption of the final rule in *Demurrage Liability,* Docket No. EP 707 (codified at 49 CFR part 1333).[59] Participants raised

[52] The Board notes that three of the Class I carriers have agreed to arbitrate certain demurrage disputes under the binding, voluntary program set forth in 49 CFR part 1108. *See* UP Notice (June 21, 2013), CSXT Notice (June 28, 2019), and CN Notice (July 1, 2019), *Assessment of Mediation & Arbitration Procedures,* EP 699. In addition, BNSF was commended by one commenter in the Docket No. EP 754 proceeding for including an arbitration provision in its tariffs. *See* NGFA Comments 28, May 8, 2019.

[53] Each rail carrier sets its own rules and practices for issuing credits and debits in connection with the assessment of demurrage or accessorial charges; however, a common aspect across rail carriers' rules and practices is that certain types of credits expire monthly.

[54] *See, e.g.,* TFI Comments 4, May 8, 2019 (credits issued for carrier-caused bunching near the end of the month have an expiration date of just a few days); Western Coal Traffic League Comments 3, June 6, 2019 (ensuring that credits do not expire after only a few weeks would increase reciprocity in rail carrier practices); American Fuel & Petrochemical Manufacturers Comments 12, 16, May 8, 2019 (credit systems are not balanced).

[55] NITL Comments 4, May 8, 2019 (further stating that, ''[g]iven the complexity of rail operations and the time, money[,] and difficulty involved in constructing new facilities or otherwise acquiring additional track capacity to address the reduction in free time, 45 days of notice was insufficient for many shippers and receivers'').

[56] TFI Comments 2, May 8, 2019 (further stating that the ability of TFI members to comply with the new free time rules varies by member and location, but that compliance ''takes time and comes at a substantial cost'').

[57] ACC Comments 7–8, May 8, 2019 (further stating that ''[a]ctions such as building or acquiring new infrastructure to avoid storage charges require far more time. It is unreasonable to impose charges while a facility is acting in good faith to implement necessary changes'').

[58] *See also N. Am. Freight Car Ass'n,* NOR 42060 (Sub-No. 1), slip op. at 9 (referencing steps taken by BNSF to inform shippers about the newly imposed storage charges and respond to shippers' concerns, including offering to waive the charges in the first year to offset the cost of new track construction and offering to enter into transitional leases).

[59] In Docket No. EP 707, the Board explained that a question had arisen as to who should bear liability when an intermediary that detains rail cars too long

concerns that the rule adopted in Docket No. EP 707 led rail carriers to impose demurrage charges on warehousemen who lack control over the timing or volume of railcars shipped to them and have no business relationship with rail carriers to facilitate the resolution of demurrage disputes.[60]

Commenters suggested shipper-direct billing as one potential solution but stated that warehousemen and shippers have been unable to reach such agreements with rail carriers.[61] At least one rail carrier has reportedly taken the position that the rule adopted in Docket No. EP 707 *precludes* rail carriers from entering such agreements and requires them to bill and hold warehousemen solely responsible for demurrage on delivered cars.[62]

The rule adopted in Docket No. EP 707 does not require rail carriers to bill warehousemen, nor does it preclude a rail carrier from sending demurrage bills directly to the shipper, or from looking to the shipper as the responsible party for any unpaid assessments. The Board notes, in particular, that the rule adopted in Docket No. EP 707 states, in permissive terms, that parties who receive cars ''*may* be held liable for demurrage,'' *see* 49 CFR 1333.3 (emphasis added), and that the Board expressly stated that the demurrage liability rules promulgated in that docket ''are default rules only, meant to govern demurrage in the absence of a privately negotiated contract.'' *Demurrage Liability Final Rule,* EP 707, slip op. at 25. Nor should rail carriers be able to hold warehousemen responsible when a shipper that has agreed to accept responsibility for demurrage does not pay.[63] In *Demurrage Billing Requirements,* Docket No. EP 759, served concurrently with this decision, the Board is proposing rules that will further address these matters, in addition to the invoicing issues noted above. In the meantime, the Board encourages railroads to work collaboratively with warehousemen and shippers to address these issues.

General Concluding Considerations

The Board concludes by restating two fundamental principles that all rail carriers, and all shippers and receivers, are encouraged to keep in mind. First, demurrage rules and charges are not reasonable when they do not serve to incentivize the behavior of shippers and receivers to encourage the efficient use of rail assets. In other words, charges should not be assessed in circumstances beyond the shipper's or receiver's reasonable control. It follows, then, that revenue from demurrage charges should reflect reasonable financial incentives to advance the overarching purpose of demurrage and that revenue is not itself the purpose. Second, transparency and mutual accountability by both rail carriers and the shippers and receivers they serve are important factors in the establishment and administration of reasonable demurrage and accessorial rules and charges. These two principles were recognized by rail carriers, shippers, and receivers in connection with the Docket No. EP 754 oversight hearing, and the Board affirms them here.

The Board expects to take all of the principles discussed in this proposed policy statement into consideration, together with all of the evidence and argument that is before it, in evaluating the reasonableness of demurrage and accessorial rules and charges in future cases.

Opportunity for comment. The Board seeks public comment on this proposed policy statement. Comments are due by November 6, 2019. Reply comments are due by December 6, 2019.

Decided: October 4, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Kenyatta Clay,

Clearance Clerk.

Participants in Docket No. EP 754

The Board received comments and testimony from the following parties in Docket No. EP 754. For parties that provided testimony at the May 22–23, 2019 hearing, the panel is noted in parentheses. Pre-hearing comments are denoted with ''*''and post-hearing comments are denoted with ''†''.

- Ag Processing Inc * † (Panel VI)
- Agricultural Retailers Association (ARA) * (Panel VI)
- Agricultural Transportation Working Group* [64]
- Agricultural Transportation Working Group † [65]
- All South Warehouse D/C, Inc.†
- American Chemistry Council * † (Panel VIII)
- American Forest & Paper Association *
- American Frozen Food Institute *
- American Fuel & Petrochemical Manufacturers *
- American Plant Food Corporation *
- American Short Line and Regional Railroad Association †
- ArcelorMittal USA LLC *
- Archer Daniels Midland Company *
- Arizona Electric Power Cooperative, Inc. and Freight Rail Customer Alliance * † (Panel XII)
- Armada Supply Chain Solutions, LLC *
- Association of American Railroads †
- Auriga Polymers, Inc., a wholly owned subsidiary of Indorama, NA, on behalf of Indorama Ventures affiliates * (Panel VII)
- Barilla America, Inc. * (Panel IX)
- BNSF Railway Company * † (Panel XI)
- Brainerd Chemical Company, Inc., on behalf of itself and other members of the National Association of Chemical Distributors * (Panel IV)
- Brunk Plastic Services * (Panel VII)
- Bunge North America * † (Panel I)
- California League of Food Producers *
- Canadian National Railway Company * † (Panel XI)
- Canadian Pacific Railway Company * † (Panel XI)
- Cargill, Inc.* (Panel IV)
- Consolidated Scrap Resources, Inc.* † (Panel I)
- Corn Refiners Association (CRA) * (Panel VI)
- Covia Holdings Corporation *
- CSX Transportation, Inc.* † (Panel II)

is named as consignee in the bill of lading but asserts that it either did not know of its consignee status or had affirmatively asked not to be named as consignee. *Demurrage Liability Final Rule,* EP 707, slip op. at 4. The Board noted that there was a split on that issue in the U.S. Courts of Appeals. *Id.* The Board determined that identification of a party in the bill of lading was not controlling for purposes of demurrage liability. *Id.* at 14. The Board adopted ''a conduct-based approach to demurrage in lieu of one based on the bill of lading,'' *id.* at 15, based on ''the theory that responsibility for demurrage should be placed on the party in the best position to expedite the loading or unloading of rail cars at origin or destination,'' *id.* at 8.

[60] *See, e.g.,* International Liquid Terminals Association (ILTA) Comments 1–2, May 8, 2019; Kinder Morgan Terminals (Kinder Morgan) Comments 8–9, May 8, 2019.

[61] ILTA Comments 2, May 8, 2019; Kinder Morgan Comments 2–3, June 6, 2019.

[62] *See* Kinder Morgan Comments 10–11, May 8, 2019; Kinder Morgan Comments 1–2, June 6, 2019.

[63] The shipper is, after all, the party shown on the bill of lading, and indeed the one that was historically responsible for demurrage.

[64] Submitted on behalf of ARA, Amcot, American Farm Bureau Federation, American Frozen Food Institute, American Soybean Association, Corn Refiners Association (CRA), Cotton Growers Warehouse Association, Cotton Warehouse Association of America, Cottonseed & Feed Association, Growth Energy Institute of Shortening and Edible Oils, National Barley Growers Association, National Cotton Council, National Cotton Ginners Association, National Cottonseed Products Association, National Council of Farmer Cooperatives, National Farmers Union, National Grain and Feed Association (NGFA), National Oilseed Processors Association (NOPA), National Sorghum Producers, North American Millers' Association (NAMA), The Fertilizer Institute (TFI), U.S. Canola Association, and U.S. Wheat Associates.

[65] Submitted on behalf of ARA, American Bakers Association, American Cotton Shippers Association, American Farm Bureau Federation, CRA, Cottonseed & Feed Association, Cotton Warehouse Association of America, Growth Energy Institute of Shortening and Edible Oils, National Association of State Departments of Agriculture, National Association of Wheat Growers, National Cattlemen's Beef Association, National Corn Growers Association, National Cotton Council, National Cotton Ginner's Association, National Cottonseed Products Association, National Council of Farmer Cooperatives, National Farmers Union, NGFA, National Grange, National Milk Producers Federation, NOPA, National Pork Producers Council, National Renderers Association, NAMA, TFI, and U.S. Wheat Associates.

- Diversified CPC International, Inc.* (Panel VIII)
- Dow, Inc.*
- Energy Transfer *
- Federal Maritime Commission * (Panel III)
- Glass Packaging Institute *
- Global Harvest Foods *
- Grain Craft *
- Growth Energy *
- Hudson Terminal Rail Services *
- Imerys USA, Inc.*
- Industrial Minerals Association—North America *
- Institute of Scrap Recycling Industries, Inc.* †
- Intermodal Motor Carriers Conference†
- International Association of Refrigerated Warehouses * (Panel X)
- International Liquid Terminals Association * (Panel X)
- International Paper * (Panel IV)
- International Warehouse Logistics Association * † (Panel X)
- Kansas City Southern Railway Company * † (Panel VIII)
- Kinder Morgan Terminals * † (Panel I)
- Lansdale Warehouse Company *
- Lhoist North America * (Panel V)
- Louis Dreyfus Company LLC *
- Lyondell Chemical Company, Equistar Chemicals LP, and LyondellBasell Acetyls, LLC *
- Martin-Brower Company, LLC *
- MHW Group, Inc. and its companies, Cryo-Trans, Inc., Perryville Cold Storage and Chambersburg Cold Storage * † (Panel V)
- MillerCoors LLC * (Panel IV)
- National Coal Transportation Association * (Panel XII)
- National Customs Brokers and Forwarders Association of America, Inc.*
- National Grain and Feed Association (NGFA) * † [66] (Panel VI)
- National Industrial Transportation League * † (Panel VII)
- Norfolk Southern Railway Company * † (Panel II)
- Normerica Inc. and Northdown Industries Inc.* (Panel IX)
- North America Freight Car Association * †
- North Dakota Grain Dealers Association *
- Olin Corporation * † (Panel I)
- Oxbow Carbon LLC *
- Packaging Corporation of America * (Panel IV)
- Palmer Logistics * (Panel V)
- PBF Energy Inc. and PBF Logistics * (Panel XII)
- Peabody Energy Corporation *
- Portland Cement Association †
- Private Railcar Food and Beverage Association, Inc. (PRFBA) * † (Panel IV)
- R. D. Gould *
- Rebel Oil Company, Inc. and Pro Petroleum, Inc.*
- Reserve Management Group *
- San Jose Distribution Services Inc.*
- San Jose Distribution Services Inc., Kenco, RBW Logistics, Palmer Logistics, CDS Transportation, Acme Distribution, Total Distribution Inc., Verst Group Logistics Inc., Sonwil Distribution Center, Peoples Services, Lansdale Services Inc., Logistics Services Inc., PRFBA, Stech Group, The Shippers Group, RGL Logistics, Moran Logistics, Wagner Logistics †
- Shea Brothers Lumber Handling, Inc.*
- Sims Metal Management Limited and SA Recycling * (Panel IX)
- Star Distribution †
- Sysco Corporation *
- The Anderson-DuBose Company * (Panel V)
- The Fertilizer Institute (TFI) * † (Panel VII)
- The Shippers Warehouse Co., dba The Shippers Group (The Shippers Group) * † (Panel V)
- UGI Energy Services, LLC *
- Union Pacific Railroad Company * † (Panel II)
- U.S. Clay Producers Traffic Association, Inc.*
- U.S. Department of Agriculture *
- Valley Distributing & Storage Company *
- Verso Corporation *
- Western Coal Traffic League * † (Panel XII)

[66] Pre-hearing comments supported by members of NOPA, North America Freight Car Association, and NAMA.

[FR Doc. 2019–22200 Filed 10–9–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Burlington International Airport, South Burlington, Vermont

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for Burlington International Airport, as submitted by the City of Burlington, Vermont, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979, are in compliance with applicable requirements.

DATES: *Applicable Date:* The effective date of the FAA's determination on the noise exposure maps is September 26, 2019.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 1200 District Ave., Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Burlington International Airport are in compliance with applicable requirements of Part 150, effective September 26, 2019.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Burlington, Vermont. The specific maps under consideration were ''Figure 12, 2018 Existing Conditions Noise Exposure Map'' on page 39 and ''Figure 13, 2023 Forecast Conditions Noise Exposure Map'' on page 41 in the submission. The FAA has determined that these maps for Burlington International Airport are in compliance with applicable requirements. This determination is effective on September 26, 2019.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the

responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Burlington International Airport, 1200 Airport Drive #1, South Burlington, Vermont 05403.

Federal Aviation Administration, New England Region, Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts on September 26, 2019.

Richard P. Doucette,

Environmental Program Manager, FAA New England Region, Airports Division.

[FR Doc. 2019–22221 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0028; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2014 Ferrari LaFerrari Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2014 Ferrari LaFerrari (also known as the Ferrari F150) passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2014 Ferrari LaFerrari PCs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 12, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, (Registered Importer R–90–006), of Baltimore, Maryland has petitioned NHTSA to decide whether nonconforming 2014 Ferrari LaFerrari PCs are eligible for importation into the United States. The vehicles which J.K. Technologies believes are substantially similar are MY 2014 Ferrari LaFerrari PCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2014 Ferrari LaFerrari PCs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

J.K. Technologies submitted information with its petition intended to demonstrate that non-U.S. certified MY 2014 Ferrari LaFerrari PCs, as originally manufactured, conform to many

applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2014 Ferrari LaFerrari PCs, as originally manufactured, conform to: FMVSS Nos. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect,* 103, *Windshield Defrosting and Defogging Systems,* 104, *Windshield Wiping and Washing Systems,* 105, *Hydraulic and Electric Brake Systems,* 106, *Brake Hoses,* 113, *Hood Latch System,* 114, *Theft Protection and Rollaway Prevention,* 116, *Motor Vehicle Brake Fluids,* 118, *Power-Operated Window, Partition, and Roof Panel System,* 124, *Accelerator Control Systems,* 126, *Electronic Stability Control Systems,* 135, *Light Vehicle Brake Systems,* 138, *Tire Pressure Monitoring Systems,* 139, *New Pneumatic Radial Tires for Light Vehicles,* 201, *Occupant Protection in Interior Impact,* 202, *Head Restraints; Applicable at the Manufacturers Option until September 1, 2009,* 203, *Impact Protection for the Driver from the Steering Control System,* 204, *Steering Control Rearward Displacement,* 205, *Glazing Materials,* 206, *Door Locks and Door Retention Components,* 207, *Seating Systems,* 209, *Seat Belt Assemblies,* 210, *Seat Belt Assembly Anchorages,* 212, *Windshield Mounting,* 213, *Child Restraint Systems,* 214, *Side Impact Protection,* 216, *Roof Crush Resistance; Applicable unless a Vehicle is Certified to § 571.216a,* 219, *Windshield Zone Intrusion,* 225, *Child Restraint Anchorage Systems,* and 302, *Flammability of Interior Materials.*

The petitioner also contends that the subject non-U.S certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101, *Controls and Displays:* Programming of the body electronic control unit, instrument cluster, and front gateway. FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment:* Installation of the wiring harness for the U.S. side marker lights which are standard but not working in the Ferrari La Ferrari, programming to activate the U.S. lighting programs systems, replacement of front and rear side markers, replacement of headlamps, and replacement of the taillamps. FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* installation of the required tire information placard. FMVSS No. 111, *Rear Mirrors:* Inscription of the required warning statement on the face of the passenger mirror. FMVSS No. 201, *Occupant Protection in Interior Impact:* Replacement of sun visors, windscreen pillar trim, ''A'' pillar trim, and rear bulkhead trim. FMVSS No. 208, *Occupant Crash Protection:* Replacement of passenger air bag warning light, air bag control unit, passenger seat, body harness, child seat restraint latch, knee guard, passenger footrest, under-seat mat, underbody water return pipes, and programming to activate safety restraint system airbag control module. FMVSS No. 301, *Fuel System Integrity:* Replacement of cap, air filter boxes, and air filter.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle, near the left windshield pillar, to meet the requirements of 49 CFR part 565, as well as, a reference and certification label added to the left front door post area to meet the requirements of 49 CFR part 567. An owner's manual and all other information manuals must be replaced with the United States original equipment manufacturer manuals to meet the requirements of 49 CFR part 575. The front and rear bumpers must be modified or changed to meet the requirements of 49 CFR part 581.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–22164 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0083]

Public Meeting Regarding NHTSA's Research Portfolio

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: NHTSA is announcing a public meeting where the Agency's Vehicle Safety Research and Behavioral Safety Research offices will present information on activities related to the Agency's research programs. Representatives from across the two research offices will present the information and accept questions from the audience after presentations.

DATES: NHTSA will hold the public meeting on November 20–21, 2019, from 8:30 a.m. to 4:00 p.m., Eastern Standard Time on November 20, and 8:30 a.m. to 12 p.m., Eastern Standard Time on November 21. Check-in (through security) will begin at 7:30 a.m. both days. Attendees should arrive early enough to enable them to go through security by 8:20 a.m. The public docket will remain open for 90 days following the conclusion of the public meeting.

ADDRESSES: The public meeting will be held at the DOT headquarters building located at 1200 New Jersey Avenue SE, Washington, DC 20590 (Green Line Navy Yard/Ballbark Metro station) in the West Building Atrium. This facility is accessible to individuals with disabilities. The meeting will also be recorded and made available after the event for offline viewing (no planned live broadcast) at *https://www.nhtsa.gov/events-and-public-meetings.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the public meeting, please contact Lisa Floyd at 202–366–4697, by email at *Lisa.Floyd@dot.gov,* or by US Mail at NHTSA's Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: *Registration is recommended for all attendees.* Attendees should register at *https://www.surveymonkey.com/r/NHTSAResearchPortfolio2019* by November 13, 2019. Please provide name, affiliation, email, and indicate whether you need special accommodations. Space is limited, so advance registration is highly encouraged.

NHTSA DOT is committed to providing equal access to this meeting for all participants. If you need accommodation because of a disability, please contact Lisa Floyd at 202–366–4697, or via email at *Lisa.Floyd@dot.gov,* with your request by close of business November 13, 2019. Should it be necessary to cancel or reschedule the meeting due to inclement weather or emergency, NHTSA will take all available measures to notify registered participants as soon as possible.

NHTSA will conduct the public meeting informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the meeting and keep the official record open for 90 days after the meeting to allow submission of public comments and supplemental information. You may make arrangements for copies of the transcripts directly with the court reporter, and the transcript will also be

posted in the docket when it becomes available.

Written Comments: Written comments can be submitted during the 90-day comment period. Please submit all written comments no later than February 20, 2019, following the close of the public meeting by any of the following methods:

- *Federal Rulemaking Portal*: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail: Docket Management Facility:* US Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* 202–366–1767.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information to the Chief Counsel, NHTSA, at 1200 New Jersey Avenue SE, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Background: Each year, NHTSA executes a broad array of research programs in support of agency priorities. The Agency's research portfolio covers program areas pertaining to vehicle safety, including safety countermeasures implemented through the vehicle, components, operation and use, among others, and behavioral safety, which includes safety countermeasures that pertain to the behavior and actions of the driver, occupant, and other road users.

The public meeting is intended to provide public outreach regarding research activities at NHTSA for both vehicle and behavioral safety, including expected near term deliverables. NHTSA technical research staff will discuss projects underway and allow time for meeting attendees to ask questions. There will be display information available and posters illustrating select research activities and staff available for discussion.

The Agency invites comments on the information presented regarding research priorities, research goals, and additional research gaps/needs the public may believe NHTSA should be addressing. Select project work may be posted to the docket for which comments are also welcome. Slides presented at the public meeting will be posted to the docket subsequently for public viewing and a recording of the meeting will be made available after the event for offline viewing (no planned live broadcast).

Issued in Washington, DC under authority delegated by 49 CFR 1.95.

Cem Hatipoglu,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2019–22130 Filed 10–9–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: CMIA Annual Report and Direct Cost Claims

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the CMIA Annual Report and Direct Cost Claims.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: CMIA Annual Report and Direct Cost Claims.

OMB Number: 1530–0066.

Form Number: None.

Abstract: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims, to assess State and Federal cash management practices and to exchange amounts of interest owed.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Estimated Time per Respondent: Average 393.5 hours per state.

Estimated Total Annual Burden Hours: 22,036.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 7, 2019.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2019–22191 Filed 10–9–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: FS Form 2001—Release

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Release.

OMB Number: 1530–0053.

Form Number: FS Form 2001.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 25.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 2.5.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 16, 2019.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2019–22190 Filed 10–9–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: September 27, 2019.

Douglas Poms,

International Tax Counsel, (Tax Policy).

[FR Doc. 2019–22136 Filed 10–9–19; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Agency: United States Institute of Peace.

Date/Time: Friday, October 18, 2019 (10:00 a.m.–12:30 p.m.).

Location: 2301 Constitution Avenue NW, Washington, DC 20037.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: October 19, 2019 Board Meeting: Chairman's Report; Vice Chairman's Report; President's Report; Approval of Minutes of the April 12, 2019 Board of Directors Meeting; Reports from USIP Building, Program, Audit & Finance and Security Committees; and Reports/Updates from the Front Lines: Afghanistan, Colombia/Venezuela, Ethiopia/Red Sea, and Nonviolent Action.

Contact: Nancy Lindborg, President: *nlindborg@usip.org.*

Dated: October 4, 2019.

Nancy Lindborg,

President.

[FR Doc. 2019–22196 Filed 10–9–19; 8:45 am]

BILLING CODE 6820–AR–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 197 October 10, 2019

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Domestic and Foreign Species That Are Candidates for Listing as Endangered or Threatened; Annual Notification of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2019–0009; FF09E21000 FXES11190900000 167]

Endangered and Threatened Wildlife and Plants; Review of Domestic and Foreign Species That Are Candidates for Listing as Endangered or Threatened; Annual Notification of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this candidate notice of review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, and by allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting earlier candidate conservation measures to alleviate threats to the species. This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period October 1, 2016, through September 30, 2018. Moreover, we request any additional status information that may be available for the candidate species identified in this CNOR.

DATES: We will accept information on any of the species in this notice at any time.

ADDRESSES: This notice is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/endangered/what-we-do/cnor.html.*

For domestic species: Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Branch of Domestic Listing, Falls Church, VA (see address under **FOR FURTHER INFORMATION CONTACT**), or on our website (*http://ecos.fws.gov/tess_public/reports/candidate-species-report*). Please submit any new information, materials, comments, or questions of a general nature on this notice to the appropriate address listed under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions pertaining to a particular species to the address of the Endangered Species Coordinator in the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION**. Species-specific information and materials we receive will be available for public inspection by appointment, during normal business hours, at the appropriate Regional Office listed below under Request for Information in **SUPPLEMENTARY INFORMATION**. General information we receive will be available at the Branch of Domestic Listing, Falls Church, VA (see address under **FOR FURTHER INFORMATION CONTACT**).

For species foreign to the United States: Please submit any new information, materials, comments, or questions of a general nature on this notice or pertaining to a specific species to the appropriate address listed under **FOR FURTHER INFORMATION CONTACT**. Species-specific information and materials we receive will be available for public inspection by appointment, during normal business hours, at the appropriate address listed under **FOR FURTHER INFORMATION CONTACT**. General information we receive will be available at the Branch of Delisting and Foreign Species, Falls Church, VA (see address under **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

For domestic species: Chief, Branch of Domestic Listing, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–1796).

For species foreign to the United States: Chief, Branch of Delisting and Foreign Species, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–1735).

Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We request additional status information that may be available for any of the candidate species identified in this CNOR (see Request for Information, below). We will consider this information to monitor changes in the status or LPN of candidate species and to manage candidates as we prepare listing documents and future revisions to the notice of review. We also request information on additional species to consider including as candidates as we prepare future updates of this notice.

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), requires that we identify species of wildlife and plants that are endangered or threatened based solely on the best scientific and commercial data available. As defined in section 3 of the ESA, an endangered species is any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal for listing as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. We may identify a species as a candidate for listing after we have conducted an evaluation of its status—either on our own initiative, or in response to a petition we have received. If we have made a finding on a petition to list a species, and have found that listing is warranted, but precluded by other higher priority listing actions, we will add the species to our list of candidates.

We maintain this list of candidates for a variety of reasons: (1) To notify the public that these species are facing threats to their survival; (2) to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; (3) to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; (4) to request input from interested parties to help us identify those candidate species that may not require protection under the ESA, as well as additional species that may

require the ESA's protections; and (5) to request necessary information for setting priorities for preparing listing proposals. We encourage collaborative conservation efforts for candidate species and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Office listed under Request for Information, below, or visit our website, *http://www.fws.gov/endangered/what-we-do/cca.html.*

Publication of this notice has been delayed due to efforts to resolve outstanding issues. As a result, many of the candidate forms reflect that our formal analysis was conducted in fall of 2017, as shown by the date as of which the information is current on each form. However, we were able to update a small subset of the candidate forms recently to reflect additional information we have obtained on those species. We intend to publish an updated combined CNOR for animals and plants that will update all of the candidate forms, including our findings on resubmitted petitions and a description of our progress on listing actions, in the near future in the **Federal Register.**

Previous Notices of Review

We have been publishing CNORs since 1975. The most recent was published on December 2, 2016 (81 FR 87246). CNORs published since 1994 are available on our website, *http://www.fws.gov/endangered/what-we-do/cnor.html.* For copies of CNORs published prior to 1994, please contact the Branch of Domestic Listing (see **FOR FURTHER INFORMATION CONTACT**, above).

On September 21, 1983, we published guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Section 4(h)(3) of the ESA (16 U.S.C. 1533(h)(3)) requires the Secretary to establish guidelines for such a priority-ranking system. As explained below, in using this system, we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. All candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. For all candidate species, the threats are of sufficiently high magnitude to put them in danger of extinction or make them likely to become in danger of extinction in the foreseeable future. However, for species with higher-magnitude threats, the threats have a greater likelihood of bringing about extinction or are expected to bring about extinction on a shorter timescale (once the threats are imminent) than for species with lower-magnitude threats. Because we do not routinely quantify how likely or how soon extinction would be expected to occur absent listing, we must evaluate factors that contribute to the likelihood and time scale for extinction. We therefore consider information such as: (1) The number of populations or extent of range of the species affected by the threat(s), or both; (2) the biological significance of the affected population(s), taking into consideration the life-history characteristics of the species and its current abundance and distribution; (3) whether the threats affect the species in only a portion of its range, and, if so, the likelihood of persistence of the species in the unaffected portions; (4) the severity of the effects and the rapidity with which they have caused or are likely to cause mortality to individuals and accompanying declines in population levels; (5) whether the effects are likely to be permanent; and (6) the extent to which any ongoing conservation efforts reduce the severity of the threat(s).

As used in our priority-ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent,'' and is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over species for which threats are only potential or species that are intrinsically vulnerable to certain types of threats but are not known to be presently facing such threats.

Our priority-ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPS).

The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threats are of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (*i.e.,* a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies or DPS would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this notice as a candidate is one for which we have concluded that we have sufficient information to prepare a proposed rule for listing because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the 1983 guidance is available on our website at: *http://www.fws.gov/endangered/esa-library/pdf/1983_LPN_Policy_FR_pub.pdf.* Information on the LPN assigned to a particular species is summarized in this CNOR, and the species assessment for each candidate contains the LPN chart and a more-detailed explanation—including citations to, and more-detailed analyses of, the best scientific and commercial data available—for our determination of the magnitude and immediacy of threat(s) and assignment of the LPN.

To the extent this revised notice differs from any previous animal, plant, and combined CNORs or previous 12-month warranted-but-precluded petition findings for those candidate species that were petitioned for listing, this notice supersedes them.

Summary of This CNOR

Since publication of the previous CNORs for species foreign to the United States on October 17, 2016 (81 FR 71457) and for domestic species on December 2, 2016 (81 FR 87246), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency list any of these species, particularly species with higher priorities (*i.e.,* species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk.

In addition to reviewing candidate species since publication of the last CNORs, we have worked on findings in response to petitions to list species, on proposed rules to list species under the ESA, and on final listing determinations. Some of these findings

and determinations have been completed and published in the **Federal Register.** while work on others is still under way (see Preclusion and Expeditious Progress, below, for details).

Combined with other findings and determinations published separately from this CNOR, 41 species are now candidates awaiting preparation of rules proposing their listing. Table 1 identifies these 41 species, along with the 17 species currently proposed for listing (including 1 species proposed for listing due to similarity in appearance).

Table 2 lists the changes for species identified in the previous CNORs, and includes 29 species identified in the previous CNORs as either proposed for listing or classified as candidates that are no longer in those categories. This includes 17 species for which we published a final listing rule, 8 candidate species for which we published separate not-warranted findings and removed them from candidate status, and 4 species for which we published a withdrawal of a proposed rule.

New Candidates

We are not identifying any new candidate species through this notice.

Listing Priority Changes in Candidates

We reviewed the LPNs for all candidate species and are changing the LPN for the Colorado delta clam (*Mulinia modesta*) and longfin smelt (*Spirinchus thaleichthys*) for the reasons discussed below.

Colorado delta clam—The Colorado delta clam is a relatively large, estuarine bivalve that was once very abundant at the head of the Gulf of California in the Colorado River estuary in Mexico prior to the construction of dams on the Colorado River. In our previous CNOR (81 FR 71457; October 17, 2016), we reported that the Colorado delta clam was endemic to the upper Gulf of California within the Colorado River estuary. However, experts have recently confirmed that *Mulinia coloradoensis* is actually a junior synonym (part of the broader taxon) of *M. modesta.* Recognizing that the clam is *M. modesta,* we now also recognize that the clam has a broader distribution into the northern and central portions of the Gulf of California. Therefore, the species is more widespread than we previously believed, and it is capable of living in salinities ranging from brackish (mixture of salt and fresh water) to full seawater. Because this species is not restricted to the Colorado delta, it is likely that there are subpopulations of the species in other areas in the Gulf of California.

Information on the population numbers and trends for the species is limited. The subpopulation in the Colorado River delta and upper Gulf of California has experienced at least a 90 percent decline, and one post-dam study indicated that the species comprised 0.77 percent of the overall living intertidal shelly macrofauna (including mollusk, echinoderm, and brachiopod) in this area. We could not find information regarding numbers of the Colorado delta clam in subpopulations elsewhere in the Gulf of California because benthic surveys of the near-coastal invertebrate macrofauna in this area appear to be lacking. However, the area of potentially suitable habitat available to the clam is greater than we previously believed. The species has not been assessed for the International Union for the Conservation of Nature's (IUCN) Red List. It is not commercially harvested or threatened by international trade, and it is not listed in any appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Although the specific causes for the dramatic decline of the clam in the Colorado delta and upper Gulf of California region have not definitively been identified, several researchers have indicated that it was a consequence of decrease in the Colorado River's inflow to the estuary since completion of the dams, and there is strong circumstantial evidence for this assertion. Environmental changes to the estuary associated with the decrease in river inflow include increased salinity, decreased sediment load, decreased input of naturally derived nutrients, and elimination of the spring/summer flood. Dams and diversions along the Colorado River have greatly affected the estuarine environment of the Colorado delta and have likely caused the localized decline in abundance of the clam in this region. However, we have no reason to believe that dams and diversions are a stressor for the Colorado delta clam elsewhere within its range in the northern and central portions of the Gulf of California.

Stressors for the clam throughout its range may arise from other natural or manmade factors affecting the clam's continued existence, such as pollution-related problems and effects from climate change. One example of a pollution-related problem is a 2003 harmful algal bloom that caused fish and bivalve mortalities along 94 square kilometers (km^2) (36 square miles (mi^2)) of the coastline. Potential stressors to the clam associated with the effects of climate change include marine transgression, increased intensity and frequency of storms, and further invasion by nonnative species. However, studies of climate change and its effects to species in the Gulf of California are limited.

In the previous CNOR (81 FR 71457; October 17, 2016), the Colorado delta clam was assigned an LPN of 2. After reevaluating the status of and threats to the Colorado delta clam, we have determined that a change in the LPN for the species is warranted. With the recent confirmation that the clam is *Mulinia modesta,* we now recognize that it has a broader distribution into the northern and central portions of the Gulf of California and is capable of living in full seawater. Therefore, our review of the best information available indicates that the Colorado delta clam exists across a greater range in the Gulf of California than we previously believed. However, we lack information about the distribution and viability of populations of the clam outside of the Colorado delta region. Despite the conservation measures in place (primarily two large protected areas), the species continues to face habitat loss and degradation in the Colorado delta region due to dams and diversions on the Colorado River. Because this threat appears to be affecting the clam in upper Gulf of California, and not in the remainder of its range, it is moderate in magnitude. The threat of habitat loss and degradation in the Colorado delta region is ongoing and, therefore, imminent. Thus, we have changed the LPN from a 2 to an 8 to reflect imminent threats of moderate magnitude.

Longfin smelt, Bay-Delta DPS—The following summary is based on information contained in our files and the 12-month finding published in the **Federal Register** on April 2, 2012 (77 FR 19756). In our 12-month finding, we determined that the longfin smelt San Francisco Bay-Delta distinct vertebrate population segment (Bay-Delta DPS) warranted listing as an endangered or threatened species under the Act, but that listing was precluded by higher priority listing actions. In our previous CNOR (81 FR 87246; December 2, 2016), the longfin smelt was assigned an LPN of 3. Longfin smelt measure 9–11 centimeters (cm) (3.5–4.3 inches (in)) in length. Longfin smelt are considered pelagic and anadromous, although anadromy in longfin smelt is poorly understood and certain populations in other parts of the species' range are not anadromous and complete their entire life cycle in freshwater lakes and streams. Longfin smelt usually live for

2 years, spawn, and then die, although some individuals may spawn as 1- or 3-year-old fish before dying. In the San Francisco Bay-Delta, longfin smelt are believed to spawn primarily in freshwater in the lower reaches of the Sacramento River and San Joaquin River.

Longfin smelt numbers in the San Francisco Bay-Delta have declined significantly since the 1980s. Abundance indices derived from the Fall Midwater Trawl, Bay Study Midwater Trawl, and Bay Study Otter Trawl all show marked declines in Bay-Delta longfin smelt populations from 2002 to 2016. Longfin smelt abundance over the last decade is the lowest recorded in the 40-year history of the Fall Midwater Trawl monitoring surveys of the California Department of Fish and Wildlife (formerly the California Department of Fish and Game).

The primary threats to the Bay-Delta DPS of longfin smelt are reduced freshwater flows, competition from introduced species, and potential contaminants. Freshwater flows, especially winter-spring flows, are significantly correlated with longfin smelt abundance (*i.e.,* longfin smelt abundance is lower when winter-spring flows are lower). Reductions in food availability and disruptions of the Bay-Delta food web caused by establishment of the nonnative overbite clam (*Corbula amurensis*) and ammonium concentrations have also likely attributed to declines in the species' abundance within the San Francisco Bay-Delta. The threats remain high in magnitude, as they pose a significant risk to the DPS throughout its range.

While Delta outflow is the predominant driver of the DPS's abundance, the best available information indicates that high winter-spring flows have occurred in recent and the current water years. Additionally, the State of California has listed the longfin smelt under the California Endangered Species Act, and is preparing a new permit for operation of the State Water Project that will be issued by the end of the year. The California State Water Resources Control Board just adopted new flow objectives for the Lower San Joaquin River and will be addressing Delta flow objectives this year. Through these processes, we anticipate the State will take action to reduce the threats particularly around outflow, and is poised to do so in the near term. Therefore, the threat is not operative in the immediate future, and thus is nonimminent. As such, we are identifying an LPN of 6 for this population.

Candidate Removals

Uvea parakeet (*Eunymphicus uvaeensis*)—We have evaluated the threats to the Uvea parakeet and have considered factors that, individually and in combination, currently or potentially could pose a risk to the species and its habitat. After a review of the best scientific and commercial data available, we conclude that listing this species is not warranted because it is not in danger of extinction throughout all or a significant portion of its range, or likely to become so within the foreseeable future. Therefore, we no longer consider the Uvea parakeet to be a candidate species for listing. We will continue to monitor the status of this species and to accept additional information and comments concerning this finding. We will reconsider our determination in the event that we gather new information that indicates that the threats are of a considerably greater magnitude or imminence than identified through assessments of information contained in our files, as summarized below.

The Uvea parakeet is a relatively large, green parakeet found on the small atoll of Uvea, located approximately 1,500 kilometers (km) (932 miles (mi)) east of Australia in the Loyalty Archipelago, New Caledonia (a territory of France). The entire island of Uvea is considered an ''Important Bird Area'' by BirdLife International, which works with communities to combine conservation with sustainable livelihoods. Additionally, in 2008, Uvea Island became part of the ''Lagoons of New Caledonia'' a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site.

Uvea parakeets were introduced to the adjacent island of Lifou (to establish a second population) in 1925 and 1963, but these introductions failed. The species occupies both the north and south ends of Uvea Island. The species primarily uses older (old-growth) forest habitats and nests in the cavities of living *Syzygium* and *Mimusops* trees. Their exclusive use of tree cavities for nesting may be a limiting factor. In 1977, the Uvea parakeet population was estimated to be between 500 to 800 individuals. The most recent estimate of the Uvea parakeet population is 1,730 birds with a 95-percent confidence interval of 963 to 3,203 individuals.

The Uvea parakeet is listed as ''Endangered'' on the IUCN Red List. More recently, IUCN downlisted the Uvea parakeet to vulnerable, noting that decline in forest quality may not be affecting the species, and because the population trend is increasing. This species was listed on Appendix I of CITES in July 2000. An Appendix I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

Historically, the primary stressor to the Uvea parakeet was the capture of juveniles for the pet trade. Although New Caledonian law has protected the Uvea parakeet from trade since 1935, harvest and export were common until recent decades. Capture and trade likely increased in the second half of the 20th century. Between September 1992 and February 1993, it appears that more than 50 young parakeets were illegally captured and most were then illegally exported. Additionally, capture of young parakeets involves cutting nest cavities open to extract nestlings, which destroys the cavities and makes them unsuitable for future nesting.

In 1993, a nongovernmental organization, the Association for the Protection of the Uvea Parakeet (Association), was formed to help recover the species. The Association was established with mostly local members to increase the chances that Uvea parakeet conservation would be accepted by the Island community. The Association initiated long-term monitoring and ecological studies and prepared two recovery plans (1997–2002 and 2003–2008). Capture of Uvea parakeets is now restricted, and the species is monitored using local guides as part of its recovery plan. As part of this effort, these local guides are paid to spread conservation messages and protect parakeet nests; since 2006, the number of guides increased to 10. With the establishment of a community-based effort to protect the parakeet, it appears that nest poaching is no longer occurring such that it significantly affects the species.

Other potential threats to the parakeet include: (1) Habitat loss and degradation, particularly as it negatively affects nesting sites and may impede species dispersal; (2) competition and predation from nonnative species such as the honey bee (*Apis mellifera ligustica*), which competes with the Uvea parakeet for tree cavities, and the potential introduction of the nonnative ship rat (*Rattus rattus*), which preys on forest birds (although we are not aware of any indication at this time that such an invasion has already occurred, if an invasion were to occur in the future, it could very quickly affect the parakeet); (3) the potential for Psittacine beak and feather disease; and (4) effects from climate change, which may negatively alter the Uvea parakeet's habitat in the

future if they lead to loss of forest habitat or important food sources, and the parakeet is unable to adapt.

Overall, the increase in the population is attributed to the reduction in nest poaching, and it appears that the community-based efforts to protect the parakeet have been successful. The population has increased significantly from 1998 to 2008 despite the threats noted above.

In our previous CNOR (81 FR 71457; October 17, 2016), we assigned the Uvea parakeet an LPN of 8. After reevaluating the available information, including new information that has become available since our previous CNOR, we find that this species no longer warrants listing. Although it is an island endemic that is restricted in range, the primary threat to the species—poaching and trade—has been removed, and the population has responded and expanded. Although we identified a number of other potential threats to the species (*e.g.,* habitat loss and degradation, competition and predation from nonnative species, disease, future effects from climate change), the population has rebounded despite these stressors and is increasing. Recent population trend data support these findings and have lead to the Interantional Union for Conservation of Nature's decision to downlist the species on its Red List from ''endangered'' to ''vulnerable'' in 2017. Additionally, New Caledonia and its conservation partners remain active in conservation efforts, and the designation of Uvea Island as both an ''Important Bird Area'' and a UNESCO World Heritage Site bode well for future conservation of the species and its habitat. Therefore, we have determined that this species no longer warrants listing, and we are removing it from the candidate list.

Petition Findings

The ESA provides two mechanisms for considering species for listing. One method allows the Secretary, on the Secretary's own initiative, to identify species for listing under the standards of section 4(a)(1). The second method provides a mechanism for the public to petition us to add a species to the Lists. As described further in the paragraphs that follow, the CNOR serves several purposes as part of the petition process: (1) In some instances (in particular, for petitions to list species that the Service has already identified as candidates on its own initiative), it serves as the initial petition finding; (2) for candidate species for which the Service has made a warranted-but-precluded petition finding, it serves as a ''resubmitted'' petition finding that the ESA requires the Service to make each year; and (3) it documents the Service's compliance with the statutory requirement to monitor the status of species for which listing is warranted but precluded, and to ascertain if they need emergency listing.

First, the CNOR serves as an initial petition finding in some instances. Under section 4(b)(3)(A) of the ESA, when we receive a petition to list a species, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information indicating that listing may be warranted (a ''90-day finding''). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make, within 12 months of the receipt of the petition, one of the following three possible findings (a ''12-month finding''):

(1) The petitioned action is not warranted, and promptly publish the finding in the **Federal Register**;

(2) The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) of the ESA govern further procedures, regardless of whether or not we issued the proposal in response to a petition); or

(3) The petitioned action is warranted, but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals to determine whether any species is endangered or threatened, and (b) expeditious progress is being made to add qualified species to the Lists. We refer to this third option as a ''warranted-but-precluded finding,'' and after making such a finding, we must promptly publish it in the **Federal Register**.

We define ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 5, 1996). The standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

Therefore, all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings. Nevertheless, if we receive a petition to list a species that we have already identified as a candidate, we review the status of the newly petitioned candidate species and through this CNOR publish specific section 4(b)(3) findings (*i.e.,* substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition. We have identified the candidate species for which we received petitions and made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column on the left side of Table 1, below.

Second, the CNOR serves as a ''resubmitted'' petition finding. Section 4(b)(3)(C)(i) of the ESA requires that when we make a warranted-but-precluded finding on a petition, we treat the petition as one that is resubmitted on the date of the finding. Thus, we must make a 12-month petition finding for each such species at least once a year in compliance with section 4(b)(3)(B) of the ESA, until we publish a proposal to list the species or make a final not-warranted finding. We make these annual resubmitted petition findings through the CNOR. To the extent these annual findings differ from the initial 12-month warranted-but-precluded finding or any of the resubmitted petition findings in previous CNORs, they supersede the earlier findings, although all previous findings are part of the administrative record for the new finding, and in the new finding, we may rely upon them or incorporate them by reference as appropriate, in addition to explaining why the finding has changed.

Third, through undertaking the analysis required to complete the CNOR, the Service determines if any candidate species needs emergency listing. Section 4(b)(3)(C)(iii) of the ESA requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12-month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.'' The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new

information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, we will make prompt use of the emergency listing authority under section 4(b)(7) of the ESA. For example, on August 10, 2011, we emergency listed the Miami blue butterfly (76 FR 49542). We have been reviewing and will continue to review, at least annually, the status of every candidate, whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms constitute the Service's system for monitoring and making annual findings on the status of petitioned species under sections 4(b)(3)(C)(i) and 4(b)(3)(C)(iii) of the ESA.

A number of court decisions have elaborated on the nature and specificity of information that we must consider in making and describing the petition findings in the CNOR. The CNOR that published on November 9, 2009 (74 FR 57804), describes these court decisions in further detail. As with previous CNORs, we continue to incorporate information of the nature and specificity required by the courts. For example, we include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, below, which includes the lead region and the LPN for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species only, and we explain the priority system and why the work we have accomplished has precluded action on listing candidate species.

In preparing this CNOR, we reviewed the current status of, and threats to, the 41 candidates for which we have received a petition to list and the 4 listed species for which we have received a petition to reclassify from threatened to endangered, where we found the petitioned action to be warranted but precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher-priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

Our review included updating the status of, and threats to, petitioned candidate or listed species for which we published findings, under section 4(b)(3)(B) of the ESA, in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species. However, for some of these species, we are currently engaged in a thorough review of all available data to determine whether to proceed with a proposed listing rule; as a result of this review we may conclude that listing is no longer warranted.

The immediate publication of proposed rules to list these species was precluded by our work on higher-priority listing actions, listed below, during the period from October 1, 2016, through September 30, 2017. Below we describe the actions that continue to preclude the immediate proposal and final promulgation of a regulation implementing each of the petitioned actions for which we have made a warranted-but-precluded finding, and we describe the expeditious progress we are making to add qualified species to, and remove species from, the Lists. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available to determine if a change in status is warranted, including the need to emergency list a species under section 4(b)(7) of the ESA.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why each of these candidates warrants listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the domestic species, from the appropriate office listed under **FOR FURTHER INFORMATION CONTACT** for species foreign to the United States, or from the Fish and Wildlife Service's internet website: *http://ecos.fws.gov/tess_public/reports/candidate-species-report.* As described above, under section 4 of the ESA, we identify and propose species for listing based on the factors identified in section 4(a)(1)—either on our own initiative or through the mechanism that section 4 provides for the public to petition us to add species to the Lists of Endangered or Threatened Wildlife and Plants.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending proposals to determine whether any species is threatened or endangered; and (2) that expeditious progress is being made to add qualified species to either of the lists and to remove species from the lists (16 U.S.C. 1533(b)(3)(B)(iii)).

Preclusion

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions—(1) The amount of resources available for completing the listing function, (2) the estimated cost of completing the proposed listing regulation, and (3) the Service's workload, along with the Service's prioritization of the proposed listing regulation in relation to other actions in its workload.

Available Resources

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program (spending cap). This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the ESA (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final rules to add species to the Lists or to change the status of species from threatened to endangered; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the ESA; critical habitat petition findings; proposed rules

designating critical habitat or final critical habitat determinations; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

We cannot spend more for the Listing Program than the amount of funds within the spending cap without violating the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)). In addition, from FY 2002 through FY 2017, the Service's listing budget included a subcap for critical habitat designations for already-listed species to ensure that some funds within the listing cap are available for completing Listing Program actions other than critical habitat designations for already-listed species. (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities.'' House Report No. 107–103, 107th Congress, 1st Session (June 19, 2001)). In FY 2002 and each year until FY 2006, the Service had to use virtually all of the funds within the critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the funds within the critical habitat subcap were available for other listing activities. In some FYs between 2006 and 2017, we have not needed to use all of the funds within the critical habitat subcap to comply with court orders, and we therefore could use the remaining funds within the subcap towards additional proposed listing determinations for high-priority candidate species. In other FYs, while we did not need to use all of the funds within the critical habitat subcap to comply with court orders requiring critical habitat actions, we did not apply any of the remaining funds towards additional proposed listing determinations, and instead applied the remaining funds towards completing critical habitat determinations concurrently with proposed listing determinations. This allowed us to combine the proposed listing determination and proposed critical habitat designation into one rule, thereby being more efficient in our work.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first, and because we allocate our listing budget on a nationwide basis. Through the listing cap and the amount of funds needed to complete court-mandated actions within the cap, Congress and the courts have in effect determined the amount of money remaining (after completing court-mandated actions) for listing activities nationwide. Therefore, the funds that remain within the listing cap—after paying for work needed to comply with court orders or court-approved settlement agreements requiring critical habitat actions for already-listed species, listing actions for foreign species, and petition findings, respectively—set the framework within which we make our determinations of preclusion and expeditious progress.

From FY 2012 through FY 2017, Congress had put in place two additional subcaps within the listing cap: One for listing actions for foreign species and one for petition findings. As with the critical habitat subcap, if the Service did not need to use all of the funds within either subcap, we were able to use the remaining funds for completing proposed or final listing determinations.

For FY 2017, Congress passed a Consolidated Appropriations Act of 2017 (Pub. L. 115–31), included an overall listing spending cap of $20,515,000, and the subcaps of no more than $4,569,000 to be used for critical habitat determinations; no more than $1,501,000 to be used for listing actions for foreign species; and no more than $1,498,000 to be used to make 90-day or 12-month findings on petitions.

In FY 2018, through the Consolidated Appropriations Act of 2018 (Pub. L. 115–141), the use of subcaps was discontinued, and Congress appropriated the Service $18,818,000 under a consolidated cap for all domestic and foreign listing work, including status assessments, listings, domestic critical habitat determinations, and related activities.

Costs of Listing Actions

The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer-review comments on proposed rules and incorporating relevant information from those comments into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. Our practice of proposing to designate critical habitat concurrent with listing species requires additional coordination and an analysis of the economic impacts of the designation, and thus adds to the complexity and cost of our work. In the past, we estimated that the median cost for preparing and publishing a 90-day finding was $4,500 and for a 12-month finding, $68,875. We estimated that the median costs for preparing and publishing a proposed listing rule with proposed critical habitat is $240,000; and for a final listing determination with a final critical habitat determination, $205,000.

Prioritizing Listing Actions

The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) essential litigation-related, administrative, and listing program-management functions; (3) section 4 (of the ESA) listing and critical habitat actions with absolute statutory deadlines; and (4) section 4 listing actions that do not have absolute statutory deadlines.

In previous years, the Service received many new petitions and a single petition to list 404 domestic species, significantly increasing the number of actions within the third category of our workload—actions that have absolute statutory deadlines. As a result of the outstanding petitions to list hundreds of species, and our efforts to make initial petition findings within 90 days of receiving the petition to the maximum extent practicable, at the end of FY 2018, we had more than 446 12-month petition findings for domestic species yet to be initiated and completed. Because we are not able to work on all of these at once, we prioritized status reviews and accompanying 12-month findings (81 FR 49248; July 27, 2016) and developed a multi-year workplan for completing them. For foreign species, we currently have 17 pending 12-month petition findings yet to be initiated and completed.

An additional way in which we prioritize work in the section 4 program is application of the listing priority guidelines (48 FR 43098; September 21, 1983). Under those guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus), a species, or a part of a species (subspecies or distinct population

segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species.

Finally, proposed rules for reclassification of threatened species to endangered species are generally lower in priority, because as listed species, they are already afforded the protections of the ESA and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court order or court-approved deadline.

Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. Therefore, it is important that we be as efficient as possible in our listing process.

On September 1, 2016, the Service released its National Listing Workplan for addressing ESA domestic listing and critical habitat decisions over the subsequent 7 years. At the close of FY 2018, the workplan identified the Service's schedule for addressing all domestic species on the candidate list and conducting 251 status reviews (also referred to as 12-month findings) by FY 2023 for domestic species that have been petitioned for Federal protections under the ESA. The petitioned species are prioritized using our final prioritization methodology (81 FR 49248; July 27, 2016). As we implement our listing work plan and work on proposed rules for the highest-priority species, we increase efficiency by preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest-priority species. The National Listing Workplan is available online at: *https://www.fws.gov/endangered/what-we-do/listing-workplan.html.*

For foreign species, the Service has 17 pending 12-month petition findings that are subject to statutory deadlines. Because these actions are subject to statutory deadlines, and, thus, are higher priority than work on proposed listing determinations for the 19 foreign candidate species, publication of proposed rules for these 19 species is precluded. In addition, available staff resources are also a factor in determining which high-priority foreign species are provided with funding. The Branch of Delisting and Foreign Species may, depending on available staff resources, work on foreign candidate species with an LPN of 2 or 3 and, when appropriate, species with a lower priority if they overlap geographically or have the same threats as the species with higher priority.

Listing Program Workload

The National Listing Workplan that the Service released in 2016 outlined work for domestic species over the period from 2017 to 2023. Through FY 2017, commitments set forth as part of a settlement agreement in a case before the U.S. District Court for the District of Columbia (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (''MDL Litigation''), Document 31–1 (D.D.C. May 10, 2011) (''MDL Settlement Agreement'')) greatly affected our preclusion analysis. First, the Service was limited in the extent to which it could undertake additional actions within the Listing Program through FY 2017 because complying with the requirements of the MDL Settlement Agreement exhausted a large portion of the funds within the spending cap for the listing program. Second, because the settlement was court-approved, it was the Service's highest priority (compliance with a court order) for FY 2016 to fulfill the requirements of those settlement agreements. Included within the settlement agreements was a requirement to complete—by the end of FY 2016—proposed listings or not-warranted findings for the remaining candidate species that were included in the 2010 CNOR, as well as to make final determinations on any of the proposed listings within the statutory timeframe. Therefore, one of the Service's highest priorities was to make steady progress towards completing the remaining final listing determinations for the 2010 candidate species by the end of 2017, taking into consideration the availability of staff resources. In FY 2018, the Service fulfilled the commitments set forth as part of the MDL Settlement Agreement.

Based on these prioritization factors, we continue to find that proposals to list the petitioned candidate species included in Table 1 are all precluded by higher-priority listing actions. We provide tables under *Expeditious Progress,* below, identifying the higher-priority listing actions that we completed in FYs 2017 and 2018, as well as those we worked on but did not complete in FY 2017 or 2018.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our ''precluded'' finding, the evaluation of whether expeditious progress is being made is a function of the resources available and the competing demands for those funds. As discussed earlier, the FY 2017 appropriations law included a spending cap of $20,515,000 for listing activities; within that amount, Congress prohibited the Service from spending more than $1,501,000 on listing determinations for foreign species. The FY 2018 appropriations law included a spending cap of $18,818,000 for listing activities.

As discussed below, given the limited resources available for listing, we find that we are making expeditious progress in adding qualified species to the Lists. (Although we do not discuss it in detail here, we are also making expeditious progress in removing domestic species from the list under the Recovery program, as well as reclassifying endangered species as threatened, in light of the resources available for delisting domestic species, which is funded through the recovery line item in the budget of the Endangered Species Program. During FYs 2017 and 2018, we finalized delisting rules for 8 species and downlisting rules for 5 species (in addition to completing numerous recovery planning activities).)

Below, we provide tables cataloguing the work of the Service's domestic and foreign species listing programs in FYs 2017 and 2018. This work includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that may warrant listing; (2) undertaking the evaluation of the best available scientific data about those species and the threats they face in preparation for a proposed or final determination; and (3) adding species to the Lists by publishing proposed and final listing rules that include a summary of the data on which the rule is based and show the relationship of that data to the rule. As the tables below demonstrate, during FYs 2017 and 2018, the Service completed the following number of actions within category 1: 90-day findings for 13 species; within category 2: 12-month findings for 42 species; and within category 3: Proposed listing rules for 21 species (including concurrent proposed critical habitat designations for 3 species), and final listing rules for 28 species

(including concurrent final critical habitat determinations for 3 species).

After taking into consideration the limited resources available for these accounts, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress in all three of the steps necessary for adding qualified species to the Lists (identifying, evaluating, and adding/removing species).

First, we are making expeditious progress in identifying species that may qualify for listing. In FYs 2017 and 2018, we completed 90-day findings on petitions to list 13 species and 12-month findings for petitions to list 42 species.

Second, we are making expeditious progress in working towards adding candidate species to the Lists. In FYs 2017 and 2018, we funded and worked on the development of 12-month findings for 29 species and proposed listing determinations for 11 candidates. Although we did not complete those actions during FY 2017 or FY 2018, we made expeditious progress towards doing so.

Third, we are making expeditious progress in listing qualified species. In FYs 2017 and 2018, we resolved the status of 28 species that we determined, or had previously determined, qualified for listing, delisting, or downlisting. Moreover, for 24 of those species, the resolution was to finalize the listing proposal (22 species), some with concurrent designations of critical habitat for domestic species, or the delisting proposal. For four species, we published withdrawals of the proposed rules. We also proposed to list an additional 21 qualified species and to downlist an additional 2 species.

Our accomplishments in FYs 2017 and 2018 should also be considered in the broader context of our commitment to reduce the number of candidate species for which we have not made final determinations whether to list. On May 10, 2011, the Service filed in the MDL Litigation a settlement agreement that put in place an ambitious schedule for completing proposed and final listing determinations at least through FY 2016; the court approved that settlement agreement on September 9, 2011. That agreement required, among other things, that for all 251 domestic species that were included as candidates in the 2010 CNOR, the Service submit to the **Federal Register** proposed listing rules or not-warranted findings by the end of FY 2016, and for any proposed listing rules, the Service complete final listing determinations within the statutory time frame. By the end of FY 2018, the Service had completed proposed listing rules or not-warranted findings for all 251 of the domestic candidate species in the 2010 CNOR, as well as final listing determinations for all of the proposed listings rules among them—thus completing all requirements specified under the MDL Settlement Agreement. By completing both the requirements under the MDL Settlement Agreement and numerous other listing actions included in the Service's current workplan, the Service is making expeditious progress to add qualified species to the Lists.

The Service's progress in FYs 2017 and 2018 included completing and publishing the following actions:

FY 2017–2018 COMPLETED DOMESTIC LISTING AND FOREIGN ACTIONS

Publication date	Title *	Actions	FR pages
10/4/2016	Proposed Threatened Species Status for Meltwater Lednian Stonefly and Western Glacier Stonefly.	Proposed Listing—Threatened	81 FR 68379–68397
10/5/2016	Threatened Species Status for Kentucky Arrow Darter with 4(d) Rule.	Final Listing—Threatened	81 FR 68963–68985
10/5/2016	Endangered Species Status for the Miami Tiger Beetle (*Cicindelidia floridana*).	Final Listing—Endangered	81 FR 68985–69007
10/6/2016	Threatened Species Status for Suwannee Moccasinshell.	Final Listing—Threatened	81 FR 69417–69425
10/6/2016	12-Month Findings on Petitions To List 10 Species as Endangered or Threatened Species.	12-Month Petition Findings (10 domestic species)	81 FR 69425–69442
10/6/2016	Proposed Threatened Species Status for Louisiana Pinesnake.	Proposed Listing—Threatened	81 FR 69454–69475
10/6/2016	Endangered Species Status for Black Warrior Waterdog.	Proposed Listing—Endangered	81 FR 69500–69508
10/11/2016	Proposed Threatened Species Status for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades Bully), *Digitaria pauciflora* (Florida Pineland Crabgrass), and *Chamaesyce deltoidea* ssp. *pinetorum* (Pineland Sandmat) and Endangered Species Status for *Dalea carthagenensis* var. *floridana* (Florida Prairie-Clover).	Proposed Listing—Threatened or Endangered	81 FR 70282–70308
11/28/2016	Threatened Species Status for Hyacinth Macaw	Proposed Listing—Threatened	81 FR 85488–85507
11/30/2016	90-Day Findings on Three Petitions	90-Day Petition Findings (2 domestic species for listing and 1 foreign species).	81 FR 86315–86318
12/14/2016	Endangered Species Status for Five Sri Lankan Tarantulas.	Proposed Listing—Endangered	81 FR 90297–90314
1/11/2017	Endangered Species Status for Rusty Patched Bumble Bee.	Final Listing—Endangered	82 FR 3186–3209
4/5/2017	Threatened Species Status for Yellow Lance	Proposed Listing—Threatened	82 FR 16559–16569
4/5/2017	Removal of the Scarlet-Chested Parrot and the Turquoise Parrot From the Federal List of Endangered and Threatened Wildlife.	Final Delisting	82 FR 16522–16540
4/7/2017	Threatened Species Status for the Headwater Chub and Roundtail Chub Distinct Population Segment.	Withdrawal of Proposed Listing	82 FR 16981–16988

FY 2017–2018 COMPLETED DOMESTIC LISTING AND FOREIGN ACTIONS—Continued

Publication date	Title *	Actions	FR pages
4/19/2017	90-Day Findings on Two Petitions	90-Day Petition Findings (2 domestic species for listing).	82 FR 18409–18411
9/7/2017	Endangered Species Status for Guadalupe Fescue; Designation of Critical Habitat for Guadalupe Fescue.	Final Listing—Endangered; Final Critical Habitat	82 FR 42245–42260
9/20/2017	Endangered Species Status for Sonoyta Mud Turtle.	Final Listing—Endangered	82 FR 43897–43907
9/20/2017	Threatened Species Status for Pearl Darter	Final Listing—Threatened	82 FR 43885–43896
9/20/2017	Threatened Species Status for the Iiwi	Final Listing—Threatened	82 FR 43873–43885
9/29/2017	Withdrawal of the Proposed Rule to List Kenk's Amphipod.	Withdrawal of Proposed Listing	82 FR 45551–45574
10/4/2017	Threatened Species Status for the Candy Darter	Proposed Listing—Threatened	82 FR 46197–46205
10/4/2017	12 Month Findings on Petitions To List the Holiday Darter, Trispot Darter, and Bridled Darter; Threatened Species Status for Trispot Darter.	12-Month Petition Findings; Proposed Listing—Threatened.	82 FR 46183–46197
10/5/2017	12-Month Findings on Petitions To List 25 Species as Endangered or Threatened Species.	12-Month Petition Findings (25 domestic species)	82 FR 46618–46645
10/6/2017	Endangered Species Status for *Dalea carthagenensis* var. *floridana* (Florida Prairie-clover), and Threatened Species Status for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades Bully), *Digitaria pauciflora* (Florida pineland crabgrass), and *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat).	Final Listing—Endangered and Threatened	82 FR 46691–46715
12/6/2017	12-Month Findings on Petitions To List Four Species as Endangered or Threatened Species.	12-Month Petition Findings (4 domestic species)	82 FR 57562–57565
12/20/2017	90-Day Findings for Five Species	90-Day Petition Findings (5 domestic species for listing).	82 FR 60362–60366
12/27/2017	Endangered Species Status of the Yangtze Sturgeon.	Proposed Listing—Endangered	83 FR 61230–61241
12/29/2017	12-Month Findings on Petitions To List a Species (Beaverpond Marstonia) and Remove a Species (Southwestern Willow Flycatcher) From the Federal Lists of Endangered and Threatened Wildlife and Plants.	12-Month Petition Findings Finding (1 domestic species for listing and 1 domestic species for delisting).	80 FR 61725–61727
1/3/2018	Threatened Species Status for the Panama City Crayfish.	Proposed Listing—Threatened	83 FR 330–341
1/3/2018	Endangered Species Status for Black Warrior Waterdog and Designation of Critical Habitat.	Final Listing—Endangered; Final Critical Habitat	83 FR 257–284
1/4/2018	Endangered Species Status for Barrens Topminnow.	Proposed Listing—Endangered	83 FR 490–498
1/16/2018	Taxonomical Update for Orangutan	Direct Final Rule	83 FR 2085–2087
2/9/2018	Endangered Species Status for Texas Hornshell	Final Listing—Endangered	83 FR 5720–5735
3/15/2018	Withdrawal of the Proposed Rule To List *Chorizanthe parryi* var. *fernandina* (San Fernando Valley Spineflower).	Withdrawal of Proposed Listing	83 FR 11453–11474
4/3/2018	Threatened Species Status for Yellow Lance	Final Listing—Threatened	83 FR 14189–14198
4/6/2018	Threatened Species Status for Louisiana Pinesnake.	Final Listing—Threatened	83 FR 14958–14982
4/6/2018	Section 4(d) Rule for Louisiana Pinesnake	Proposed Section 4(d) Rule	83 FR 14836–14841
4/12/2018	Endangered Status for the Island Marble Butterfly and Designation of Critical Habitat.	Proposed Listing—Endangered; Proposed Critical Habitat.	83 FR 15900–15936
4/17/2018	90-Day Findings for Two Species	90-Day Petition Findings (1 foreign species for listing and 1 domestic species for delisting).	83 FR 16819–16822
6/27/2018	90-day Findings for Three Species	90-Day Petition Findings (2 domestic species for listing and 1 domestic species for delisting).	83 FR 30091–30094
7/31/2018	Endangered Species Status for Five Sri Lankan Tarantulas.	Final Listing—Endangered	83 FR 36755–36773
8/13/2018	Threatened Species Status for the Hyacinth Macaw.	Final Listing—Threatened	83 FR 39894–39916
9/5/2018	Reclassifying the Golden Conure From Endangered to Threatened With a Section 4(d) Rule.	Proposed Reclassification—Threatened	80 FR 45073–45087

* 90-day and 12-month finding batches include findings regarding delisting or downlisting of domestic species, which are funded through the Recovery account, as well as findings regarding foreign species, which are funded through the account for foreign species. To make the sources of funding more clear, and ensure that the number of species reported in the titles of batched findings matches the numbers we report in this CNOR for domestic listing and foreign species, we identify the number of foreign and domestic species and the requested action (listing or delisting) in each batch.

Our expeditious progress also included work on listing actions that we funded in previous fiscal years and in FYs 2017 and 2018, but did not complete in FY 2017 or 2018. For these species, we completed the first step, and

worked on the second step necessary for adding species to the Lists. These actions are listed below.

ACTIONS FUNDED IN PREVIOUS FYS AND IN FYS 2017 AND 2018 BUT NOT COMPLETED DURING THAT TIME

Species	Action
Chapin Mesa milkvetch	Proposed listing determination
Cirsium wrightii (Wright's marsh thistle)	Proposed listing determination.
Hermes copper butterfly	Proposed listing determination.
Marron bacora	Proposed listing determination.
Rattlesnake-master borer moth	Proposed listing determination.
Red-crowned parrot	Proposed listing determination.
Sierra Nevada red fox	Proposed listing determination.
Texas fatmucket	Proposed listing determination.
Texas fawnsfoot	Proposed listing determination.
Texas pimpleback	Proposed listing determination.
Whitebark pine	Proposed listing determination.
Northern spotted owl	12-month finding.
Lesser prairie chicken	12-month finding.
Carolina madtom	12-month finding.
Neuse River waterdog	12-month finding.
Franklin's bumblebee	12-month finding.
False spike	12-month finding.
Bartram stonecrop	12-month finding.
Beardless chinch weed	12-month finding.
Chihuahua scurfpea	12-month finding.
Donrichardsonia macroneuron (unnamed moss)	12-month finding.
Peppered chub	12-month finding.
Eastern hellbender	12-month finding.
Big Cypress epidendrum	12-month finding.
Cape Sable orchid	12-month finding.
Clam-shell orchid	12-month finding.
Longsolid	12-month finding.
Purple lilliput	12-month finding.
Round hickorynut	12-month finding.
Ashy darter	12-month finding.
Barrens darter	12-month finding.
Redlips darter	12-month finding.
Arkansas mudalia	12-month finding.
Brook floater	12-month finding.
Elk River crayfish	12-month finding.
Seaside alder	12-month finding.
Yellow banded bumble bee	12-month finding.
Joshua tree	12-month finding.
Panamint alligator lizard	12-month finding.
Tricolored blackbird	12-month finding.

We also funded work on resubmitted petition findings for 20 candidate species (species petitioned prior to the last CNOR). We did not include an updated assessment form as part of our resubmitted petition findings for the 16 candidate species for which we are preparing either proposed listing determinations or not-warranted 12-month findings. However, in the course of preparing the proposed listing determinations or 12-month not-warranted findings for those species, we have continued to monitor new information about their status so that we can make prompt use of our authority under section 4(b)(7) of the ESA in the case of an emergency posing a significant risk to the well-being of any of these candidate species; see summaries below regarding publication of these findings (these species will remain on the candidate list until a proposed listing rule is published). Because the majority of these petitioned species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program, so we continue to monitor the status of these species through our Candidate Conservation Program.

During FYs 2017 and 2018, we also funded work on resubmitted petition findings for petitions to uplist four listed species (two grizzly bear populations, Delta smelt, and *Sclerocactus brevispinus* (Pariette cactus)), for which we had previously received a petition and made a warranted-but-precluded finding.

Another way that we have been expeditious in making progress to add qualified species to the Lists is that we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale and have been batching related actions together. Given our limited budget for implementing section 4 of the ESA, these efforts also contribute towards finding that we are making expeditious progress to add qualified species to the Lists.

Findings for Petitioned Candidate Species

Below are updated summaries for petitioned candidates for which we published findings under section 4(b)(3)(B) of the ESA. In accordance with section 4(b)(3)(C)(i), we treat any petitions for which we made warranted-

but-precluded 12-month findings within the past year as having been resubmitted on the date of the warranted-but-precluded finding. We are making continued warranted-but-precluded 12-month findings on the petitions for these species.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. Because we have determined that each candidate species is in danger of extinction throughout all of its range or likely to become an endangered species within the foreseeable future throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Therefore, on the basis of the best available scientific and commercial information, we find that each candidate species below, for which we are making a resubmitted 12-month finding, warrants listing throughout all of its range in accordance with sections 3(6), 3(20), and 4(a)(1) of the Act.

Birds

Southern helmeted curassow (*Pauxi unicornis*)—The southern helmeted curassow is a game bird with a distinctive pale-blue horn-like appendage, or casque, above its bill. The southern helmeted curassow is known only from central Bolivia on the eastern slope of the Andes, where large portions of its habitat are in National Parks. The species inhabits dense, humid, foothill and lower montane forest and adjacent evergreen forest at altitudes between 450 and 1,500 meters (m) (1,476 to 4,921 feet (ft)).

The total population of southern helmeted curassow is estimated to be between 1,500 and 7,500 individuals and is declining. Hunting is believed to be the primary threat to the species, followed by habitat loss and degradation. Although the National Parks have been important for the preservation of the species, financial and human resources needed to protect park resources are limited. Within the Parks, there are human settlements and ongoing encroachment, including illegal logging operations and forest clearing for farming. Rural development and road building limit the species' ability to disperse. Range reductions due to effects from climate change are also predicted for the southern helmeted curassow, when warming temperatures may cause the species to shift its distribution upslope and outside of protected National Parks.

The southern helmeted curassow is classified as critically endangered on the IUCN Red List. Trade has not been noted internationally, and the species is not listed in any appendices of CITES. The species was listed in Annex B of the European Union (EU) Wildlife Trade Regulations that are directly applicable in all EU Member States. In 1997, the southern helmeted curassow was listed with all species in the genus *Pauxi.* In 2008, it was moved from Annex B to Annex D (*i.e.,* a lower level of protection) because it was one of the species that ''are not subject to levels of international trade that might be incompatible with their survival, but warrant monitoring of trade levels.'' The species continues to be listed on Annex D.

In the October 17, 2016, CNOR, the southern helmeted curassow was assigned an LPN of 2. After reevaluating the threats to the species, we have determined that no change in the LPN is warranted. The southern helmeted curassow does not represent a monotypic genus. It faces threats that are high in magnitude based on its small, limited range. The few locations where it is believed to exist continue to face pressure from hunting and habitat loss and destruction, and the population will likely continue to decline. Because the species is experiencing ongoing significant population declines and habitat loss, we have made no change to the LPN of 2, which reflects imminent threats of high magnitude.

Sira curassow (*Pauxi koepckeae)*—The Sira curassow is a game bird that is known only from the Cerros del Sira region of Peru. Size and coloration are similar to the southern helmeted curassow, but the Sira curassow has a shorter and rounder pale-blue casque (a horn-like bony appendage above the bill) that is flattened against the head. The Sira curassow inhabits cloud-forest habitat (a type of rainforest that occurs on high mountains in the tropics) at elevations from 1,100 to 1,450 m (3,609 to 4,757 ft) and above.

Although historical population data are lacking, the population is currently estimated at fewer than 250 mature individuals and is declining. The primary cause of the decline is ongoing hunting by local indigenous communities. Additionally, the Sira curassow's range within the Cerros del Sira region is limited (550 square kilometers (km^2) (212 square miles (mi^2)) and declining. Its habitat is being degraded by subsistence agriculture, forest clearing, road building, and associated rural development. Although the Sira curassow is legally protected in a large portion of its range in El Sira Communal Reserve, illegal hunting still occurs there. The species is classified as critically endangered on the IUCN Red List. It is not threatened by international trade, and it is not listed in any appendices of CITES or the EU Wildlife Trade Regulations.

In the October 17, 2016, CNOR, the sira curassow was assigned an LPN of 2. After reevaluating the threats to the species, we have determined that no change in the LPN is warranted. The Sira curassow does not represent a monotypic genus. It faces threats that are high in magnitude based on its small estimated population and limited range. The few locations where it is believed to exist continue to face pressure from hunting and habitat loss. The best scientific and commercial data available indicate that the population decline will continue in the future. Because the species is experiencing significant population declines due to both hunting and habitat loss and degradation, we have made no change to the LPN of 2, which reflects imminent threats of high magnitude.

Bogotá rail (*Rallus semiplumbeus*)—The Bogotá rail is found in the East Andes of Colombia, South America. It is a medium-sized nonmigratory rail largely restricted to areas at elevations from 2,500–4,000 m (8,202–13,123 ft) in and surrounding Bogotá, Columbia, on the Ubaté–Bogotá Plateau. This region formerly supported vast marshes and swamps, but few lakes with suitable habitat for the rail remain. The species is secretive, and wetland habitats most frequently used by rail are fringed by dense vegetation-rich shallows. The current population size of the Bogotá rail is estimated between 1,000 and 2,499 mature individuals and is thought to be declining. The primary threat to

the rail is habitat loss and degradation. Approximately 8 million people live in the City of Bogotá, and 11 million in the larger metro area. The wetlands have experienced a 97 percent loss in historical extent with few suitably vegetated marshes remaining. Additionally, road building may result in further colonization and human interference, including introduction of nonnative species in previously stable wetland environments. The Bogotá rail is listed as endangered at the global and national level by IUCN. Trade does not appear to be of concern at the international level, and the species is not listed in any appendices of CITES.

In the October 17, 2016, CNOR, the Bogotá rail was assigned an LPN of 2. After reevaluating the threats to this species, we have determined that no change in the LPN for the species is needed. The Bogotá rail does not represent a monotypic genus. It faces threats that are high in magnitude due to the pressures on the species' habitat. Its range is very small and is rapidly contracting because of widespread habitat loss and degradation. Although portions of the Bogotá rail's range occur in protected areas, most of the savanna wetlands are unprotected. The population is small and is believed to be declining. The factors affecting the species are ongoing, and are, therefore, imminent. Thus, the LPN remains at 2 to reflect imminent threats of high magnitude.

Takahe (*Porphyrio hochstetteri*)—The takahe is a large flightless bird in the rail family. The takahe was once widespread in the forest and grassland ecosystems on the South Island of New Zealand. It was thought to be extinct until it was rediscovered in the Murchison Mountains on the South Island in 1948. In addition to its native range on the mainland, the takahe has been introduced to offshore islands and mainland sanctuaries.

When rediscovered in 1948, it was estimated that the takahe population consisted of 100 to 300 birds, and the minimum total population now rests at 306 individuals. Several factors have historically led to the species' decline, including hunting, competition from introduced herbivores (animals that feed on plants), and predators such as weasels and the weka, a flightless woodhen that is endemic to New Zealand. Currently, weasel predation appears to be the most significant of these threats. Weasel trapping is an effective tool at slowly increasing survival and reproductive output of takahe; however, control efforts do not completely eliminate the threat.

Takahe is a long-lived bird, potentially living between 14 and 20 years, and has a low reproductive rate, with clutches consisting of one to three eggs. Severe weather in the Murchison Mountains (cold winters and high snowfall) may also be a limiting factor to the takahe. The population of takahe remains very small and has low genetic diversity relative to other species. The New Zealand Department of Conservation (NZDOC) is currently attempting to manage further loss of genetic diversity through translocations. Additionally, NZDOC has implemented a captive-breeding and release program to supplement the mainland population and has established several reserve populations on islands and fenced mainland sites; these actions are having a positive effect on population growth. The takahe is listed as endangered on the IUCN Red List, and New Zealand considers it a nationally critical species. It is not listed in any appendices of CITES as international trade is not a concern.

In the October 17, 2016, CNOR, the takahe was assigned an LPN of 8. After reevaluating the threats to the takahe, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The takahe does not represent a monotypic genus. The species is subject to predation by nonnative animals, particularly the introduced weasel. Although it has a small population, has limited suitable habitat, and may experience inbreeding depression, because the NZDOC is actively involved in measures to aid the recovery of the species, we find the threats are moderate in magnitude. Despite conservation efforts, the threats are ongoing and, therefore, imminent. Lack of suitable habitat and predation, combined with the takahe's small population size and naturally low reproductive rate, are threats to this species that are moderate in magnitude. Thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

Chatham oystercatcher (*Haematopus chathamensis*)—The Chatham oystercatcher is native to the Chatham Island group located 860 km (534 mi) east of mainland New Zealand. The species breeds along the coastline of four islands in the chain: Chatham, Pitt, South East, and Mangere. The Chatham oystercatcher is found mainly along rocky shores, including wide volcanic rock platforms and occasionally on sandy or gravelly beaches.

The Chatham oystercatcher is the rarest oystercatcher in the world, with a recent population estimate of 300 to 320 individuals. The species has experienced a three-fold increase in its population since the first reliable census was conducted in 1987. Most of this increase occurred during a period of intensive management, especially predator control, from 1998 through 2004. The Chatham oystercatcher is listed as nationally critical by the NZDOC. It is classified as endangered on the IUCN Red List and is not listed in any appendices of CITES.

Predation of eggs and chicks, and to a lesser extent of adults, is thought to be the main impediment to the Chatham oystercatcher population. Although the Mangere and South East nature reserves are free of all mammalian predators, nonnative mammalian predators inhabit Chatham and Pitt Islands. Feral cats are the most common predator on eggs. Other documented predators include gulls (*Larus* spp.), the native brown skua (*Catharacta antarctica*), weka, and domestic dogs. Nest destruction and disturbance by humans and livestock are also noted threats. Habitat loss and degradation has occurred from introductions of nonnative Marram grass (*Ammophila arenaria*) in the early 1900s to revegetate destabilized dunes. The dense marram grass is unsuitable for Chatham oystercatcher nesting. Consequently, the Chatham oystercatcher is forced to nest closer to shore, where nests are vulnerable to tides and storm surges; up to 50 percent of eggs are lost in some years. Rising sea levels associated with climate change will likely affect future nesting success. Additionally, the Chatham oystercatcher may be at risk from loss of genetic diversity given its small population size.

In the October 17, 2016, CNOR, the Chatham oystercatcher was assigned an LPN of 8. After reevaluating the threats to this species, we have determined no change in the LPN for the species is warranted. The Chatham oystercatcher does not represent a monotypic genus. The current population estimate is very small, and the species has a limited range, but NZDOC has taken measures to recover and maintain the species, and the population appears to have stabilized. However, the species continues to face moderate threats, from predation, trampling, nest disturbance, storm surges, and habitat loss due to nonnative Marram grass, that are affecting nesting success and survival of the Chatham oystercatcher. These threats are ongoing and, thus, are imminent. The LPN remains an 8 to reflect imminent threats of moderate magnitude.

Orange-fronted parakeet (*Cyanoramphus malherbi*)—The orange-fronted parakeet was once well

distributed on the South Island of mainland New Zealand and a few offshore islands. It is now considered the rarest parakeet in New Zealand. The three remaining naturally occurring populations are all within a 30-km (18.6-mi) radius of one another in fragmented beech tree forests (*Nothofagus* spp.) of the upland valleys. Orange-fronted parakeets have also been captive-bred and released onto four predator-free islands where breeding has been confirmed.

The species' range contracted when its population was severely reduced in the late 1800s and early 1900s for unknown reasons. From 1999 to 2000, the mainland population crashed from perhaps 500 to 700 birds to a rough estimate of 100 to 200 birds as a result of ship rat (*Rattus rattus*) eruptions. Information on current population status is mixed. In 2013, the total population was estimated between 290 and 690 individuals (130 to 270 on the mainland, and 160 to 420 on the islands). More recently, there are indications that both the offshore and mainland populations have declined to around 100 and 250 birds, respectively, but these are rough estimates.

The most prominent factors affecting the species on the mainland are predation by nonnative mammals such as weasels and rats (*Rattus* spp.), as well as habitat destruction. Habitat loss and degradation has affected large areas of native forest on the mainland. In addition, silviculture (care and cultivation) of beech forests in the past had removed mature trees with nest cavities needed by the parakeet. The species' habitat is also degraded by introduced herbivores that alter forest structure in a way that reduces the available feeding habitat for the parakeet. Additionally, the parakeet competes with two other native parakeets for nest sites and food and with nonnative wasps and finches for food. Lastly, Psittacine beak and feather disease virus is a potential threat to this species. The disease was discovered in wild native birds in New Zealand in 2008 (*e.g.,* the red-fronted parakeet, *Cyanoramphus novaezelandiae*), although it has not been documented in the orange-fronted parakeet. Infected birds generally follow one of three paths: They develop immunity, die within a couple of weeks, or become chronically infected. Chronic infections result in feather loss and deformities of beak and feathers.

In the October 17, 2016, CNOR, the orange-fronted parakeet was assigned an LPN of 8. After reevaluating the factors affecting the species, we have determined that no change in the LPN is warranted because NZDOC is actively managing for the species. The orange-fronted parakeet does not represent a monotypic genus. Although the species' available suitable nesting habitat in beech forests is limited, there appears to have been some success with translocations to offshore islands, and translocations are continuing. The species faces threats (*e.g.,* predation, habitat degradation, and competition for food and suitable nesting habitat) that are moderate in magnitude because the NZDOC continues to take measures to aid the recovery of the species. We find that the threats to this species are ongoing and imminent; thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

Helmeted woodpecker (*Dryocopus galeatus*)—The helmeted woodpecker is a fairly small woodpecker native to regions of southern Brazil, eastern Paraguay, and northeastern Argentina. The helmeted woodpecker is non-migratory, occurring in subpopulations in suitable habitat within its range. Characteristic habitat is large tracts of well-preserved southern Atlantic Forest in both lowland and montane areas from sea level up to elevations of 1,000 m (3,280 ft). The species is believed to prefer mature (old-growth) trees in tropical and subtropical semi-deciduous forests as well as in mixed deciduous-coniferous forests.

The helmeted woodpecker is one of the rarest woodpeckers in the Americas. Its population is believed to have declined sharply between 1945 and 2000, in conjunction with the clearing of mature forest habitat, and is currently estimated at 400–8,900 individuals. Although forest clearing has recently slowed, and the species occurs in at least 17 protected areas throughout its range, habitat degradation continues and the population is still believed to be declining. The principal threat to the helmeted woodpecker is loss, degradation, and fragmentation of its Atlantic Forest habitat. Competition for nest cavities is also likely a limiting factor. The helmeted woodpecker is listed as endangered in Brazil and as vulnerable by the IUCN. It is not listed in any appendices of CITES.

In the October 17, 2016, CNOR, the helmeted woodpecker was assigned an LPN of 8. After reevaluating the available information, we find that no change in the LPN for the helmeted woodpecker is warranted. The helmeted woodpecker does not represent a monotypic genus. The magnitude of threats to the species is moderate because the species' range is fairly large. The threats are imminent because the forest habitat upon which the species depends is still being altered and degraded. An LPN of 8 continues to be accurate for this species.

Okinawa woodpecker (*Dendrocopos noguchii,* syn. *Sapheopipo noguchii*)—The Okinawa woodpecker is a relatively large woodpecker found on Okinawa Island, Japan. The species prefers subtropical evergreen broadleaf forests that are undisturbed and mature. It currently occurs within the forested areas in the northern part of the island, generally in the Yambaru forest, and in some undisturbed forest in coastal areas. Most of the older forests that support the species are within the Jungle Warfare Training Center (formerly known as the Northern Training Area or Camp Gonsalves), part of the U.S. Marine Corps installation on Okinawa Island.

Deforestation in the Yambaru region has been cited as the main cause of the Okinawa woodpecker's reduced habitat and population. As of the mid 1990s, only 40 km^2 (15 mi^2) of suitable habitat was available for this species. While most of the activities associated with habitat loss appear to have ceased, the Okinawa woodpecker still suffers from limited suitable habitat and a small population size. This situation makes it vulnerable to extinction from disease and natural disasters such as typhoons. In addition, the species is vulnerable to introduced predators such as feral dogs and cats, Javan mongoose (*Herpestes javanicus*), and weasels (*Mustela itatsi*).

In 2016, the Japanese Government designated Yambaru National Park and nominated ''the northern part of Okinawa Island'' (including Yambaru National Park) as a United Nations Educational, Scientific and Cultural Organization World Heritage Centre. The species is listed as critically endangered on the IUCN Red List. It is legally protected in Japan. It is not listed in any appendices of CITES and is not known to be in trade.

In the October 17, 2016, CNOR, the Okinawa woodpecker was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN is warranted. The Okinawa woodpecker does not represent a monotypic genus. Threats to the species are high in magnitude due to the scarcity of its old-growth habitat. The population is very small and is believed to still be declining. Although new protected areas have been established that will likely benefit the Okinawa woodpecker, it is not yet clear that these areas will be fully protected from logging and other anthropogenic development, and from nonnative predators. Even though threats from logging have been reduced, it will take

many years for secondary and clear-cut forest habitat to mature such that it is suitable for the woodpecker. The threats to the species are ongoing, imminent, and high in magnitude due to its restricted range, small population size, past habitat loss, and endemism. The LPN for this species remains a 2 to reflect imminent threats of high magnitude.

Yellow-browed toucanet (*Aulacorhynchus huallagae*)—The yellow-browed toucanet has a small range on the eastern slope of the Andes of north-central Peru at elevations of 2,000–2,600 m (6,562–8,530 ft). The toucanet occurs in humid montane forests. The population status is not well known because of the inaccessibility of its habitat, but is estimated at 600–1,500 mature individuals. The species currently occupies three known locations within a small range. Habitat loss and destruction from deforestation for agriculture has been widespread in the region and is suspected to be the main threat, although deforestation appears to have occurred mainly below the altitudinal range of this toucanet. Gold mining and manufacturing also are common in the region. The yellow-browed toucanet is described as scarce wherever found, and ongoing population declines resulting from habitat loss are assumed. It is classified as endangered on the IUCN Red List and is not listed in any CITES appendices.

In the October 17, 2016, CNOR, the yellow-browed toucanet was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN is warranted at this time. The yellow-browed toucanet does not represent a monotypic genus. The estimated population is small with just three known locations within a restricted range. The magnitude of threats to the habitat remains high, and its population is likely declining. The LPN remains a 2 to reflect imminent threats of high magnitude.

Brasilia tapaculo (*Scytalopus novacapitalis*)—The Brasilia tapaculo is a small, secretive, ground-dwelling bird with limited flight ability. The tapaculo is found in gallery-forest habitat that is a smaller habitat component occurring within the wider tropical savanna or ''Cerrado'' of the Central Goiás Plateau of Brazil. Gallery forests are narrow fringes of thick streamside vegetation that occur on the edges of rivers and streams at elevations of approximately 800–1,000 m (2,625–3,281 ft). The Brasilia tapaculo is described as ''rare,'' but the population size is unknown. Despite a lack of data on population trends, declines are suspected to be occurring, due to the continued decline in area and quality of the tapaculo's gallery forest habitat. Effects from climate change may also be negatively altering the Cerrado and the tapaculo's specialized gallery forest habitat within the Cerrado by reducing the amount of available habitat for the species. Results from one climate change modeling study predicted that the Brasilia tapaculo could lose all its range and protected habitat by 2060. The species is currently known to occur in six protected areas and has been found on private land next to protected areas. These protected areas are limited in extent and size, with few larger than 25,000 hectares (ha) (61,776 acres (ac)). In the early 2000s, only 1.2 percent of the Cerrado was in protected areas; however, more recent estimates are 6.5 percent.

The primary threat to the species is ongoing loss, fragmentation, and degradation of its habitat, which is expected to limit the availability and extent of suitable habitat for the tapaculo. The Cerrado is the largest, most diverse, and possibly most threatened tropical savanna in the world. Land in the Cerrado is currently being converted for intensive grazing and mechanized agriculture, including soybean and rice plantations. The tapaculo's gallery-forest habitat has been less affected by clearing for agriculture than the surrounding Cerrado. However, effects to gallery forest arise from wetland drainage and the diversion of water for irrigation and from annual burning of adjacent grasslands.

The IUCN recently changed the status of the species from near threatened to endangered, identifying the species' small and fragmented range as justification for the change in status. The Brazilian Red List assessed the species as endangered, noting severe fragmentation and continuing decline in area and quality of habitat. It is not threatened by international trade and is not listed in any appendices of CITES.

In the October 17, 2016, CNOR, we assigned the Brasilia tapaculo an LPN of 8. After reevaluating the available information, we have determined that no change in the LPN is warranted at this time. The Brasilia tapaculo does not represent a monotypic genus. Threats to the species are moderate in magnitude and are imminent. The species has a fairly wide geographic range, but is endemic to the Cerrado and strongly associated with gallery forests, a very small component of the Cerrado. Conversion of the Cerrado is ongoing. The populations currently appear to be found only in or next to a handful of protected areas, and most of these areas are small. The species is reported as rare, even in protected areas. Therefore, an LPN of 8 remains valid for this species.

Ghizo white-eye (*Zosterops luteirostris*)—The Ghizo white-eye is a small passerine (perching) bird described as ''warbler-like.'' It is endemic to the small island of Ghizo in the Solomon Islands in the South Pacific Ocean, east of Papua New Guinea. The total range of the Ghizo white-eye is estimated to be less than 35 km^2 (13.5 mi^2), of which less than 1 km^2 (0.39 mi^2) is the old-growth forest that the species seems to prefer.

Little information is available about this species and its habitat. It is locally common in old-growth forest patches and less common elsewhere. The species has been observed in a variety of habitats on the island, but it is unknown whether sustainable populations can exist outside of forested habitats. The population is estimated to be between 250 and 1,000 mature individuals and is suspected to be declining due to habitat degradation, particularly since a tsunami hit the island in 2007. Habitat loss appears to be the main threat. As of 2012, the human population on the island was 7,177 and growing rapidly, and there has been prolific growth in informal human settlements and temporary housing on Ghizo, which may be adversely affecting the Ghizo white-eye and its habitat. Areas around Ghizo Town, which previously supported the species, have been further degraded since the town was devastated by the 2007 tsunami, and habitat was found less likely able to support the species in 2012. The species is also affected by conversion of forested areas to agricultural uses. The old-growth forest on Ghizo is still under pressure from clearance for local use as timber and firewood, and for clearing for gardens, as are the areas of secondary growth, which are already suspected to be suboptimal habitat for this species.

The population of this species is believed to be declining and, given its fragmented habitat in combination with small population sizes, may be at greater risk of extinction due to synergistic effects. The IUCN Red List classifies this species as endangered. It is not listed in any appendices of CITES, and this species is not in international trade.

In the October 17, 2016, CNOR, the Ghizo white-eye was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN is warranted. The Ghizo white-eye does not represent a monotypic genus. It faces threats that are high in magnitude due to declining suitable

habitat and its small, declining population size. The best information available indicates that forest clearing is occurring at a pace that is rapidly denuding its habitat; secondary-growth forest continues to be converted to agricultural purposes. Further, the human population on the small island is likely contributing to the reduction in old-growth forest for local uses such as timber and clearing for gardens. These threats to the species are ongoing, high in magnitude, and imminent. Thus, based on the best scientific and commercial data available, the LPN remains a 2 for this species.

Black-backed tanager (*Tangara peruviana*)—The black-backed tanager is endemic to the coastal Atlantic Forest region of southeastern Brazil. It is currently found in the coastal states of Espirito Santo, Rio de Janeiro, São Paulo, Paranà, Santa Catarina, and Rio Grande do Sul. The species is generally restricted to the sand-forest ''restinga'' habitat, which is a coastal component habitat of the greater Atlantic Forest complex. Restingas are herbaceous, shrubby, coastal sand-dune habitats. The black-backed tanager is primarily found in undisturbed vegetated habitat but has also been observed in secondary (or second-growth) forests. It has also been observed visiting gardens and orchards of houses close to forested areas. The black-backed tanager is one of just a few tanagers known to migrate seasonally. Within suitable habitat, the black-backed tanager is generally not considered rare. The population estimate is between 2,500 to 9,999 mature individuals. Populations currently appear to be small, fragmented, and declining.

The primary factor affecting this species is habitat loss and destruction due to urban expansion and beachfront development, and this type of development will continue in the future. Additional habitat loss from sea-level rise associated with global climate change may be compounded by an increased demand by humans to use remaining land for housing and infrastructure. In addition to the overall loss and degradation of its habitat, the remaining tracts of its habitat are severely fragmented. The black-backed tanager's remaining suitable habitat in the areas of Rio de Janeiro and Paraná have largely been destroyed, and habitat loss and degradation will likely increase in the future. Although small portions of this species' range occur in six protected areas, protections appear limited. The black-backed tanager is classified as vulnerable by the IUCN. The species is also listed as vulnerable in Brazil. It is not listed in any appendices of CITES although it has infrequently been illegally sold in the pet trade.

In the October 17, 2016, CNOR, the black-backed tanager was assigned an LPN of 8. After reevaluating the available information, we have determined that no change in the LPN for this species is warranted at this time. The black-backed tanager does not represent a monotypic genus. We find that the threat from habitat loss is moderate in magnitude due to the species' fairly large range, its existence in protected areas, and an indication of some flexibility in its diet and habitat suitability. Threats are imminent because the species is at risk due to ongoing and widespread loss of habitat due to beachfront and related development. Therefore, an LPN of 8 remains valid for this species.

Lord Howe Island pied currawong (*Strepera graculina crissalis*)—The Lord Howe Island pied currawong is a fairly large, crow-like bird, endemic to Lord Howe Island, New South Wales, Australia. Lord Howe Island is a small island northeast of Sydney, Australia, with 28 smaller islets and rocks. The Lord Howe Island pied currawong occurs throughout the island but is most numerous in the mountainous areas on the southern end. It has also been recorded to a limited extent on the Admiralty Islands, located 1 km (0.6 mi) north of Lord Howe Island. The Lord Howe Island pied currawong breeds in rainforests and palm forests, particularly along streams. Approximately 75 percent of Lord Howe Island, plus all outlying islets and rocks within the Lord Howe Island group, is protected under the Permanent Park Preserve, which has similar status to that of a national park.

The best current population estimate in 2005 and 2006 indicated that there were approximately 200 individuals. The Lord Howe Island pied currawong exists as a small, isolated population, which makes it vulnerable to stochastic events. The potential for the introduction of other nonnative predators to this island ecosystem has also been identified as an issue for this subspecies. In addition to its small population size, direct persecution (via shootings) by humans in retaliation for predation on domestic and endemic birds has been documented. The incidence of shootings has declined since the 1970s, when conservation efforts on Lord Howe Island began, but occasional shootings were still occurring as recently as 2006.

Because the Lord Howe pied currawong often preys on small rodents, it may be subject to nontarget poisoning during ongoing rat-baiting programs, and especially during an extensive rodent eradication effort planned for this year. Project impact evaluations for the eradication effort determined that the currawong was at significant risk from secondary poisoning, and this action is expected to result in the temporary disruption of one breeding cycle. To ensure the currawong's safety, project evaluators determined that approximately 50–60 percent of the wild population would need to be held in captive management during the eradication effort. A pilot study that housed wild currawongs in aviaries in anticipation of this eradication effort has shown promise for protecting the subspecies. Another potential threat to the currawong is rising global temperatures associated with climate change that may affect the cloud layer on the island's mountaintops—resulting in drying of the forest where the currawong gets about half of its food and possibly creating a food shortage for the subspecies.

The subspecies' status is not addressed by IUCN; however, based on IUCN criteria, it has been assessed as endangered nationally in Australia. In addition, the New South Wales Threatened Species Conservation Act of 1995 lists the Lord Howe Island pied currawong as vulnerable due to its extremely limited range and its small population size. It is not listed in any appendices of CITES, and trade is not an issue for this subspecies.

In the October 17, 2016, CNOR, the Lord Howe Island pied currawong was assigned an LPN of 6. After reevaluating the threats to the Lord Howe Island pied currawong, we have determined that no change in the LPN is warranted. The Lord Howe Island pied currawong does not represent a monotypic genus. It faces threats that are high in magnitude due to a combination of factors including its small population size and risks from nontarget poisoning from rodent control. Additionally, aspects of the rodent eradication project also carry some risk, including those associated with trapping, holding, and a missed breeding cycle. If the rodent eradication program is successful, effects from nontarget poisoning and any predation by rodents on currawong eggs will cease to be stressors for the currawong.

Despite conservation efforts, the population of the Lord Howe Island pied currawong has remained around 100 to 200 individuals, probably because of limited suitable nesting habitat. Species with small population sizes such as the Lord Howe pied currawong may be at greater risk of extinction due to synergistic effects of factors affecting this subspecies.

However, because significant conservation efforts for the currawong have been implemented, and the subspecies is being closely managed and monitored, we find that the threats are nonimminent. Thus, based on the best information available, the LPN remains at 6 to reflect nonimminent threats of high magnitude.

Reptiles

Gopher tortoise, eastern population (*Gopherus polyphemus*)—The following summary is based on information in our files. The gopher tortoise is a large, terrestrial, herbivorous turtle that reaches a total length up to 15 in (38 cm) and typically inhabits the sandhills, pine/scrub oak uplands, and pine flatwoods associated with the longleaf pine (*Pinus palustris*) ecosystem. A fossorial animal, the gopher tortoise is usually found in areas with well–drained, deep, sandy soils; an open tree canopy; and a diverse, abundant, herbaceous groundcover.

The gopher tortoise ranges from extreme southern South Carolina south through peninsular Florida, and west through southern Georgia, Florida, southern Alabama, and Mississippi, into extreme southeastern Louisiana. The eastern population of the gopher tortoise in South Carolina, Florida, Georgia, and Alabama (east of the Mobile and Tombigbee Rivers) is a candidate species; the gopher tortoise is federally listed as threatened in the western portion of its range, which includes Alabama (west of the Mobile and Tombigbee Rivers), Mississippi, and Louisiana.

The primary threat to the gopher tortoise is fragmentation, destruction, and modification of its habitat (either deliberately or from inattention), including conversion of longleaf pine forests to incompatible silvicultural or agricultural habitats, urbanization, shrub/hardwood encroachment (mainly from fire exclusion or insufficient fire management), and establishment and spread of invasive species. Other threats include disease, predation (mainly on nests and young tortoises), and inadequate regulatory mechanisms, specifically those needed to protect and enhance relocated tortoise populations in perpetuity. The magnitude of threats to the eastern range of the gopher tortoise is considered moderate to low, since populations extend over a broad geographic area and conservation measures are in place in some areas. However, since the species is currently being affected by a number of threats including destruction and modification of its habitat, disease, predation, exotics, and inadequate regulatory mechanisms, the threat is imminent. Thus, we have assigned an LPN of 8 for this species.

Snails

Magnificent ramshorn (*Planorbella magnifica*)—Magnificent ramshorn is the largest North American air-breathing freshwater snail in the family Planorbidae. It has a discoidal (*i.e.,* coiling in one plane), relatively thin shell that reaches a diameter commonly exceeding 35 millimeters (mm) and heights exceeding 20 mm. The great width of its shell, in relation to the diameter, makes it easily identifiable at all ages. The shell is brown colored (often with leopard-like spots) and fragile, thus indicating it is adapted to still or slow-flowing aquatic habitats. The magnificent ramshorn is believed to be a southeastern North Carolina endemic. The species is known from only four sites in the lower Cape Fear River Basin in North Carolina. Although the complete historical range of the species is unknown, the species and the fact that it was not reported until 1903 suggest that the species may have always been rare and localized.

Salinity and pH are major factors limiting the distribution of the magnificent ramshorn, as the snail prefers freshwater bodies with circumneutral pH (*i.e.,* pH within the range of 6.8–7.5). While members of the family Planorbidae are hermaphroditic, it is currently unknown whether magnificent ramshorns self-fertilize their eggs, mate with other individuals of the species, or both. Like other members of the Planorbidae family, the magnificent ramshorn is believed to be primarily a vegetarian, feeding on submerged aquatic plants, algae, and detritus. While several factors have likely contributed to the possible extirpation of the magnificent ramshorn in the wild, the primary factors include loss of habitat associated with the extirpation of beavers (and their impoundments) in the early 20th century, increased salinity and alteration of flow patterns, as well as increased input of nutrients and other pollutants. The magnificent ramshorn appears to be extirpated from the wild due to habitat loss and degradation resulting from a variety of human-induced and natural factors. The only known surviving individuals of the species are presently being held and propagated at a private residence and a lab at North Carolina State University's Veterinary School; the population at the North Carolina Wildlife Resources Commission's Watha State Fish Hatchery was recently lost.

While efforts have been made to restore habitat for the magnificent ramshorn at one of the sites known to have previously supported the species, all of the sites continue to be affected and/or threatened by the same factors (*i.e.,* salt water intrusion and other water quality degradation, nuisance aquatic plant control, storms, sea-level rise, etc.) believed to have resulted in extirpation of the species from the wild. Currently, only two captive populations exist: A captive population of the species comprised of approximately 1,000+ adults and one with approximately 300+ adults. Although captive populations of the species have been maintained since 1993, a single catastrophic event, such as a severe storm, disease, or predator infestation, affecting this captive population could result in the near extinction of the species. The threats are high in magnitude and ongoing; therefore, we assign this species an LPN of 2.

Insects (Butterflies)

Harris' mimic swallowtail (*Mimoides lysithous harrisianus*)—Harris' mimic swallowtail is a subspecies that inhabits the restinga (sand forest) habitats within the coastal Atlantic Forest of Brazil. It historically occurred in southern Espirito Santo State and along the coast of the State of Rio de Janeiro, Brazil. Recent records indicated that there were just three sites occupied by the butterfly in the State of Rio de Janeiro; however, preliminary results from an ongoing study indicate that there are two newly discovered colonies within the City of Rio de Janeiro. Two areas are within protected National Parks, and the other sites appear to be under municipal conservation with uncertain protected status. These two new colonies in the City of Rio de Janeiro are located in small patches of vegetation and are possibly at risk of extirpation (disappearing from a specific geographic area within its range). The best-studied colony at Barra de São João has maintained a stable and viable size for nearly two decades; however, there is limited information on its status since 2004. We could not find recent population numbers for the subspecies in any of the other colonies.

Habitat destruction has been the main threat and is ongoing. Based on a number of estimates, 88 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as the result of human activities. In addition to the overall loss and degradation of its habitat, the remaining tracts of its habitat are severely fragmented. Fire, either wildfire or human-caused, is a stressor for Harris' mimic swallowtail due to its potential to

destroy the few remaining, occupied habitats. Sea-level rise may also affect this coastal subspecies, and habitat loss from sea-level rise may be compounded by an increased demand by humans to use remaining land for housing and infrastructure.

Another factor affecting this butterfly is collection. Although Harris' mimic swallowtail is categorized as endangered on the list of Brazilian fauna threatened with extinction, and collection and trade of the subspecies is prohibited, it has been offered for sale on the internet. Specimens of Harris' mimic swallowtail are routinely advertised online ranging from $1,000 to $2,200 U.S. dollars (USD), indicating that illegal collection and trade may be occurring and demand for this butterfly is high. Harris' mimic swallowtail is not currently on the IUCN Red list, although it was identified as a ''threatened and extinct subspecies'' in the family Papilionidae in the 1994 IUCN Red List. The subspecies has not been formally considered for listing in the appendices to CITES. It is also not regulated on the annexes to EU Wildlife Trade Regulations.

In the October 17, 2016, CNOR, Harris' mimic swallowtail was assigned an LPN of 3. After reevaluating the threats to this subspecies, we have determined that no change in the LPN is warranted. Harris' mimic swallowtail is a subspecies that is not within a monotypic genus. Threats are high in magnitude due to the existence of only a few small, fragmented colonies, and the potential for catastrophic events such as fire. Additionally, although the subspecies is protected by Brazilian law and several of the colonies are located within protected areas, the high price advertised online for specimens indicates that there is demand for the subspecies, likely from illegal collection. Because the population is very small and limited to approximately five known colonies, we find the threats are of high magnitude. Based on the best information available, the LPN remains a 3 to reflect imminent threats of high magnitude.

Fluminense swallowtail (*Parides ascanius*)—Like Harris' mimic swallowtail (above), the fluminense swallowtail also inhabits the restinga (sand forest) habitats of the coastal Atlantic Forest of Brazil within the State of Rio de Janeiro. There are at least eight confirmed subpopulations of fluminense swallowtail, and several other small, likely ephemeral, subpopulations are currently being studied (*i.e.,* 8–12 estimated subpopulations). Thus, the overall number of subpopulations reported for the species has declined from ''fewer than 20 colonies'' in 1994, to 8 to 12 in 2017. The body of science on the species indicates a continual decline of subpopulations as well as a decrease in the numbers of individuals within each subpopulation. Genetic analysis of eight of the remaining subpopulations is consistent with metapopulation dynamics (a group of separate subpopulations that has some level of mixing) with low genetic diversity and trending towards increased isolation of these populations from urban development. The butterfly is described as seasonally common, with sightings of up to 50 individuals at one colony in a single morning. A study at Biological Reserve of Poço das Antas estimated that the subpopulation ranged from 10 to 50 individuals. We could not find estimates for butterfly numbers in the remaining subpopulations.

Habitat loss, degradation, and fragmentation are the principal threats to this species. The species occupies highly specialized habitat and requires large areas to maintain a viable colony. Based on a number of estimates, 88 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of human activities. Habitat loss and destruction is caused primarily by road and building construction, drainage of swamps, and vegetation suppression, and the remaining tracts are severely fragmented. Fire, either wildfire or human-caused, is a stressor for the fluminense swallowtail and has the potential to destroy the few remaining, occupied habitats. This coastal butterfly may also be affected by habitat loss from sea-level rise, which may be compounded by human use of the remaining land for infrastructure and housing.

Only one of the subpopulations is presently found within a large protected area (Poço das Antas Biological Reserve), and the majority of the remaining populations are on smaller, fragmented parcels with limited or no protections and are vulnerable to extirpation.

Illegal collection of the fluminense swallowtail is likely occurring and ongoing. The species is located near urban areas and is easy to capture. Recently, multiple specimens of fluminense swallowtail have been advertised online with costs ranging from $220 to $700 USD. The impact of illegal collection to the fluminense swallowtail is difficult to assess, but removal of individuals from the remaining small, fragmented populations could, in combination with other stressors, contribute to local extirpations.

The fluminense swallowtail butterfly was the first invertebrate to be officially noted on the list of Brazilian animals threatened with extinction in 1973. It has been classified as vulnerable by the IUCN Red List since 1983. The species is currently categorized by Brazil as endangered. It has not been formally considered for listing in the appendices to CITES. However, it is listed on Annex B of the EU Wildlife Trade Regulations; species listed on Annex B require a permit for import.

In the October 17, 2016, CNOR, the fluminense swallowtail was assigned an LPN of 2. After reevaluating the stressors to this species, we have determined that no change to the LPN is warranted. The fluminense swallowtail does not represent a monotypic genus. The overall number of subpopulations recorded for the species has declined from previous records of ''fewer than 20 colonies'' to approximately 8 to 12. Only one of these known subpopulations is presently found within a large protected area, and the majority of the remaining subpopulations are on small, fragmented parcels with limited or no protections and are vulnerable to extirpation. Despite the conservation measures in place, the species continues to face stressors (*e.g.,* habitat loss and destruction, and illegal collection and trade) that are high in magnitude. The threats are ongoing and, therefore, imminent. The LPN remains a 2 to reflect imminent threats of high magnitude.

Hahnel's Amazonian swallowtail (*Parides hahneli*)—Hahnel's Amazonian swallowtail is a large black and yellow butterfly endemic to Brazil. It is known from three remote locations along the tributaries of the middle and lower Amazon River basin in the states of Amazonas and Pará. Its preferred habitat is on old sand strips (stranded beaches) that are overgrown with dense scrub vegetation or forest. Hahnel's Amazonian swallowtail is described as very scarce and extremely localized in association with its specialized habitat and its larval host plant. Population size and trends are not known for this species. However, habitat alteration and destruction are ongoing in Pará and Amazonas where this species is found, and researchers are concerned that this destruction is taking place before the butterfly can be better studied and its ecological needs can be better understood.

In the 2015 Global Forest Resources Assessment of 234 countries and territories, Brazil reported the greatest

loss of primary forest from 1990 to 2015, and the states of Pará and Amazonas (where the butterfly is found) experienced high rates of deforestation in the last decade. Habitat loss and destruction are occurring (*e.g.,* high rates of deforestation, dam construction, waterway crop transport, and clearing for agriculture and cattle grazing) and will likely continue in the future.

Collection (see Harris' mimic swallowtail discussion, above) is also a potential threat for Hahnel's Amazonian swallowtail. The species has been collected for commercial trade and may be reared for trade. Locations in the wild have been kept secret given the high value of this butterfly to collectors. Over the past 2 years, multiple specimens of Hahnel's Amazonian swallowtail were noted for sale or sold from locations in the United States for $70 to $500 USD and from Germany (approximately $166 USD).

Hahnel's Amazonian swallowtail is classified as data deficient as of 2018 on the IUCN Red List. The species is listed as endangered on the State of Pará's list of threatened species, but it is not listed by the State of Amazonas or by Brazil. Hahnel's Amazonian swallowtail is not listed in any appendices of CITES. However, it is listed on Annex B of the EU Wildlife Trade Regulations; species listed on Annex B require a permit for import.

In the October 17, 2016, CNOR, the Hahnel's Amazonian swallowtail was assigned an LPN of 2. After reevaluating the threats to the Hahnel's Amazonian swallowtail, we have determined that no change in the LPN is warranted. This swallowtail does not represent a monotypic genus. It faces threats that are high in magnitude and imminence due to its small endemic population and limited and decreasing availability of its highly specialized habitat. Habitat alteration and destruction are ongoing in Pará and Amazonas where the butterfly is found and are likely to continue. These threats are high in magnitude due to the species' highly localized and specialized habitat requirements. Potential impacts from collection are unknown but could, in combination with other stressors, contribute to local extirpations. Based on a reevaluation of the threats, the LPN remains a 2 to reflect imminent threats of high magnitude.

Jamaican kite swallowtail (*Protographium marcellinus,* syn. *Eurytides marcellinus*)—The Jamaican kite swallowtail is a small blue-green and black butterfly and is regarded as Jamaica's most endangered butterfly. Breeding populations of the Jamaican kite swallowtail are found only where there are dense stands of the host plant (*Oxandra lanceolata*), and these stands are rare. There is no known estimate of population size, but subpopulations are known from five sites. Two of the sites may be recently extirpated, one is thought to be tenuous, and two are viable with strong numbers in some years.

Habitat loss, degradation, and fragmentation are considered the primary factors affecting the Jamaican kite swallowtail. Historical habitat loss and destruction occurred when forests were cleared for agriculture and timber extraction. More recent habitat destruction is occurring primarily from sapling cutting for yam sticks, fish pots, or charcoal. Charcoal-making also carries the risk of fire, which destroys pupae in the leaf litter. Additionally, mining for limestone and bauxite also pose threats to remaining forested tracts.

The two strongest subpopulations of the Jamaican kite swallowtail occur in protected areas (*i.e.,* the Portland Bight Protected Area and the Forest Reserve in the Cockpit Country), although habitat destruction within these areas continues to be a problem. Additionally, Jamaica's Forest Act of 1996 and Forest Regulations Act of 2001 have increased the power of Jamaican authorities to protect the species' habitat; the Jamaican kite swallowtail is included in Jamaica's National Strategy and Action Plan on Biological Diversity. This strategy established specific plans for protecting sites that support two subpopulations of the swallowtail. Although these projects were identified as high priorities, to date they have not been initiated due to funding and capacity constraints. Therefore, conservation management continues to be lacking for this species.

Although the Jamaican Wildlife Protection Act of 1994 carries steep fines and penalties, illegal collection of the Jamaican kite swallowtail appears to be occurring. Three specimens of the Jamaican kite swallowtail were noted for sale on the internet as recently as 2017, for as much as 100 Euros ($120 USD), and one specimen sold in 2015 for 150 Euros ($178 USD). Specimens of the Homerus swallowtail (*Papilio homerus,* another rare Jamaican butterfly) have also been illegally traded, indicating that there is a market for Jamaican butterflies despite heavy fines.

Predation from native predators, including spiders, the Jamaican tody (*Todus todus*), and praying mantis, may be adversely affecting the few remaining Jamaican kite swallowtail populations, especially in the smaller subpopulations. In years where large numbers of spiders were observed, very few Jamaican kite swallowtail larvae survived. Additionally, this species may be at greater risk of extinction due to small fragmented subpopulations and synergistic effects of the factors noted above. Since 1985, the Jamaican kite swallowtail has been categorized on IUCN's Red List as vulnerable, but it is marked ''needs updating.'' This species is not listed in any of the appendices of CITES or the EU Wildlife Trade Regulations, although some level of illegal trade is likely occurring.

In the October 17, 2016, CNOR, the Jamaican kite swallowtail was assigned an LPN of 2. After reevaluating the factors affecting the Jamaican kite swallowtail, we have determined that no change in LPN is warranted. The Jamaican kite swallowtail does not represent a monotypic genus. The Jamaican kite swallowtail is known from only five small subpopulations, and as few as two of these subpopulations may presently be viable. Although Jamaica has taken regulatory steps to preserve native swallowtail habitat, plans for conservation of vital areas for the butterfly have not been implemented. Based on our reevaluation of the threats to this species, the LPN remains a 2 to reflect imminent threats of high magnitude.

Kaiser-i-Hind swallowtail (*Teinopalpus imperialis*)—The Kaiser-i-Hind swallowtail is a large, ornate, green-black-and-orange butterfly native to the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam. The species occurs in the foothills of the Himalayan Mountains and other mountainous regions at altitudes of 1,500 to 3,050 m (4,921 to 10,000 ft) above sea level, in undisturbed (primary) broad-leaved evergreen forests or montane deciduous forests. Although it has a relatively large range, it is restricted to higher elevations and occurs only locally within this range. Adults fly up to open hilltops above the forests to mate, where males will often defend mating territories. Larval host-plants are limited to *Magnolia* and *Daphne* species, and in some regions the Kaiser-i-Hind swallowtail is strictly monophagous, only using a single species of *Magnolia* as a host plant. Despite the species' widespread distribution, populations are described as being very local and never abundant. Even early accounts of the species described it as being a very rare occurrence.

Habitat destruction is believed to negatively affect this species, which prefers undisturbed, high-altitude forests. In China and India, the Kaiser-i-Hind swallowtail populations are

affected by habitat modification and destruction due to commercial and illegal logging. In Nepal, the species is affected by habitat disturbance and destruction resulting from mining, wood collection for use as fuel, deforestation, collection of fodders and fiber plants, forest fires, invasion of bamboo species into the oak forests, agriculture, and grazing animals. In Vietnam, the forest habitat is reportedly declining. The Forest Ministry in Nepal considers habitat destruction to be a critical threat to all biodiversity, including the Kaiser-i-Hind swallowtail. Comprehensive information on the rate of degradation of Himalayan forests containing the Kaiser-i-Hind butterfly is not available, but habitat loss is consistently reported as one of the primary ongoing threats to the species there.

Collection for commercial trade is also regarded as a threat to the species. The Kaiser-i-Hind swallowtail is highly valued and has been collected and traded despite various prohibitions. Although it is difficult to assess the potential impacts from collection, it is possible that collection in combination with other stressors could contribute to local extirpations of small populations. Since 1996, the Kaiser-i-Hind swallowtail has been categorized on the IUCN Red List as ''lower risk/near threatened,'' but IUCN indicates that this assessment needs updating. The Kaiser-i-Hind swallowtail has been listed in CITES appendix II since 1987. Additionally, the Kaiser-i-Hind swallowtail is listed on annex B of the EU Wildlife Trade Regulations.

In the October 17, 2016, CNOR, the Kaiser-i-Hind swallowtail was assigned an LPN of 8. After reevaluating the threats to this species, we have determined that no change in its LPN of 8 is warranted. The Kaiser-i-Hind swallowtail does not represent a monotypic genus. Threats from habitat destruction and illegal collection are moderate in magnitude due to the species' wide distribution and to various protections in place within each country. We find that the threats are imminent due to ongoing habitat destruction and high market value for specimens. Based on our reassessment of the threats, we have retained an LPN of 8 to reflect imminent threats of moderate magnitude.

Candidates in Review

For several candidates, we continue to find that listing is warranted but precluded as of the date of publication of this notice. However, we are working on thorough reviews of all available data regarding these species and expect to publish either proposed listing rules or 12-month not-warranted findings prior to making the next annual resubmitted petition 12-month findings for these species. In the course of preparing proposed listing rules or not-warranted petition findings, we are continuing to monitor new information about these species' status so that we can make prompt use of our authority under section 4(b)(7) of the ESA in the case of an emergency posing a significant risk to any of these species. These species are the following: Peñasco least chipmunk (*Tamias minimus atristriatus*), Sierra Nevada red fox—Sierra Nevada DPS (*Vulpes vulpes necator*), red tree vole—north Oregon coast DPS (*Arborimus longicaudus*), Berry Cave salamander (*Gyrinophilus gulolineatus*), Texas fatmucket (*Lampsilis bracteata*), Texas fawnsfoot (*Truncilla macrodon*), Texas pimpleback (*Quadrula petrina*), Hermes copper butterfly (*Lycaena hermes*), Puerto Rican harlequin butterfly (*Atlantea tulita*), rattlesnake-master borer moth (*Papaipema eryngii*), *Astragalus microcymbus* (skiff milkvetch), *Astragalus schmolliae* (Chapin Mesa milkvetch), *Cirsium wrightii* (Wright's marsh thistle), *Pinus albicaulis* (whitebark pine), *Solanum conocarpum* (marron bacora), and *Streptanthus bracteatus* (bracted twistflower).

Petitions To Reclassify Species Already Listed

We previously made warranted-but-precluded findings on four petitions seeking to reclassify threatened species to endangered status. The taxa involved in the reclassification petitions are two populations of the grizzly bear (*Ursus arctos horribilis*), delta smelt (*Hypomesus transpacificus*), and *Sclerocactus brevispinus* (Pariette cactus). Because these species are already listed under the ESA, they are not candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms or 5-year review documents also constitute the findings for the resubmitted petitions to reclassify these species. Our updated assessments for these species are provided below. We find that reclassification to endangered status for two grizzly bear ecosystem populations, delta smelt, and *Sclerocactus brevispinus* are all currently warranted but precluded by work identified above (see Findings for Petitioned Candidate Species, above). One of the primary reasons that the work identified above is considered to have higher priority is that the grizzly bear populations, delta smelt, and *Sclerocactus brevispinus* are currently listed as threatened, and therefore already receive certain protections under the ESA. Those protections are set forth in our regulations: 50 CFR 17.40(b) (grizzly bear); 50 CFR 17.31, and, by reference, 50 CFR 17.21 (delta smelt); and 50 CFR 17.71, and, by reference, 50 CFR 17.61 (*Sclerocactus brevispinus*). It is therefore unlawful for any person, among other prohibited acts, to take (*i.e.,* to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity) a grizzly bear or a delta smelt, subject to applicable exceptions. Also, it is unlawful for any person, among other prohibited acts, to remove or reduce to possession *Sclerocactus brevispinus* from an area under Federal jurisdiction, subject to applicable exceptions. Other protections that apply to these threatened species even before we complete proposed and final reclassification rules include those under section 7(a)(2) of the ESA, whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

Grizzly bear (*Ursus arctos horribilis*), North Cascades ecosystem population (Region 6)—Since 1990, we have received and reviewed five petitions requesting a change in status for the North Cascades grizzly bear population (55 FR 32103, August 7, 1990; 56 FR 33892, July 24, 1991; 57 FR 14372, April 20, 1992; 58 FR 43856, August 18, 1993; 63 FR 30453, June 4, 1998). In response to these petitions, we determined that grizzly bears in the North Cascade ecosystem warrant a change to endangered status. We have continued to find that these petitions are warranted but precluded through our annual CNOR process. On January 13, 2017, in partnership with the National Park Service, we made available for public comment a draft North Cascades Ecosystem Grizzly Bear Restoration Plan (plan) and draft environmental impact statement (EIS) to determine how to restore the grizzly bear to the North Cascades ecosystem (82 FR 4416). The comment period on this draft plan and EIS closed on March 14, 2017 and reopened again on August 2, 2019. The final restoration plan and EIS are expected to take up to 2 years to complete as we evaluate a variety of alternatives, including population restoration. This ecosystem does not contain a verified population (only three confirmed observations of individuals in the last 20 years), and is isolated from

other populations in British Columbia and the United States.

We continue to find that reclassifying grizzly bears in this ecosystem as endangered is warranted but precluded, and we continue to assign an LPN of 3 for the uplisting of the North Cascades population based on high-magnitude threats, including human-caused mortality due to incomplete habitat protection measures (motorized-access management), very small population size, and population fragmentation resulting in genetic isolation. However, we acknowledge the possibility that there is no longer a population present in the ecosystem. The threats are high in magnitude, because the limiting factors for grizzly bears in this recovery zone are human-caused mortality and extremely small population size. The threats are ongoing and imminent. However, higher-priority listing actions, including court-approved settlements, court-ordered and statutory deadlines for petition findings and listing determinations, emergency listing determinations, and responses to litigation, continue to preclude reclassifying grizzly bears in this ecosystem. Furthermore, proposed rules to reclassify threatened species to endangered are a lower priority than listing currently unprotected species, as species currently listed as threatened are already afforded protection under the ESA and its implementing regulations.

Grizzly bear (*Ursus arctos horribilis*), Cabinet-Yaak ecosystem population (Region 6)—Since 1992, we have received and reviewed six petitions requesting a change in status for the Cabinet-Yaak grizzly bear population (57 FR 14372, April 20, 1992; 58 FR 8250, February 12, 1993; 58 FR 43856, August 18, 1993; 63 FR 30453, June 4, 1998; 64 FR 26725, May 17, 1999; 81 FR 1368, January 12, 2016). In response to these petitions, in an August 29, 2011, 5-year status review, we determined that grizzly bears in the Cabinet-Yaak ecosystem warranted a change to endangered status. However, in the 2014 CNOR (79 FR 72450; December 5, 2014), we determined that threatened status was appropriate and that uplisting to endangered status was no longer warranted. This decision was challenged in court (*Alliance for the Wild Rockies* v. *Ryan Zinke et al.* (Case No. 9:16–cv–00021–DLC)), and on August 22, 2017, the court ruled against the Service. The court reinstated the previous finding that uplisting the Cabinet-Yaak ecosystem population of grizzly bears was warranted but precluded, with an LPN of 3 for the uplisting based on high-magnitude threats that are ongoing, thus imminent, and, therefore, we are reevaluating its status. However, higher-priority listing actions, including court-approved settlements, court-ordered and statutory deadlines for petition findings and listing determinations, emergency listing determinations, and responses to litigation, continue to preclude reclassifying grizzly bears in this ecosystem. Furthermore, proposed rules to reclassify threatened species to endangered are a lower priority than listing currently unprotected species, as species currently listed as threatened are already afforded protection under the ESA and its implementing regulations.

Delta smelt (*Hypomesus transpacificus*) (Region 8)—The following summary is based on information contained in our files and the April 7, 2010, 12-month finding published in the **Federal Register** (75 FR 17667); see that 12-month finding for additional information on why reclassification to endangered is warranted but precluded. In our 12-month finding, we determined that a change in status of the delta smelt from threatened to endangered was warranted, although precluded by other high priority listings. The primary rationale for reclassifying delta smelt from threatened to endangered was the significant declines in species abundance that have occurred since 2001. Delta smelt abundance, as indicated by the Fall Mid-Water Trawl survey, was exceptionally low between 2004 and 2010, increased during the wet year of 2011, and decreased again to very low levels at present.

The primary threats to the delta smelt are direct entrainments by State and Federal water export facilities, summer and fall increases in salinity and water clarity resulting from decreases in freshwater flow into the estuary, and effects from introduced species. Ammonia in the form of ammonium may also be a significant threat to the survival of the delta smelt. Additional potential threats are predation by striped and largemouth bass and inland silversides, contaminants, and small population size. Existing regulatory mechanisms have not proven adequate to halt the decline of delta smelt since 1993, when we listed the delta smelt as a threatened species (58 FR 12854; March 5, 1993).

As a result of our analysis of the best scientific and commercial data available, we have retained the recommendation of uplisting the delta smelt to an endangered species. We have assigned an LPN of 2, based on the high magnitude and high imminence of threats faced by the species. The magnitude of the threats is high because the threats occur rangewide and result in mortality or significantly reduce the reproductive capacity of the species. Threats are imminent because they are ongoing and, in some cases (*e.g.,* nonnative species), considered irreversible. Thus, we are maintaining an LPN of 2 for this species.

Sclerocactus brevispinus (Pariette cactus) (Region 6)—Pariette cactus is restricted to clay badlands of the Uinta geologic formation in the Uinta Basin of northeastern Utah. The species is restricted to one population with an overall range of approximately 16 miles by 5 miles in extent. The species' entire population is within a developed and expanding oil and gas field. The location of the species' habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. The species may be illegally collected as a specimen plant for horticultural use. Recreational off-road vehicle use and livestock trampling are additional threats. The species is currently federally listed as threatened (44 FR 58868, October 11, 1979; 74 FR 47112, September 15, 2009). The threats are of a high magnitude, because any one of the threats has the potential to severely affect the survival of this species, a narrow endemic with a highly limited range and distribution. Threats are ongoing and, therefore, are imminent. Thus, we assigned an LPN of 2 to this species for uplisting. However, higher-priority listing actions, including court-approved settlements, court-ordered and statutory deadlines for petition findings and listing determinations, emergency listing determinations, and responses to litigation, continue to preclude reclassifying the Pariette cactus. Furthermore, proposed rules to reclassify threatened species to endangered are generally a lower priority than listing currently unprotected species (*i.e.,* candidate species), as species currently listed as threatened are already afforded the protection of the ESA and the implementing regulations.

We continue to find that reclassification of this species to endangered is warranted but precluded as of the date of publication of this notice. (See 72 FR 53211, September 18, 2007, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted but precluded.) However, we are working on a thorough review of all available data and expect to publish a 5-year status review and draft recovery plan prior to making the

next annual resubmitted petition 12-month finding. In the course of preparing a 5-year status review and draft recovery plan, we are continuing to monitor new information about this species' status.

Current Notice of Review

We gather data on plants and animals native and foreign to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists). This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants, and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2, below, list animals arranged alphabetically by common names under the major group headings, and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sort plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species, plus species currently proposed for listing under the ESA. We emphasize that in this notice we are not proposing to list any of the candidate species; rather, we will develop and publish proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to consider these species in environmental planning.

In Table 1, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. Our analysis for this notice included making new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see Findings for Petitioned Candidate Species, above, for additional information).

The ''Priority'' column indicates the LPN for each candidate species, which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats, as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098; September 21, 1983).

The third column, ''Lead Region,'' identifies the Regional Office to which you should direct information, comments, or questions regarding domestic species (see addresses under Request for Information, below). For species foreign to the United States, you should direct information, comments, or questions to the office of the Chief, Branch of Delisting and Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are those we included either as proposed species or as candidates in the previous CNORs (published December 2, 2016, at 81 FR 87246 for domestic species and October 17, 2016, at 81 FR 71457 for foreign species) that are no longer proposed species or candidates for listing. Since December 2, 2016, for domestic species and October 17, 2016, for foreign species, we listed 17 species, withdrew 4 species from proposed status, and removed 8 species from the candidate list by making not-warranted findings or withdrawing proposed rules. The first column indicates the present status of each species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

SAT—Species we listed as threatened due to similarity of appearance.

Rc—Species we removed from the candidate list, because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list, because we have withdrawn the proposed listing.

The second column indicates why the species is no longer a candidate species or proposed for listing, using the following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient that the species is a candidate for listing (for reasons other than that conservation efforts have removed or reduced the threats to the species).

F—Species whose range no longer includes a U.S. territory.

I—Species for which the best available information on biological vulnerability and threats is insufficient to support a conclusion that the species is an endangered species or a threatened species.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the ESA's definition of ''species'' and current taxonomic understanding.

U—Species that are not subject to the degree of threats sufficient to warrant issuance of a proposed listing and therefore are not candidates for listing, due, in part or totally, to conservation efforts that remove or reduce the threats to the species.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas for domestic species that we should designate as critical habitat, or indicating that designation of critical habitat would not be prudent;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

We will consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing under section 4(b)(7) of the ESA is appropriate).

For domestic species, submit information, materials, or comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Pacific Northwest. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6158).

Southwest. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 4012, Albuquerque, NM 87102 (505/248–6920).

Midwest. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458 (612/713–5334).

Southeast. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (404/679–4156).

Northeast. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589 (413/253–8615).

Mountain-Prairie. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486 (303/236–7400).

Alaska. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199 (907/786–3505).

Pacific Southwest. California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825 (916/414–6464).

We will provide information we receive to the Region having lead responsibility for each candidate species mentioned in the submission, and information and comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

For species foreign to the United States, submit information, materials, or comments regarding a particular species to the office of the Chief, Branch of Delisting and Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your submission, be advised that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 24, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[**Note:** See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
Mammals						
C*	6	Southwest	*Tamias minimus atristriatus*	Sciuridae	Chipmunk, Peñasco least	U.S.A. (NM).
PT		Pacific Southwest.	*Pekania pennanti*	Mustelidae	Fisher (West Coast DPS)	U.S.A (CA, OR, WA).
C*	3	Pacific Southwest.	*Vulpes vulpes necator*	Canidae	Fox, Sierra Nevada red (Sierra Nevada DPS).	U.S.A. (CA, OR).
PT		Pacific Southwest.	*Martes caurina* ssp. *humboldtensis.*	Mustelidae	Marten, Humboldt	U.S.A. (CA).
C*	9	Pacific	*Arborimus longicaudus*	Cricetidae	Vole, red tree (north Oregon coast DPS).	U.S.A. (OR).
PT	6	Mountain-Prairie	*Gulo gulo luscus*	Mustelidae	Wolverine, North American (Contiguous U.S. DPS).	U.S.A. (CA, CO, ID, MT, OR, UT, WA, WY).
Birds						
C*	2		*Pauxi koepckeae*	Cracidae	Curassow, Sira	Peru.
C*	2		*Pauxi unicornis*	Cracidae	Curassow, southern helmeted	Bolivia.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[**Note:** See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	6		*Strepera graculina crissalis*	Cracticidae	Currawong, Lord Howe Island pied.	Lord Howe Island, New South Wales.
C*	8		*Haematopus chathamensis*	Haematopodidae	Oystercatcher, Chatham	Chatham Islands, New Zealand.
C*	8		*Cyanoramphus malherbi*	Psittacidae	Parakeet, orange-fronted	New Zealand.
PT		Southeast	*Pterodroma hasitata*	Procellariidae	Petrel, black-capped	U.S.A. (GA, NC, SC).
C*	2		*Rallus semiplumbeus*	Rallidae	Rail, Bogotá	Colombia.
PT		Southeast	*Laterallus jamaicensis* ssp. *jamaicensis*.	Rallidae	Rail, eastern black	U.S.A. (AL, AK, CO, CT, DE, FL, GA, IL, IN, IA, KN, KT, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OK, PA, PR, RI, SC, TN, TX, VT, VA, VI, WV, WI).
PT		Pacific Southwest.	*Centrocercus urophasianus*	Phasianidae	Sage-Grouse, Greater (Bi-State DPS).	U.S.A (CA, NV).
C*	8		*Porphyrio hochstetteri*	Rallidae	Takahe	New Zealand.
C*	8		*Tangara peruviana*	Thraupidae	Tanager, black-backed	Brazil.
C*	8		*Scytalopus novacapitalis*	Rhinocryptidae	Tapaculo, Brasilia	Brazil.
C*	2		*Aulacorhynchus huallagae*	Ramphastidae	Toucanet, yellow-browed	Peru.
C*	2		*Zosterops luteirostris*	Zosteropidae	White-eye, Ghizo	Solomon Islands.
C*	8		*Dryocopus galeatus*	Picidae	Woodpecker, helmeted	Argentina, Brazil, Paraguay.
C*	2		*Dendrocopos noguchii*	Picidae	Woodpecker, Okinawa	Okinawa Island, Japan.
Reptiles						
C*	8	Southeast	*Gopherus polyphemus*	Testudinidae	Tortoise, gopher (eastern population).	U.S.A. (AL, FL, GA, LA, MS, SC).
Amphibians						
PE		Midwest	*Cryptobranchus alleganiensis alleganiensis*.	Cryptobranchidae	Hellbender, eastern (Missouri DPS).	U.S.A. (MO).
C*	8	Southeast	*Gyrinophilus gulolineatus*	Plethodontidae	Salamander, Berry Cave	U.S.A. (TN).
PT		Southeast	*Necturus lewisi*	Proteidae	Waterdog, Neuse River	U.S.A. (NC).
Fishes						
PE		Southeast	*Noturus furiosus*	Ictaluridae	Madtom, Carolina	U.S.A. (NC).
C*	6	Pacific Southwest.	*Spirinchus thaleichthys*	Osmeridae	Smelt, longfin (San Francisco Bay–Delta DPS).	U.S.A. (AK, CA, OR, WA), Canada.
PE	N/A		*Acipenser dabryanus*	Acipenseridae	Sturgeon, Yangtze	China.
PE		Southeast	*Fundulus julisia*	Fundulidae	Topminnow, Barrens	U.S.A. (TN).
PSAT	N/A	Pacific	*Salvelinus malma*	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
Clams						
C*	8		*Mulinia modesta*	Mactridae	Clam, Colorado delta	Mexico.
C*	2	Southwest	*Lampsilis bracteata*	Unionidae	Fatmucket, Texas	U.S.A. (TX).
C*	2	Southwest	*Truncilla macrodon*	Unionidae	Fawnsfoot, Texas	U.S.A. (TX).
PT		Southeast	*Fusconaia masoni*	Unionidae	Pigtoe, Atlantic	U.S.A. (GA, NC, VA).
C*	2	Southwest	*Quadrula petrina*	Unionidae	Pimpleback, Texas	U.S.A. (TX).
Snails						
C*	2	Southeast	*Planorbella magnifica*	Planorbidae	Ramshorn, magnificent	U.S.A. (NC).
Insects						
C*	5	Pacific Southwest.	*Lycaena hermes*	Lycaenidae	Butterfly, Hermes copper	U.S.A. (CA).
PE	3	Pacific	*Euchloe ausonides insulanus*	Pieridae	Butterfly, Island marble	U.S.A. (WA).
C*	2	Southeast	*Atlantea tulita*	Nymphalidae	Butterfly, Puerto Rican harlequin.	U.S.A. (PR).
C*	8	Midwest	*Papaipema eryngii*	Noctuidae	Moth, rattlesnake-master borer	U.S.A. (AR, IL, KY, NC, OK).
PT	5	Mountain-Prairie	*Lednia tumana*	Nemouridae	Stonefly, meltwater lednian	U.S.A. (MT).
PT		Mountain-Prairie	*Zapada glacier*	Nemouridae	Stonefly, western glacier	U.S.A. (MT).
C*	2		*Parides ascanius*	Papilionidae	Swallowtail, fluminense	Brazil.
C*	2		*Parides hahneli*	Papilionidae	Swallowtail, Hahnel's Amazonian.	Brazil.
C*	3		*Mimoides* (= *Eurytides* or *Graphium*) *lysithous harrisianus*.	Papilionidae	Swallowtail, Harris' mimic	Brazil.
C*	2		*Protographium* (= *Eurytides* or *Graphium* or *Neographium* or *Protesilaus*) *marcellinus*.	Papilionidae	Swallowtail, Jamaican kite	Jamaica.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[**Note:** See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	8		*Teinopalpus imperialis*	Papilionidae	Swallowtail, Kaiser-i-Hind	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam.
Crustaceans						
PT		Southeast	*Procambarus econfinae*	Cambaridae	Crayfish, Panama City	U.S.A. (FL).
PT		Southeast	*Cambarus cracens*	Cambaridae	Crayfish, slenderclaw	U.S.A. (AL).
Flowering Plants						
C*	8	Mountain-Prairie	*Astragalus microcymbus*	Fabaceae	Milkvetch, skiff	U.S.A. (CO).
C*	8	Mountain-Prairie	*Astragalus schmolliae*	Fabaceae	Milkvetch, Chapin Mesa	U.S.A. (CO).
C*	8	Southwest	*Cirsium wrightii*	Asteraceae	Thistle, Wright's marsh	U.S.A. (AZ, NM), Mexico.
C*	8	Mountain-Prairie	*Pinus albicaulis*	Pinaceae	Pine, whitebark	U.S.A. (CA, ID, MT, NV, OR, WA, WY), Canada (AB, BC).
C*	2	Southeast	*Solanum conocarpum*	Solanaceae	Bacora, marron	U.S.A. (PR).
C*	8	Southwest	*Streptanthus bracteatus*	Brassicaceae	Twistflower, bracted	U.S.A. (TX).

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

[**Note:** See End of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
Mammals						
Rc	A	Alaska	*Odobenus rosmarus divergens*	Odobenidae	Walrus, Pacific	U.S.A. (AK), Russia.
Birds						
T	L	Pacific	*Drepanis coccinea*	Fringillidae	Iiwi (honeycreeper)	U.S.A. (HI).
E	L		*Ara macao* ssp. *cyanopterus*	Psittacidae	Macaw, scarlet	Belize, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama.
T	L		*Ara macao* ssp. *macao*	Psittacidae	Macaw, scarlet (northern DPS)	Colombia, Costa Rica, Panama.
SAT	L		*Ara macao* ssp. *macao*	Psittacidae	Macaw, scarlet (southern DPS).	Bolivia, Brazil, Colombia, Ecuador, French Guiana, Guyana, Peru, Suriname, Venezuela.
Rc	A		*Eunymphicus uvaeensis*	Psittacidae	Parakeet, Uvea	Uvea, New Caledonia.
Rc	A	Southwest	*Amazona viridigenalis*	Psittacidae	Parrot, red-crowned	U.S.A. (TX), Mexico.
Reptiles						
T	L	Midwest	*Sistrurus catenatus*	Viperidae	Massasauga (= rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MN, MO, NY, OH, PA, WI), Canada.
E	L	Southwest	*Kinosternon sonoriense longifemorale.*	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.
Amphibians						
Rc	A	Southeast	*Notophthalmus perstriatus*	Salamandridae	Newt, striped	U.S.A. (FL, GA).
E	L	Southeast	*Necturus alabamensis*	Proteidae	Waterdog, black warrior (= Sipsey Fork).	U.S.A. (AL).
Fishes						
Rp	N	Southwest	*Gila nigra*	Cyprinidae	Chub, headwater	U.S.A (AZ, NM).
Rp	N	Southwest	*Gila robusta*	Cyprinidae	Chub, roundtail (Lower Colorado River Basin DPS).	U.S.A. (AZ, CO, NM, UT, WY).
E	L	Northeast	*Crystallaria cincotta*	Percidae	Darter, diamond	U.S.A. (KY, OH, TN, WV).
T	L	Southeast	*Percina aurora*	Percidae	Darter, pearl	U.S.A. (LA, MS).
Clams						
E	L	Southwest	*Popenaias popei*	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico.
Rc	N	Southwest	*Quadrula aurea*	Unionidae	Orb, golden	U.S.A. (TX).
Rc	N	Southwest	*Quadrula houstonensis*	Unionidae	Pimpleback, smooth	U.S.A. (TX).

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING—Continued

[**Note:** See End of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
Insects						
E	L	Midwest	*Bombus affinis*	Apidae	Bee, rusty patched bumble	U.S.A. (CT, DE, DC, GA, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI), Canada (Ontario, Quebec).
Rc	N	Mountain-Prairie	*Arsapnia (= Capnia) arapahoe*	Capniidae	Snowfly, Arapahoe	U.S.A. (CO).
Crustaceans						
Rp	I	Northeast	*Stygobromus kenki*	Crangonyctidae	Amphipod, Kenk's	U.S.A. (DC, MD, VA).
Flowering Plants						
Rc	A	Mountain-Prairie	*Boechera* (= *Arabis*) *pusilla*	Brassicaceae	Rockcress, Fremont County or small.	U.S.A. (WY).
T	L	Southeast	*Chamaesyce deltoidea pinetorum.*	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
Rp	A	Pacific Southwest.	*Chorizanthe parryi* var. *fernandina.*	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
E	L	Southeast	*Dalea carthagenensis* var. *floridana.*	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
T	L	Southeast	*Digitaria pauciflora*	Poaceae	Crabgrass, Florida pineland	U.S.A. (FL).
Rc	A	Mountain-Prairie	*Eriogonum soredium*	Polygonaceae	Buckwheat, Frisco	U.S.A. (UT).
E	L	Southwest	*Festuca ligulata*	Poaceae	Fescue, Guadalupe	U.S.A. (TX), Mexico.
Rc	A	Mountain-Prairie	*Lepidium ostleri*	Brassicaceae	Peppergrass, Ostler's	U.S.A. (UT).
E	L	Pacific	*Sicyos macrophyllus*	Cucurbitaceae	Anunu	U.S.A. (HI).
T	L	Southeast	*Sideroxylon reclinatum* ssp. *austrofloridense.*	Sapotaceae	Bully, Everglades	U.S.A. (FL).
Rc	A	Mountain-Prairie	*Trifolium friscanum*	Fabaceae	Clover, Frisco	U.S.A. (UT).

[FR Doc. 2019–21478 Filed 10–9–19; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–01; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–01. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–01, FAR Case 2018–008.

RULE LISTED IN FAC 2020–01

Subject	FAR Case	Analyst
Definition of ''Commercial Item''.	2018–008	Delgado.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–01 amends the FAR as follows:

Definition of ''Commercial Item'' (FAR Case 2018–008)

This final rule amends the definition of ''commercial item'' in FAR part 2 to reflect the statutory change made by section 847 of the National Defense Authorization Act for Fiscal Year 2018. Section 847 expands the universe of nondevelopmental items that qualify as commercial items to include items sold, in substantial quantities on a competitive basis, to multiple foreign governments.

This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–01 is effective October 10, 2019 except for FAR Case 2018–008, which is effective November 12, 2019.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2019–21846 Filed 10–9–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2020–01; FAR Case 2018–008; Docket No. FAR–2018–0008; Sequence No. 1]

RIN 9000–AN68

Federal Acquisition Regulation: Definition of ''Commercial Item''

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 to revise the definition of a ''commercial item.''

DATES: *Effective:* November 12, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–01, FAR Case 2018–008.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 84 FR 20607 on May 10, 2019, to implement the statutory changes made to the definition of ''commercial item'' by section 847 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91, enacted December 12, 2017). The rule would broaden the definition to allow certain additional items developed exclusively at private expense to qualify for the benefits associated with being treated as a commercial item. Section 847 expands the universe of nondevelopmental items (NDIs) that qualify as commercial items to include items sold, in substantial quantities on a competitive basis, to multiple foreign governments. Three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Changes

This final rule amends the definition of commercial item in FAR part 2 to reflect the statutory change made by section 847. Specifically, the rule adds the phrase ''or to multiple foreign governments'' at the end of paragraph (8). There are no changes as a result of comments on the proposed rule.

B. Analysis of Public Comments

1. Supports the proposed rule.

Comment: One respondent stated that the proposed rule accurately and effectively implements section 847.

Response: Noted.

2. Does not support the proposed rule.

Comment: One respondent stated that the rule is unnecessary, clouds the definition of what a commercial item is, and sets the stage for contracting officers

to lose the ability to require contractors to provide certified cost or pricing data.

Response: The rule is necessary to implement section 847 of the NDAA for FY 2018. The Councils do not agree that the implementing rule will complicate the definition of commercial item and note that the transactions, which will now become subject to FAR part 12, will be more simplified and less costly as a result of the reduced number of government-unique requirements that will be applied.

3. Potential burden reductions associated with future regulatory actions that facilitate broader acquisition of commercial items.

Comment: One respondent, in response to a request for feedback in the **Federal Register** notice for the proposed rule, provided recommendations with regard to potential burden reductions associated with future regulatory actions that facilitate broader acquisition of commercial items, and cited policies that restrict the commercial item acquisition process and pose a serious threat to the Government's access to the commercial industrial base.

Response: These comments are outside the scope of this case, but will be considered in relation to future regulatory actions.

4. Other expansion of the definition of ''commercial item.''

Comment: One respondent recommended expanding the definition of ''commercial item'' to include ''spare assemblies or piece parts which are a component of the higher level commercial item.''

Response: This recommendation is outside the scope of this case, and the Councils do not believe there is a need for additional regulatory clarification of this nature.

III. Expected Impact on the Public

Implementation of this rule allows for an increased number of transactions to benefit from the less burdensome requirements associated with rules governing commercial items. Under this rule, for the first time, NDIs that are developed exclusively at private expense and sold in substantial quantities to multiple foreign governments may be treated as commercial items.

Because commercial items, which include commercially available off-the-shelf items, are sold to the Government in the same way as NDIs, the Government can take advantage of technological advances without the need for costly, time-consuming, Government-sponsored research and development programs. All of this is made possible due to previous testing and general acceptance of the product in the commercial marketplace or by a state, local, or foreign government.

To promote the Government's acquisition of commercial items, the law and FAR part 12 create a preference for buying commercial items and provide relief from certain recordkeeping, reporting, and compliance requirements. According to an analysis published by the Section 809 Panel at page 23 of its ''May 2017 Interim Report,'' available at *https://section809panel.org/wp-content/uploads/2017/05/Sec809Panel_Interim-Report_May2017_FINAL-for-web.pdf,* commercial item acquisitions are subject to up to 138 contract clauses, while acquisitions for NDIs that do not meet the commercial item definition as well as acquisitions for noncommercial items could be subject to nearly 500 clauses, depending on the principal type and purpose of the contract. For example, a commercial firm selling an NDI today to multiple foreign governments in substantial quantities could face compliance costs with the Truth in Negotiations Act (TINA), which requires implementation of Government-specific business systems for any modifications to competitively awarded items. TINA has long been recognized under analyses performed in accordance with the Paperwork Reduction Act as one of the most costly statutes and regulations in Federal procurement. In addition, policies governing commercial item acquisitions favor reliance on commercial sector business practices and use of standard commercial terms and conditions to the maximum extent practicable. Each of these dimensions of the commercial item framework contributes to more simplified and less costly transactions.

DoD, GSA, and NASA are unable to monetize the cost savings, because procurement data is not captured in a manner that enables a determination to be made regarding how many NDIs developed exclusively at private expense have been sold or are expected to be sold to multiple foreign governments in substantial quantities, that are not also sold in substantial quantities to multiple State and local governments. For these reasons and though the public comment period did not provide data to monetize savings, this rule is considered deregulatory.

IV. Applicability to Contracts At or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends the FAR to change the definition of ''commercial item''. The revision does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses.

V. Executive Orders 12866 and 13563

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

VI. Executive Order 13771

This final rule is an E.O. 13771 deregulatory action per the discussion found in Section III, Expected Impact on the Public, of this preamble.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to implement section 847 of the NDAA for FY 2018. The objective is to treat nondevelopmental items, developed at private expense, that have been sold to multiple foreign governments, as commercial items.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule will impact any entities offering to the Federal Government a nondevelopmental item, developed at private expense, that has been sold to multiple foreign governments, but did not otherwise qualify as a commercial item. There are over 327,458 small business registrants in the System for Award Management database, but it is unknown how many of those registrants may offer to the Government a nondevelopmental item, developed at private expense, that has been sold to multiple foreign governments, but does not otherwise qualify as a commercial item. It is not expected that this rule will have a significant economic impact on a substantial number of small entities, because the number of affected entities is not expected to be substantial, and any impact will be beneficial, due to the treatment of additional nondevelopmental items as commercial items.

The rule does not include additional reporting or recordkeeping requirements.

There are no available alternatives to the rule to accomplish the desired objective of

the statute. Small businesses would benefit from the streamlined commercial acquisition procedures.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 2

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA, DoD, and NASA amend 48 CFR part 2 as follows:

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 2 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 2.101, in paragraph (b)(2), in the definition of ''commercial item'', by revising paragraph (8), to read as follows:

2.101 Definitions.

* * * * *

Commercial item * * *

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

* * * * *

[FR Doc. 2019–21847 Filed 10–9–19; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–01; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–01, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–01, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–01, FAR Case 2018–008.

RULE LISTED IN FAC 2020–01

Subject	FAR Case	Analyst
* Definition of ''Commercial Item''.	2018–008	Delgado

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–01 amends the FAR as follows:

Definition of ''Commercial Item'' (FAR Case 2018–008)

This final rule amends the definition of ''commercial item'' in FAR part 2 to reflect the statutory change made by section 847 of the National Defense Authorization Act for Fiscal Year 2018. Section 847 expands the universe of nondevelopmental items that qualify as commercial items to include items sold, in substantial quantities on a competitive basis, to multiple foreign governments.

This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–21848 Filed 10–9–19; 8:45 am]

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