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Presidential Documents

Title 3—

The President

Memorandum of October 11, 2019

Executive Orders 13836, 13837, and 13839

Memorandum for the Heads of Executive Departments and Agencies

On May 25, 2018, I signed three Executive Orders requiring executive departments and agencies (agencies) to negotiate collective bargaining agreements that will reduce costs and promote government performance and accountability. These Executive Orders, Executive Order 13836 of May 25, 2018 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining), Executive Order 13837 of May 25, 2018 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use), and Executive Order 13839 of May 25, 2018 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles), were partially enjoined by the United States District Court for the District of Columbia on August 25, 2018. The District Court's injunction barred enforcement of sections 5(a), 5(e), and 6 of Executive Order 13836, sections 3(a), 4(a), and 4(b) of Executive Order 13837, and sections 3, 4(a), and 4(c) of Executive Order 13839.

On July 16, 2019, the United States Court of Appeals for the District of Columbia Circuit held that the District Court lacked jurisdiction and vacated its judgment, and the Court of Appeals has now issued the mandate making its judgment effective.

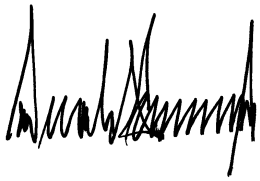
Provisions of the Executive Orders that had been subject to the District Court's injunction set presumptively reasonable goals that agencies must pursue during bargaining; directed agencies to refuse to bargain over permissive subjects of negotiation; and established Government-wide rules that displace agencies' duty to bargain with unions over contrary matters, regardless of whether the Federal Service Labor-Management Relations Statute would otherwise require bargaining absent those rules. Sections 4(c)(ii) and 8(a) of Executive Order 13837 and section 8(b) of Executive Order 13839, however, recognized agencies' ability to comply with collective bargaining agreements containing prohibited terms so long as such agreements were effective on the date of the Executive Orders.

While the District Court's injunction remained in effect, agencies retained the ability to bargain over subjects covered by the enjoined provisions. The Executive Orders, however, did not address collective bargaining agreements entered into during this period. As a result, it is necessary to clarify agencies' obligations with respect to such collective bargaining agreements.

Agencies shall adhere to the terms of collective bargaining agreements executed while the injunction was in effect. Agencies that remain engaged in collective-bargaining negotiations, to the extent consistent with law, shall comply with the terms of the Executive Orders. However, where, between the date of the Executive Orders and the date of the Court of Appeals's mandate, the parties to collective bargaining negotiations have executed an agreement to incorporate into a new collective bargaining agreement specific terms prohibited by the Executive Orders, an agency may execute the new collective bargaining agreement containing such terms, and terms ancillary to those specific terms, notwithstanding the Executive Orders.

To the extent it is necessary, this memorandum should be construed to amend Executive Orders 13836, 13837, and 13839.

The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 11, 2019

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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

7 CFR Part 1

RIN 0503–AA61

Departmental Freedom of Information Act Regulations

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the U.S. Department of Agriculture (''USDA or the Department'') Freedom of Information Act (''FOIA'') regulations. The revisions clarify and update procedures for requesting information from USDA, as well as procedures that USDA follows in responding to requests from the public. The revisions also incorporate clarifications and updates resulting from changes to the FOIA and case law.

DATES: *Effective Date:* This final rule is effective October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Alexis R. Graves, Departmental FOIA Officer, Office of the Chief Information Officer, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Room 4101, Washington, DC 20250. You may also contact the Departmental FOIA Officer by phone at 202–690–3318 or *USDAFOIA@usda.gov.*

SUPPLEMENTARY INFORMATION: On June 11, 2018, USDA proposed to revise its regulations in order to incorporate changes of the FOIA Improvement Act of 2016 and the OPEN Government Act of 2007, to streamline processing procedures, and to incorporate the template published by the Department of Justice Office of Information Policy (''Template''). The proposed regulations were published in full and reflected these substantive changes as well as a renumbering and reorganization of USDA's existing regulations. USDA also removed language it identified as obsolete, redundant, or inconsistent. In keeping with the Department's long-standing commitment to provide improved service by writing in plain language, USDA also revised some of the language to make it more clear, understandable, and useful to our requester community.

USDA invited public comment, and after carefully considering the submissions, has determined to incorporate additional revisions. USDA has also made minor clarifying and numbering corrections, made updates to reflect administrative and organizational changes, and removed duplicative language. USDA has also determined to revise the proposed language in § 1.7 to expand the component's discretion to determine whether to voluntarily undertake the creation of new records. Accordingly, this preamble addresses significant changes to USDA's existing regulations and, where relevant, addresses significant public comments.

In total, USDA received five public submissions to its proposed rule. One commenter expressed general support for the proposed rule. The remaining four submissions addressed a variety of issues to include public reading rooms, affirmative disclosures, fee provisions, treatment of confidential business information, and appeals. Collectively, these comments afforded USDA an opportunity to improve its final regulations and to reconsider the inclusion of language proposed for deletion.

1. Comments on 1.2 (Public Reading Rooms)

Two commenters raised concerns with USDA's proposed regulations concerning public reading rooms and the affirmative disclosure requirements of 5 U.S.C. 552(a)(2). Specifically, one commenter asserted that the proposed regulation fails to implement a process to manage proactive disclosures for records requested three or more times, because it fails to provide adequate guidance to components about when and how to determine when records are likely to become the subject of subsequent requests, because it removes existing guidance, and because it fails to establish procedures to identify records of public interest for disclosure in an electronic format.

Another commenter raised general concerns with USDA's past and future handling of public reading rooms, including allegations that are the subject of ongoing litigation. USDA declines to address comments that extend beyond the scope of the proposed regulations in this forum. With regard to comments about the proposed regulations, the commenter stated that (i) the proposed regulations should require all USDA components to post indices of frequently requested records with certain functions and information, pursuant to 552(a)(2)(D); (ii) USDA must promptly promulgate implementing regulations to provide ''a rational approach to FOIA's affirmative disclosure mandate''; (iii) the regulations provide no clear mechanism or guidance for submitting or processing requests under 552(a)(2)(D); (iv) the regulations eliminate existing guidance for components to determine whether records ''are likely to become the subject of requests for substantially the same records'' under 552(a)(2)(D)(ii)(I) and that such guidance should be expanded; (v) the regulations eliminate, without explanation, existing language that clarifies circumstances under which components will make frequently requested records available and what records are required to be posted online under 552(a)(2); (vi) USDA eliminates existing requirements concerning indices, handbooks, access to formal adjudication proceedings, and an index of information systems; (vii) USDA should adopt and expand factors from its existing regulations with regard to 552(a)(2)(D), *e.g.,* USDA regulations should require agencies to consider ''whether records fall into frequently requested *categories* of information . . . without regard to whether any particular [ ] record has actually been requested under (a)(3) of the statute'' and components should be required to make a determination each time it releases a record as to whether it is a ''frequently requested record''; and (viii) USDA regulations should clarify the term ''released'' under 552(a)(2)(D)(i) to include ''making the information available online or by responding to a FOIA request by referring the requester to the agency's website.''

After consideration of the public comments, USDA has determined to include language to assist components in making online publication decisions pursuant to 552(a)(2). Specifically, USDA is keeping language from its existing regulation that identifies the types of records that are required to be

published under 552(a)(2) and that assists components in determining what 552(a)(3) FOIA-processed records are ''likely to become the subject of subsequent requests for substantially the same records.'' USDA declines proposals to expand certain language in contravention of the FOIA statute. Specifically, USDA disagrees with the proposed expansion of 552(a)(2)(D) to require components to consider *categories* of records without regard to whether any record has actually been requested and released under 552(a)(3). Such a suggestion is contrary to the plain language of the FOIA 552(a)(2)(D)(i) which is limited to *records* ''that have been released to any person under paragraph (3).'' Similarly, USDA disagrees with the comment that USDA regulations should clarify the term ''released'' to include ''making the information available online.'' Such a change would be contrary to the plain language of the statute, which is limited to certain FOIA-processed records that have previously been released to a person in response to a request under (a)(3). With regard to the comment concerning the indexing requirement of 552(a)(2), USDA notes that the requirement is generally satisfied by providing a distinct link to each document that is posted. More generally, beyond what is discussed above, USDA believes it is not currently necessary or appropriate to elaborate or expand upon the reading room requirements already set forth in the statute with sufficient clarity and precision.

2. Comments on 1.3 (Requirements for Making a Records Request)

One commenter asserted that USDA's proposed regulations wrongfully delete information regarding the titles and addresses of relevant decision-making officials. This same commenter also contended that the proposed regulations failed to assist the public in identifying where records may be located. USDA disagrees with these comments. As explained in § 1.3(a) of the proposed regulations, USDA maintains a dedicated FOIA website containing contact information for component agencies and an online web portal for submitting requests. In addition, § 1.3(a) states that the public may submit requests to the Departmental FOIA Officer who will route them to the component(s) believed most likely to maintain the requested records. Additional guidance about submitting requests to USDA agencies is contained in § 1.3.

3. Comments on 1.8 (Requirements for Processing Records Requests Seeking Business Information)

On June 24, 2019, the Supreme Court issued an opinion in *Food Mktg. Inst.* v. *Argus Leader Media,* 139 S. Ct. 915 (2019), concerning FOIA Exemption 4 and the definition of the term ''confidential.'' USDA has reviewed and updated the language of § 1.8 based on the *Argus Leader* opinion. The *Argus Leader* opinion renders moot the majority of comments received on § 1.8. For the reasons explained below, USDA has determined to adopt the language of the Template, subject to some customizations for USDA.

One commenter submitted several comments on § 1.8 and raised concerns with USDA's proposed handling of information which may be determined to be confidential business information within the meaning of Exemption 4. The commenter objected to (i) USDA's proposal to hold in abeyance a FOIA request until any ''reverse FOIA'' lawsuits are fully resolved. The commenter also argued that (ii) USDA omits the former requirement that business submitters explain item-by-item why disclosure would cause substantial harm to its competitive position; (iii) USDA has attempted to improperly codify a test established in *Critical Mass Energy Project* v. *Nuclear Regulatory Commission,* 975 F.2d 871 (D.C. Cir. 1982); and (iv) USDA fails to establish a strict timeline for submission of business submitter objections to disclosure.

The USDA's decision to adopt the Template language and the *Argus Leader* decision render moot comments (i), (ii), (iii) and (iv).

4. Comments on 1.9 (Administrative Appeals)

One commenter suggested that USDA regulations improperly require that an appeal be received within 90 days. USDA accepts that comment and has revised the regulations to state that appeals must be postmarked or transmitted by email no later than 90 calendar days from the date of the adverse determination. This section is also revised to include language regarding engaging in dispute resolution services provided by the Office of Government Information Services (''OGIS''). These revisions also implement changes of the FOIA Improvement Act of 2016.

5. Comments on 1.12 (Fees and Fee Schedules)

Two commenters asserted that USDA should not cite to Uniform Freedom of Information Act Fee Schedule and Guidelines (''OMB Fee Guidelines'') which are unreliable and no longer authoritative. USDA has determined to include references to the OMB Fee Guidelines, consistent with the Template. To the extent that the guidelines conflict with the FOIA statute, USDA acknowledges that the statute would control. For this reason, USDA declines to remove its citations.

One commenter objected to the removal of the provision which allowed the agency in its discretion to waive or reduce fees regardless of whether the requester had sought a waiver or reduction. The commenter was concerned about the potential negative effect on unsophisticated requesters or requesters who do not adequately understand the requirement. USDA has determined that it will help ensure the equal treatment of requesters by declining to include such language in the revised regulations. Further, USDA's FOIA website provides guidance to all requesters about things to consider before submitting a FOIA request, including fee waiver requests.

One commenter asserted that USDA should eliminate the new provision under which the agency will close a request if advance payment is not received within 20 working days. USDA accepts this comment and has deleted this new provision.

One commenter asserted USDA's proposed regulations improperly make the fee waiver standard more stringent by requiring an ''identifiable'' operation of the government ''with a connection that is direct and clear, not remote or attenuated.'' Also, the commenter stated that USDA's proposed regulations improperly require that the information ''must be meaningfully informative'' and that ''disclosure of information in the public domain in either the same or a substantially identical form would not contribute such understanding.'' USDA declines to accept comments concerning the fee waiver provision because it is consistent with the FOIA statute and the language comes from the Template.

One commenter suggested that USDA has deviated from the six-factor test for determining whether disclosure is in the public interest for fee waiver purposes and places the burden on the requester exclusively to demonstrate there is no commercial interest. USDA disagrees with these comments. USDA's updates do not substantively change the analysis but instead present the factors in a way that is clearer to both components and requesters. Rather than six factors, the revised section establishes three factors that address substantively the same issues formerly set forth in six factors.

Specifically, a requester should be granted a fee waiver if the requested information (1) sheds light on the activities and operations of the government; (2) is likely to contribute significantly to public understanding of those operations and activities; and (3) is not primarily in the commercial interest of the requester. This streamlined description facilitates easier understanding and application of the statutory standard.

6. Comments on Appendix A (Fee Schedule)

Two commenters asserted that the proposed regulations included language that was inconsistent with the OPEN Government Act of 2007 which amended the statutory definition of representative of the news media to eliminate the ''organized and operated'' factor. USDA agrees with this comment and revises App. A (2)(b)(4)(i) accordingly.

One commenter asserted that USDA should consider the nature of the requester, not the nature of the request, in determining eligibility for news media fee category status. The commenter further contended that, while case-by-case inquiry may be appropriate for new entities without a track record, the FOIA focuses on the requester not on the request for this purpose. USDA's proposed language is consistent with the FOIA statute; therefore USDA declines to accept this comment.

One commenter suggested that USDA should use a broader standard for determining whether a product meets the ''distinct work'' standard, to include a ''simple press release commenting on records'' or ''editorial comment.'' USDA declines to accept this comment proposing to articulate a broader ''distinct work'' standard. USDA disagrees that the language of the proposed regulation is narrow and notes that it is consistent with the statutory definition and the Template.

One commenter suggested that USDA should indicate that any examples of news media entities in its regulations are non-exhaustive, in order to accommodate evolving news media formats. USDA agrees with this comment and added clarifying language to make clear that the list of examples is not exhaustive.

One commenter suggested that USDA should clarify its regulations to make clear that litigation itself is not strictly a commercial activity because the reference to litigation in the ''commercial requesters'' definition could adversely affect public interest groups and nonprofits that engage in litigation. USDA declines to accept this comment. USDA considers fee determinations on a case-by-case basis.

USDA also received a few comments regarding the definition of an educational institution. USDA agrees with the comment that teachers and students may qualify for reduced fees and therefore has elected to revise its definition accordingly.

One commenter suggested that the proposed cost of authentication and certification of records is exorbitant. USDA accepts the comment regarding the potential for increased costs for authentication and certification of records. Accordingly, USDA has determined to use the language of the existing regulations. Another comment proposed that authentication and certification services should be eligible for fee waivers automatically if a fee waiver is otherwise granted to the FOIA requester or if the requester qualifies for a fee waiver under the same conditions as FOIA requests. USDA disagrees with this proposal because those services are outside of the FOIA and because of the potential impact on processing times and agency resources.

7. Miscellaneous Comments

One commenter asserted that the proposed regulations eliminate any discussion of the annual reports. USDA prepares and posts online its reports in accordance with the requirements of the FOIA.

One commenter objected to the elimination of language requiring USDA components to provide requesters a date by which the component expects to issue a determination in the event that the component misses a FOIA deadline. USDA accepts this comment and has added language from the Template.

One commenter suggested that USDA include the foreseeable harm standard in its regulations. USDA declines to accept this comment as the foreseeable harm standard is codified in the FOIA statute.

One commenter asserted that USDA's proposed regulations eliminate a provision concerning routing misdirected requests outside of USDA. USDA has elected to omit this language because agency employees are not necessarily familiar with the missions of other federal agencies and such a provision risks further delay by misdirecting requests.

Executive Orders 12866 and 13771

This rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), section 1(b), Principles of Regulation, and Executive Order 13563, 76 FR 3821 (January 18, 2011), Improving Regulation and Regulatory Review. The rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rulemaking has not been reviewed by the Office of Management and Budget. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

USDA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters, and only for certain classes of requesters and when particular conditions are satisfied. Thus, fees assessed by the USDA are nominal.

Small Business Regulatory Enforcement Fairness Act of 1995

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Freedom of information act, Confidential business information.

■ For the reasons stated in the preamble, USDA amends 7 CFR part 1 by revising subpart A to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec
1 General Provisions
1.2 Public Reading Rooms
1.3 Requirements for Making a Records Request
1.4 Requirements for Responding to Records Requests
1.5 Responses to Records Requests
1.6 Timing of Responses to Perfected Records Requests
1.7 Records Responsive to Records Requests
1.8 Requirements for Processing Records Requests Seeking Business Information
1.9 Administrative Appeals
1.10 Authentication Under Departmental Seal and Certification of Records
1.11 Preservation of Records
1.12 Fees and Fee Schedule
Appendix A to Subpart A of Part 1—Fee Schedule

Authority: 5 U.S.C. 301, 552; 31 U.S.C. 9701; and 7 CFR 2.28(a).

Subpart A—Official Records

§ 1.1 General provisions.

(a) This subpart contains the rules that the United States Department of Agriculture (USDA) and its components follow in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about access to records maintained by the USDA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, and 7 CFR Subpart G are also processed under this subpart.

(b) The terms ''component'' or ''components'' are used throughout this subpart and in appendix A of this subpart to include both USDA program agencies and staff offices.

(c) Unless otherwise stated, references to number of days indicates business days, excluding Saturdays, Sundays, and legal holidays.

(d) Supplemental regulations for FOIA requests and appeals relating to records of USDA's Office of Inspector General are set forth in 7 CFR part 2620.

§ 1.2 Public reading rooms.

(a) Components within the USDA maintain public reading rooms containing the records that the FOIA requires to be made regularly available for public inspection in an electronic format. Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that its reading room and indices are reviewed and updated on an ongoing basis.

(b) A link to USDA Electronic Reading Rooms can be found on the USDA public FOIA website.

(c) In accordance with 5 U.S.C. 552(a)(2), each component within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to a person pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and have been requested three or more times; and

(5) Copies of all records, regardless of form or format, which have been released to a person pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Components shall decide on a case by case basis whether records meet these requirements, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

§ 1.3 Requirements for making a records request.

(a) *Where and how to submit a request.* (1) A requester may submit a request in writing and address the request to the designated component within the USDA that maintains the records requested. The Departmental FOIA Officer will maintain a list of contact information for component FOIA offices and make this list available on the USDA public FOIA website. Filing a FOIA request directly with the component that maintains the records will facilitate the processing of the request. If responsive records are likely to reside within more than one USDA component, the requester should submit the request to the USDA Departmental FOIA office.

(2) Alternatively, a requester may submit a request electronically via USDA's online web portal or via the National FOIA portal. USDA components also accept requests submitted to the email addresses of component FOIA offices as listed on the USDA public FOIA website.

(3) If a requester cannot determine where within the USDA to send a request, he or she should consult the USDA public FOIA website to determine where the records might be maintained. Alternatively, he or she may send the request to the Departmental FOIA Officer, who will route the request to the component(s) believed most likely to maintain the records requested.

(4) To facilitate the processing of a request, a requester should place the phrase ''FOIA REQUEST'' in capital letters on the front of their envelope, the cover sheet of their facsimile transmittal, or the subject line of their email.

(b) *What to include in a request.* (1) A requester seeking access to USDA records should provide sufficient information about himself or herself to enable components to resolve, in a timely manner, any issues that might arise as to the subject and scope of the request, and to deliver the response and, if appropriate, any records released in response to the request. Generally, this includes the name of the requester, name of the institution on whose behalf the request is being made, a phone number at which the requester might be contacted, an email address and/or postal mailing address, and a statement indicating willingness to pay any applicable processing fees.

(2) A requester seeking access to USDA records must also provide a reasonable description of the records requested, as discussed in paragraph (c)(1) of this section.

(3) A requester who is making a request for records about himself or herself may receive greater access if the request is accompanied by a signed declaration of identity that is either notarized or includes a penalty of perjury statement pursuant to 28 U.S.C. 1746.

(4) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual

or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased. As an exercise of administrative discretion, the component can require a requester to supply additional information if necessary, in order to verify that a particular individual has consented to disclosure.

(c) *How to describe the requested records.* (1) A FOIA request must reasonably describe the requested records. This means a request must be described in such a way as to enable component personnel familiar with the subject of the request to locate them with reasonable effort. In general, requesters should include as much detail as possible about the specific records or types of records that they are seeking. To the extent possible, supply specific information regarding dates, titles, names of individuals, names of offices, locations, names of agencies or other organizations, and contract or grant numbers that may help in identifying the records requested. If the request relates to pending litigation, the requester should identify the court and its location in addition to a case number.

(2) If a component determines that a request is incomplete, or that it does not reasonably describe the records sought, the component will inform the requester of this fact and advise as to what additional information is needed or why the request is otherwise insufficient.

§ 1.4 Requirements for responding to records requests.

(a) *In general.* Except for the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record is responsible for responding to or referring the request.

(b) *Authority to grant or deny requests.* The head of a component or his or her designee is authorized to grant or to deny any requests for records originating with or maintained by that component.

(c) *Handling of misdirected requests.* When a component's FOIA office receives and determines that a request was misdirected within the Department's components or should be directed to additional Department component(s), the receiving component's FOIA office will route the request to the FOIA office of the proper component(s).

(d) *Coordination of requests involving multiple components.* When a component becomes aware that a requester has sent a request for records to multiple USDA components, the component will notify the Departmental FOIA Officer to determine if some form of coordination is warranted.

(e) *Consultations and referrals in the process of records review.* (1) *Consultation.* When records originated with the component processing the request but contain within them information of interest to another USDA component or other Federal Government office, the component processing the request should consult with that other entity prior to making a release determination.

(2) *Referral.* When the component processing the request believes that another USDA component or Federal Government office is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record to that USDA component or Federal Government office. Ordinarily, the component or agency that originated the record is presumed to be the best able to make the disclosure determination. However, if the component processing the request and the originating component or agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component or agency responding to a request for records on a living third party locates within its files records originating with a law enforcement component or agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component or agency locates within its file's material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

§ 1.5 Responses to records requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet by electronic means, such as email, in lieu of first-class U.S. mail.

(b) *Acknowledgements of requests.* On receipt of a request, the processing component will send an acknowledgement to the requester and provide an assigned request tracking number for further reference. Components should include in the acknowledgement a brief description of the records sought, or attach a copy of the request, to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* When a component makes a determination to grant a request in whole or in part, it will notify the requester in writing. The component will also inform the requester of any fees charged, pursuant to § 1.12, in the processing of the request. Except in instances where advance payment of fees is required, components may issue bills for fees charged at the same time that they issue a determination. The component will include a statement advising the requester that he or she has the right to seek dispute resolution services from the component's FOIA Public Liaison.

(d) *Specifying the format of records.* Generally, requesters may specify the preferred form or format (including electronic formats) for the records sought. Components will accommodate the request if the records are readily reproducible in that form or format.

(e) *Exemptions and discretionary release.* All component records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(a) and (b), will be made available to any person submitting a records request under this subpart. Components are authorized, in their sole discretion, to make discretionary releases of their records when such releases are not otherwise specifically prohibited by Executive Order, statute, or regulation.

(f) *Reasonable segregation of records.* If a requested record contains portions that are exempt from mandatory disclosure and other portions that are not exempt, the processing component will ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions

are identified according to the specific exemption(s) that are applicable.

(g) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect will notify the requester of that determination in writing. The written communication to the requester will include the name and title of the person responsible for the adverse determination, if other than the official signing the letter; a brief statement of the reason(s) for the determination, including any exemption(s) applied in denying the request; an estimate of the volume of records or information withheld, such as the number of pages or some other reasonable form of estimation; a statement that the determination may be appealed, followed by a description of the requirements to file an appeal; and a statement advising the requester that he or she has the right to seek dispute resolution services from the component's FOIA Public Liaison or the Office of Government Information Services (''OGIS''). An adverse determination includes:

(1) A determination to withhold any requested record in whole or in part;

(2) A determination that a requested record does not exist or cannot be found, when no responsive records are located and released;

(3) A determination that a record is not readily reproducible in the format sought by the requester;

(4) A determination on any disputed fee matter; or

(5) A denial of a request for expedited treatment.

(h) Upon request, the component will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the component may provide interim responses, releasing the records on a rolling basis.

§ 1.6 Timing of responses to perfected records requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. In instances involving misdirected requests that are re-routed pursuant to § 1.4(c), the response time will commence on the date that the request is received by the proper component's office that is designated to receive requests, but in any event not later than 10-working days after the request is first received by any component's office that is designated to receive requests.

(b) *Response time for responding to requests.* Components ordinarily will inform requesters of their determination concerning requests within 20 working days of the date of receipt of the requests, plus any extension authorized by paragraph (d) of this section.

(c) *Multitrack processing and how it affects requests.* All components must designate a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph (f) of this section. A component also may designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request and the need for consultations or referrals. Upon request, components will advise requesters of the track into which their request falls and, when appropriate, will offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track in order to decrease the processing time.

(d) *Circumstances for extending the response time.* Whenever the component cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and the component extends the time limit on that basis, the component must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the component estimates processing of the request will be completed. Where the extension exceeds 10 working days, the component must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The component must make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component also must alert requesters to the availability of the OGIS to provide dispute resolution services.

(e) *Procedures for requesting expedited processing.* A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(1) Requests and appeals will be processed on an expedited basis whenever it is determined by the component that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information.

(2) Requests for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) or (ii) of this section must be submitted to the component that maintains the records requested. Components receiving requests for expedited processing will decide whether to grant them within 10 calendar days of their receipt of these requests and will notify the requesters accordingly. If a request for expedited treatment is granted, the request or appeal will be given priority, placed in the processing track for expedited requests or appeals, and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1.7 Records responsive to records requests.

(a) In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that the component begins its search.

(b) A component is not required to create a new record in order to fulfill a request for records. The FOIA does not require agencies to do research, to analyze data, or to answer written questions in response to a request.

(c) Creation of records may be undertaken voluntarily.

(d) A component will provide a record in the format specified by a requester, if the record is readily reproducible by the component in the format requested.

§ 1.8 Requirements for processing records requests seeking business information.

(a) *In general.* Each component is responsible for making the final determination with regard to the disclosure or nondisclosure of business information in records submitted by an outside entity.

(b) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information obtained by the USDA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, or Tribe, but not including another Federal Government

entity, that provides confidential commercial information, either directly or indirectly, to the Federal Government.

(c) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good-faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) *When notice to the submitter is required.* (1) The component must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4 but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the component may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(e) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The component determines that the information is exempt under the FOIA and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600.

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such case, the component must give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(f) *Submitter's opportunity to object to disclosure.* (1) The component must specify a reasonable time period within which the submitter must respond to the notice referenced in paragraph (d) of this section.

(2) If a submitter objects to disclosure of any portion of the records, the submitter must provide the component with a detailed written statement that specifies all grounds for withholding the particular information. The submitter must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The component is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose over submitter's objection.* If a component decides to disclose confidential commercial information over the objection of a submitter, the component will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the component intends to release them; and

(3) A disclosure date subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component will promptly notify the submitter.

(i) *Corresponding notice to requester.* The component must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1.9 Administrative appeals.

(a) *Appeals of adverse determinations.* If a requester is dissatisfied with a component's response to his or her request, the requester may submit a written appeal of that component's adverse determination denying the request in any respect.

(b) *Deadline for submitting an appeal.* Requesters must make the appeal in writing. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions transmitted, within 90 calendar days of the date of the adverse determination. Components adjudicating appeals will issue a decision on an appeal, within 20-working days of its date of receipt, plus any extension authorized by § 1.6(d).

(c) *Appeals officials.* Each component will provide for review of appeals by an official different from the official who made the initial determination(s).

(d) *Components' responses to appeals.* The decision on an appeal will be made in writing.

(1) If the component grants the appeal in part or in whole, it will inform the requester of any conditions surrounding the granting of the request *(e.g.,* payment of fees). If the component grants only a portion of the appeal, it will treat the portion not granted as a denial.

(2) If the component denies the appeal, either in part or in whole, it will inform the requester of that decision and of the following:

(i) The reasons for denial, including any FOIA exemptions asserted;

(ii) The name and title or position of each official responsible for denial of the appeal;

(iii) The availability of mediation services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation; and

(iv) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4)(B).

(e) *Legal sufficiency review of an appeal.* If a component makes the determination to deny an appeal in part or whole, that component will send a copy of all records to the Assistant General Counsel, General Law and Research Division, that the Office of the General Counsel (''OGC'') would need to examine to provide a legal sufficiency review of the component's decision.

(1) Frequently, these records will include a copy of the unredacted records requested, a copy of the records marked to indicate information the component proposes to withhold, all correspondence relating to the request, and a proposed determination letter. When the volume of records is so large as to make sending a copy impracticable, the component will enclose an informative summary and representative sample of those records. The component will not deny an appeal

until it receives concurrence from the Assistant General Counsel.

(2) With regard to appeals involving records of OIG, the records in question will be referred to the OIG Office of Counsel, which will coordinate all necessary reviews.

(f) *Submission of an appeal before judicial review.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 1.10 Authentication under Departmental Seal and certification of records.

(a) *In general.* Requests seeking either authenticated or certified copies of records will generally be processed under the FOIA. FOIA search, review, and duplication fees, where applicable, may also apply. However, because the costs for authenticated and certified copies are outside of the FOIA, the provisions of § 1.12 that call for the automatic waiver of FOIA fees under $25.00 do not apply.

(b) *Authentication of records.* (1) Authentication provides confirmation by a USDA officer that a certified copy of a record is what it purports to be, an accurate duplicate of the original record.

(2) When a request is received for an authenticated copy of a record that the component determines may be made available, under the FOIA, each component will send an authentic (*i.e.,* correct) copy of the record to the Assistant General Counsel in the OGC Division responsible for the applicable component program or other designee of the Secretary of Agriculture. The Assistant General Counsel for the applicable component program or other designee of the Secretary of Agriculture will confirm the authenticity of the record and affix the seal of the USDA to it.

(3) The Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of records for the Hearing Clerk. The Director of the National Appeals Division may authenticate copies of records for the National Appeals Division. The Inspector General is the official who authenticates copies of records for OIG.

(4) When any component determines that a record for which authentication is requested may be made available only in part, because certain portions of it are exempt from release under the FOIA, the component will process the record under the FOIA and make any needed redactions, including notations on the record as to the FOIA exemption(s) which require(s) the removal of the information redacted. In such an instance, the component will supply a copy of the record both in its unredacted state and in its redacted state to the party authorized to perform authentication, along with a copy of the proposed determination letter regarding the withholding of the information redacted.

(5) The cost for authentication of records is $10.00 each.

(c) *Certification of records.* (1) Certification is the procedure by which a USDA official confirms that a copy of a record is a true reproduction of the original.

(2) When a request is received for a certified copy of a record that the component determines may be made available under the FOIA, each component will prepare a correct copy and a statement attesting that the copy is a true and correct copy.

(3) When any component determines that a record for which a certified copy is requested may be made available only in part, because certain portions of it are exempt from release under the FOIA, the component will process the record under the FOIA and make any needed redactions, including notations on the record as to the FOIA exemption(s) which require(s) the removal of the information redacted.

(4) The cost for certification of records is $5.00 each.

§ 1.11 Preservation of records.

Components will preserve all correspondence and records relating to requests and appeals received under this subpart, as well as copies of all requested records, until disposition or destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the NARA. Agency records will not be disposed of, or destroyed, while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 1.12 Fees and fee schedule.

(a) *Authorization to set FOIA fees.* The Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all components of the USDA regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A of this subpart.

(b) *In general.* Components will charge for processing requests under the FOIA in accordance with the provisions of appendix A of this subpart and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Fee Guidelines'').

(c) *Guidance for lowering FOIA fees.* Components will ensure that searches, review, and duplication are conducted in the most efficient and least expensive manner practicable.

(d) *Communicating with requesters on fee issues.* In order to resolve any fee issues that arise under this subpart, a component may contact a requester for additional information.

(e) *Notifying requesters of estimated fees.* When a component determines or estimates that the processing of a FOIA request will incur chargeable FOIA fees, in accordance with appendix A of this subpart and the OMB Fee Guidelines, the component will notify the requester in writing of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated.

(f) *Requester commitment to pay estimated fees.* In cases in which a requester has been notified that the processing of his or her request will incur chargeable FOIA fees, the component providing such notification will not begin processing the request until the requester commits in writing to pay the actual or estimated total fee, or designates the amount of fees that he or she is willing to pay, or in the case of a requester who has not yet been provided with his or her statutory entitlements, designates that he or she seeks only that which can be provided by these statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount he or she is willing to pay.

(g) *Tolling of request for fee issues.* If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester is willing to pay. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(h) *Assisting requesters wishing to lower fees.* Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(i) *Timing of Bills for Collection.* Except in instances where advance payment is required, or where requesters have previously failed to pay a properly charged FOIA fee within 30

calendar days of the billing date, components may issue Bills for Collection for FOIA fees owed at the same time that they issue their responses to FOIA requests.

(j) *Advance payment of FOIA fees when estimated fees exceed $250.00.* When a component determines or estimates that a total fee to be charged for the processing of a FOIA request is likely to exceed $250.00, it may require the requester to make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. However, a component may elect to process a request prior to collecting fees exceeding $250.00 when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(k) *Special services.* For services not covered by the FOIA or by appendix A of this subpart, as described in § 1.10, components may set their own fees in accordance with applicable law. Although components are not required to provide special services, such as providing multiple copies of the same record, or sending records by means other than first class mail, if a component chooses to do so as a matter of administrative discretion, the direct costs of these services will be charged.

(l) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30 calendar day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involves. Multiple requests involving unrelated matters will not be aggregated for fee purposes.

(m) *Payment of FOIA fees.* Requesters must pay FOIA fees by check or money order made payable to the Treasury of the United States. Components are not required to accept payments in installments.

(n) *Failure to pay properly charged fees.* When a requester has previously failed to pay a properly charged FOIA fee to any component within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(o) *Restrictions on charging fees.* (1) If a component fails to comply with the statutory time limits in which to respond to a request, as provided in § 1.6(b), and if unusual circumstances, as that term is defined by the FOIA, apply to the processing of the request, as discussed in § 1.6(d), it may not charge search fees for the processing of the request, or duplication fees for the processing of the request if the requester is classified as an educational institution requester, a noncommercial scientific institution requester, or a representative of the news media, as defined in appendix A of this subpart, unless:

(i) The component notifies the requester, in writing, within the statutory 20-working day time period, that unusual circumstances, as that term is defined by the FOIA, apply to the processing of the request;

(ii) More than 5,000 pages are necessary to respond to the request; and

(iii) The component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(2) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(p) *Waivers of chargeable fees.* (1) *In general.* Records responsive to a request will be furnished without charge or at a reduced rate below that established in Table 1 of appendix A of this subpart, where a component determines, based on available evidence, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest as defined in paragraph (p)(3) of this section, because it is likely to contribute significantly to public understanding of the operations or activities of the government, and;

(ii) Disclosure of the information is not primarily in the commercial interest of the requester as defined in paragraph (p)(4) of this section.

(2) *Adjudication of fee waivers.* Each fee waiver request is judged on its own merit.

(3) *Factors for consideration of public interest.* In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, components will consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the requester's individual understanding. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media, as defined in appendix A of this subpart, will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant degree. However, components will not make value judgments about whether the information at issue is ''important'' enough to be made public.

(4) *Factors for consideration of commercial interest.* In deciding whether disclosure of the requested information is in the requester's commercial interest, components will consider the following two factors:

(i) Components will identify any commercial interest of the requester, as defined in appendix A of this subpart. Requesters may be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily will presume that where a news media requester has satisfied the public interest standard, the public

interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) *Partial fee waivers.* Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records only.

(6) *Timing of requests for fee waivers.* Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced in paragraph (p)(3) of this section. A requester may submit a fee waiver request later so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

Appendix A to Subpart A—Fee Schedule

Section 1. In General. This schedule sets forth fees to be charged for providing copies of records—including photographic reproductions, microfilm, maps and mosaics, and related services—requested under the Freedom of Information Act (''FOIA''). The fees set forth in this schedule are applicable to all components of the USDA. Further information about fees and fee waivers is provided in 7 CFR 1.12 Fees and Fee Waivers.

Section 2. Definitions.

(a) *Types of FOIA fees.* The FOIA defines the following types of FOIA fees that may be charged for responding to FOIA requests.

(1) *Search fees.*

(i) *Searching* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(ii) Search time is charged in quarter-hour increments within the USDA, and includes the *direct costs* incurred by a component in searching for records responsive to a request. It does not include overhead expenses such as the costs of space and heating or lighting of the facility in which the records are maintained.

(iii) Components may charge for time spent searching for requested records even if they do not locate any responsive records or if they determine that the records that they locate are entirely exempt from disclosure.

(iv) USDA components will charge for search time at the actual salary rate of the individual who conducts the search, plus 16 percent of the salary rate (to cover benefits). This rate was adopted for consistency with the Uniform Freedom of Information Act Fee Schedule and Guidelines (''OMB Fee Guidelines'') that state that agencies should charge fees that recoup the full allowable direct costs that they incur in searching for responsive records.

(v) Search time also includes the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Components will notify requesters of the costs of creating such a program, and requesters must agree to pay the associated costs before these costs may be incurred.

(2) *Review fees.*

(i) *Reviewing* is the process of examining records located in response to a request in order to determine whether any portion of the records is exempt from disclosure. The process of review also includes the process of preparing records for disclosure, for example, doing all that is necessary to redact them and prepare them for release. Review time also includes time spent considering any formal objection to disclosure of responsive records made by a business submitter as discussed in 7 CFR 1.8 Requirements for processing requests seeking business information. However, it does not include time spent resolving general legal or policy issues regarding the application of the nine FOIA exemptions.

(ii) Review time is charged in quarter-hour increments within the USDA, and includes the *direct costs* incurred by a component in preparing records responsive to a request for disclosure. It does not include overhead expenses such as the costs of space and heating or lighting of the facility in which the records are maintained.

(iii) USDA components may charge for time spent reviewing requested records even if they determine that the records reviewed are entirely exempt from disclosure.

(iv) USDA components will charge for review time at the actual salary rate of the individual who conducts the review, plus 16 percent of the salary rate (to cover benefits). This rate was adopted for consistency with the OMB Fee Guidelines that state that agencies should charge fees that recoup the full allowable direct costs that they incur in reviewing records for disclosure.

(v) Review time also includes the direct costs associated with the cost of computer programming designed to facilitate a manual review of the records, or to perform electronic redaction of responsive records, particularly when records are maintained in electronic form. Components will notify requesters of the costs performing such programming, and requesters must agree to pay the associated costs before these costs may be incurred.

(3) *Duplication fees.*

(i) *Duplicating* is the process of producing copies of records or information contained in records requested under the FOIA. Copies can take the form of paper, audiovisual materials, or electronic records, among other forms.

(ii) Duplication is generally charged on a per-unit basis. The duplication of paper records will be charged at a rate of $.05 per page within the USDA. The duplication of records maintained in other formats will include all *direct costs* incurred by a component in performing the duplication, including any costs associated in acquiring special media, such as CDs, disk drives, special mailers, and so forth, for transmitting the requested records or information. It does not include overhead expenses such as the costs of space and heating or lighting of the facility in which the records are maintained.

(iii) Duplication generally does not include the cost of the time of the individual making the copy. This time is generally factored into the per page cost of duplication. However, when duplication requires the handling of fragile records, or paper records that cannot be safely duplicated in high-speed copiers, components may also charge for the time spent duplicating these records. In such an instance, the cost of this time will be added to the per-page charge, and an explanation provided to the requester in the component's itemization of FOIA fees charges. Components may describe this time as time spent in duplicating fragile records.

(iv) USDA components will charge for time spent in duplicating fragile records at the actual salary rate of the individual who performs the duplication, plus 16 percent of the salary rate (to cover benefits). This rate was adopted for consistency with the OMB Fee Guidelines that state that agencies should charge fees that recoup the full allowable direct costs that they incur in duplicating requested records.

(v) Where paper records must be scanned in order to comply with a requester's preference to receive the records in an electronic format, duplication costs will also include the direct costs associated with scanning those materials, including the time spent by the individual performing the scanning. Components may describe this time as time spent in scanning paper records.

(vi) However, when components ordinarily scan paper records in order to review and/or redact them, the time required for scanning records will not be included in duplication fees, but in review fees, when these are applicable. When components that ordinarily scan paper records in order to review and/or redact them release records in an electronic format to requesters who are not to be charged review fees, duplication fees will not include the time spent in scanning paper records. In such instances, duplication fees may only include the direct costs of reproducing the scanned records. In such instances, components may not charge duplication fees on a per-page basis.

(b) *Categories of FOIA requesters for fee purposes.* The FOIA defines the following types of requests and requesters for the charging of FOIA fees.

(1) *Commercial use requests.*

(i) *Commercial use requests* are requests for information for a use or a purpose that furthers commercial, trade or profit interests, which can include furthering those interests through litigation. Components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component may provide the

requester a reasonable opportunity to submit further clarification. A component's decision to place a request in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(ii) Commercial requests will be charged applicable search fees, review, and duplication fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to a commercial request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge search fees for the processing of the request. It may, however, still charge applicable review and duplication fees.

(iv) If a component fails to comply with the statutory time limits in which to respond to a commercial request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge any search fees for the processing of the request, as well as any applicable review and duplication fees. Otherwise, it may only charge applicable review and duplication fees.

(2) *Educational institution requesters.*

(i) *Educational institution requesters* are requesters who are affiliated with a school that operates a program of scholarly research, such as a preschool, a public or private elementary or secondary school, an institution of undergraduate education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education. To be in this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. Records sought by students at an educational institution for use in fulfilling their degree requirements may qualify if the requester articulates a clear relationship to his or her coursework. Students must document how the records they are requesting will further the scholarly research aims of the institution in question.

(ii) Educational institution requesters are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplicating of any additional pages of responsive records released. They may not be charged search or review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to an educational use request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge duplication fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to an educational use request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge duplication for the processing of the request. Otherwise, it may not charge duplication fees.

(3) *Noncommercial scientific institution requesters.*

(i) *Noncommercial scientific institution requesters* are requesters who are affiliated with an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1)(i) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(ii) Noncommercial scientific institution requesters are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplicating of any additional pages of responsive records released. They may not be charged search or review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to a noncommercial scientific institution request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge duplication fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to a noncommercial scientific institution request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge duplication for the processing of the request. Otherwise, it may not charge duplication fees.

(4) *Representatives of the news media.*

(i) *Representative of the news media* is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public, including news organizations that disseminate solely on the internet. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components will also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester will not be considered of commercial use.

(ii) Representatives of the news media are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplication of any additional pages of responsive records released. They may not be charged search or review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to a news-media use request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge duplication fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to a news-media request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could

effectively limit the scope of the request, the component may charge duplication for the processing of the request. Otherwise, it may not charge duplication fees.

(5) *All other requesters.*

(i) *All other requesters* are individuals and entities who do not fall into any of the four categories described in Section 2(b) paragraphs (1), (2), (3) and (4) of this appendix. Requesters seeking information for personal use, public interest groups, and nonprofit organizations are examples of requesters who might fall into this group.

(ii) All other requesters are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplicating of any additional pages of responsive records released. All other requesters are also entitled to receive 2 hours of search time without charge. Following the exhaustion of this entitlement, they may be charged search fees for any remaining search time required to locate the records requested. They may not be charged review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to an all-other request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge search fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to an all-other request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge search fees for the processing of the request as well as any applicable duplication fees. Otherwise, it may only charge applicable duplication fees.

Section 3. Charging fees.

(a) *In general.* When responding to FOIA requests, components will charge all applicable FOIA fees that exceed the USDA charging threshold, as provided in paragraph (b) of this section, unless a waiver or reduction of fees has been granted under 7 CFR 1.12(p), or statutory time limits on processing are not met, and when unusual or exceptional circumstances apply, components do not meet all of the three conditions for charging as set forth in 7 CFR 1.12(o).

(b) *USDA fee charging threshold.* The OMB Fee Guidelines state that agencies will not charge FOIA fees if the cost of collecting the fee would be equal to or greater than the fee itself. This limitation applies to all requests, including those seeking records for commercial use. At the USDA, the cost of collecting a FOIA fee is currently established as $25.00. Therefore, when calculating FOIA fees, components will charge requesters all applicable FOIA fees when these fees equal or exceed $25.01.

(c) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(d) *NARA retrieval fees.* For requests that require the retrieval of records stored by a component at a Federal records center operated by the National Archives and Records Administration (''NARA''), additional costs will be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(e) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires a component to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that program.

(f) *Social Security Numbers and Tax Identification Numbers.* Components may not require requesters to provide Social Security Numbers or Tax Identification Numbers in order to pay FOIA fees due.

TABLE 1 TO APPENDIX A TO SUBPART A—FOIA FEE SCHEDULE

Type of request	Type of charge	Price
Commercial Requesters	Duplication charges	$0.05 per page.
		When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	Actual hourly salary rate of employee involved, plus 16% of the hourly salary rate.
	Review charges	Actual hourly salary rate of employee involved, plus 16% of the hourly salary rate.
Educational or Non-Commercial Scientific Requesters.	Duplication charges	No charge for first 100 pages, then $0.05 per page.
		When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	Free.
	Review charges	Free.
Representatives of the News Media.	Duplication charges	No charge for first 100 pages, then $0.05 per page
		When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	Free.
	Review charges	Free.
All Other Requesters	Duplication charges	No charge for first 100 pages, then $0.05 per page.
		When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	No charge for first two (2) hours of search time, then actual hourly salary rate of employee involved, plus 16% of the hourly salary rate.
	Review charges	Free.

Stephen L. Censky,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0738; Product Identifier 2019–SW–017–AD; Amendment 39–19749; AD 2019–19–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model EC225LP helicopters. This AD requires determining the total hours time-in-service (TIS) of the free wheel shafts of certain main rotor gearboxes (MGBs), replacing the MGB or right-hand side (RH) free wheel shaft, installing placard(s), and revising the Rotorcraft Flight Manual (RFM) for your helicopter. This AD was prompted by a report of wear of the ramps of the RH free wheel shaft. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD becomes effective November 5, 2019. The FAA must receive comments on this AD by December 20, 2019.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments 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 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0738; 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 AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, the FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. The FAA will consider all the comments received and may conduct additional rulemaking based on those comments.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2019–0152–E, dated June 28, 2019, to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Model EC 225 LP helicopters with MGB part number (P/N) 332A325001.XX, P/N 332A325002.XX, or P/N 332A325003.XX equipped with main reduction gear module P/N 332A325011.XX, P/N 332A325012.XX, or P/N 332A325013.XX in post-mod 07–53016 configuration installed, where XX represents any dash number, and with RH free wheel shaft P/N 332A322191.20 (16-roller free wheel) installed. EASA advises of a report of wear of the ramps and a broken roller cage of the RH free wheel shaft that were discovered during overhaul of an MGB. EASA states an investigation to determine the root cause of the occurrence is ongoing. EASA advises that this condition, if not corrected, could lead to reduced capacity to transfer one engine inoperative (OEI) power delivered by the right side engine following an event of in-flight shut down of the left side engine, resulting in reduced control of the helicopter.

Accordingly, the EASA AD requires repetitive replacement of the affected MGBs, installing placards that specify an operational limitation for OEI training flights, and introduces conditions for installing a replacement MGB. EASA states its AD is considered an interim action and further AD action may follow.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in the EASA AD. The FAA is issuing this AD after evaluating all information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Airbus Helicopters has issued Emergency Alert Service Bulletin No. 04A016, Revision 1, dated June 28, 2019, which specifies procedures to determine the total hours TIS of the free wheel shafts, a life limit schedule and instructions to replace the MGB or RH free wheel shaft, and instructions to install one or two labels (placards) in view of both pilots about OEI training procedures.

AD Requirements

This AD requires determining the total hours TIS of each free wheel shaft. For the purpose of this AD, if the total hours TIS of the RH and LH free wheel shafts are different, the greater number of total hours TIS will be considered as the RH free wheel shaft total hours TIS. If the RH free wheel shaft has accumulated 1,000 or more total hours TIS, or before the RH free wheel shaft exceeds 1,000 total hours TIS, this AD requires replacing the MGB with an airworthy MGB or replacing the RH free wheel shaft. This AD also requires installing placard(s) in full view of both pilots and revising the RFM for your helicopter with OEI training procedures pertaining to the ''TRAINING IDLE'' switches. As an option, this AD specifies installing alternate MGB configurations that would constitute terminating action for the requirements of this AD.

Differences Between This AD and the EASA AD

The EASA AD requires repetitive replacement of the MGB, whereas this AD requires an initial replacement of the MGB instead. The FAA plans to publish a notice of proposed rulemaking to give the public an opportunity to comment on this longer-term requirement. This AD requires revising the RFM for your helicopter, whereas the EASA AD does not.

Interim Action

The FAA considers this AD to be an interim action. Repetitively replacing the MGB at a longer interval is also necessary. However, the planned compliance time for the repetitive replacement would allow enough time to provide notice and opportunity for prior public comment on the merits of the replacement.

Costs of Compliance

The FAA estimates that this AD affects 23 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Determining the hours TIS of each free wheel shaft takes about 0.25 work-hour, for an estimated cost of $21 per helicopter and $483 for the U.S. fleet. Installing placard(s) and revising the RFM for your helicopter takes about 0.5 work-hour for an estimated cost of $43 per helicopter and $989 for the U.S. fleet. Replacing an MGB takes about 40 work-hours and parts cost about $850,000 (overhauled), for an estimated cost of $853,400.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the required corrective actions must be completed within 10 hours TIS. Therefore, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reason(s) stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

The FAA prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

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):

2019–19–13 Airbus Helicopters: Amendment 39–19749; Docket No. FAA–2019–0738; Product Identifier 2019–SW–017–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC225LP helicopters, certificated in any category, with a main rotor gearbox (MGB) part number (P/N) 332A325001.XX, P/N 332A325002.XX, or P/N 332A325003.XX, with a main reduction gear module (main module), with modification (MOD) 07–53016 (16-roller free wheel of free wheel shaft P/N 332A322191.20) installed, P/N 332A325011.XX, P/N 332A325012.XX, or P/N 332A325013.XX, with ''XX'' denoting any dash number.

(b) Unsafe Condition

This AD defines the unsafe condition as wear of the ramps of the right-hand side (RH) free wheel shaft. During an in-flight shutdown of the left-hand side (LH) engine, this condition could result in reduced ability to transfer one engine inoperative (OEI) power from the RH engine to the main rotor, and subsequent reduced control of the helicopter.

(c) Effective Date

This AD becomes effective November 5, 2019.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 10 hours time-in-service (TIS), determine the total hours TIS of the RH and LH free wheel shafts since new or last RH free wheel shaft replacement during overhaul. For the purpose of this AD, if the total hours TIS of the RH and LH free wheel shafts are different, use the greater number of total hours TIS as the RH free wheel shaft total hours TIS.

(i) If the total hours TIS of the RH free wheel shaft is 1,000 or more hours TIS, before further flight, replace the MGB or replace the RH free wheel shaft under the supervision of an Airbus Helicopter Specialist that is qualified for this replacement.

(ii) If the total hours TIS of the RH free wheel shaft is less than 1,000 hours TIS, before exceeding 1,000 hours TIS, replace the MGB or replace the RH free wheel shaft under the supervision of an Airbus Helicopter Specialist that is qualified for this replacement.

(2) *Within 10 hours TIS:*

(i) Install one or two self-adhesive placards on the instrument panel in full view of the pilot and co-pilot with 6-millimeter red letters on a white background that state the information contained in Figure 1 to paragraph (e)(2)(i) of this AD. Refer to Figure 1 of Airbus Helicopters Emergency Alert Service Bulletin No. 04A016, Revision 1, dated June 28, 2019, for an example of this placard.

The use of ENG1 "TRAINING IDLE" switch is prohibited.

ENG2 "TRAINING IDLE" switch must be systematically used.

Figure 1 to Paragraph (e)(2)(i)

(ii) After installing the placard(s) required by paragraph (e)(2)(i) of this AD, before further flight, revise the limitations section of the Rotorcraft Flight Manual (RFM) for your helicopter by adding the information in Figure 2 to paragraph (e)(2)(ii) of this AD, by inserting a copy of this AD, or by making pen-and-ink changes. This action may be done by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD by following 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439

The use of ENG1 "TRAINING IDLE" switch is prohibited.

ENG2 "TRAINING IDLE" switch must be systematically used.

Accomplishment of OEI training flight is allowed, provided that only ENG2 "TRAINING IDLE" switch is used for that purpose.

Figure 2 to Paragraph (e)(2)(ii)

(3) After the effective date of this AD, do not install an MGB P/N 332A325001.XX, P/N 332A325002.XX, or P/N 332A325003.XX, with a main reduction gear module (main module), with modification (MOD) 07–53016 (16-roller free wheel of free wheel shaft P/N 332A322191.20) installed, P/N 332A325011.XX, P/N 332A325012.XX, or P/N 332A325013.XX, with ''XX'' denoting any dash number unless the requirements of paragraph (e)(2) of this AD have been accomplished.

(4) As an optional terminating action for the requirements of this AD, install MGB P/N 332A325001.XX, P/N 332A325002.XX, or P/N 332A325003.XX, with a main module (12-roller free wheel), without MOD 07–53016 installed, P/N 332A325011.XX, P/N 332A325012.XX, or P/N 332A325013.XX, with ''XX'' denoting any dash number.

(f) Credit for Previous Actions

Actions accomplished before the effective date of this AD by following the procedures specified in Airbus Helicopters Emergency Alert Service Bulletin No. 04A016, Revision 1, dated June 28, 2019, are considered acceptable for compliance with the corresponding requirements specified in paragraphs (e)(1) through (e)(2)(i) of this AD.

(g) Special Flight Permits

A one-time special flight permit to a maintenance facility may be permitted.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to Rao Edupuganti, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Airbus Helicopters Emergency Alert Service Bulletin No. 04A016, Revision 1, dated June 28, 2019, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in

this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) No. 2019–0152–E, dated June 28, 2019. You may view the EASA AD on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0738.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

Issued in Fort Worth, Texas, on September 30, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–22567 Filed 10–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31276; Amdt. No. 3873]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 21, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops—M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html* .

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and

contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 4, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 7 November 2019

Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (RNP) Z RWY 6, Amdt 1
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (RNP) Z RWY 24, Amdt 3
Gunnison, CO, Gunnison-Crested Butte Rgnl, ILS OR LOC RWY 6, Amdt 5B
St Petersburg-Clearwater, FL, St Petersburg-Clearwater Intl, RNAV (GPS)-A, Amdt 2A, CANCELLED
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 5, Orig-A
Atlanta, GA, Paulding Northwest Atlanta, RNAV (GPS)-A, Orig-A, CANCELLED
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS)-A, Orig-A, CANCELLED
Lawrenceville, GA, Gwinnett County—Briscoe Field, RNAV (GPS)-A, Orig-B, CANCELLED
New York, NY, John F Kennedy Intl, ILS OR LOC RWY 22L, ILS RWY 22L (CAT II), ILS RWY 22L (CAT III), Amdt 25
New York, NY, John F Kennedy Intl, ILS OR LOC RWY 22R, Amdt 3
New York, NY, John F Kennedy Intl, RNAV (GPS) Z RWY 13L, Orig

Effective 5 December 2019

Atka, AK, Atka, RNAV (GPS)-A, Orig-A
Egegik, AK, Egegik, RNAV (GPS) RWY 12, Amdt 1B
Egegik, AK, Egegik, RNAV (GPS) RWY 30, Amdt 1B
Gustavus, AK, Gustavus, RNAV (GPS) RWY 29, Amdt 3A
Klawock, AK, Klawock, Takeoff Minimums and Obstacle DP, Amdt 4A
Port Heiden, AK, Port Heiden, ITAWU ONE, Graphic DP
Port Heiden, AK, Port Heiden, NDB/DME RWY 5, Amdt 3, CANCELLED
Port Heiden, AK, Port Heiden, NDB/DME RWY 13, Amdt 3, CANCELLED
Port Heiden, AK, Port Heiden, RNAV (GPS) RWY 6, Amdt 1
Port Heiden, AK, Port Heiden, RNAV (GPS) RWY 14, Amdt 1
Port Heiden, AK, Port Heiden, Takeoff Minimums and Obstacle DP, Amdt 3
Soldotna, AK, Soldotna, RNAV (GPS) RWY 7, Amdt 1A
Window Rock, AZ, Window Rock, RNAV (GPS) RWY 3, Amdt 2
Window Rock, AZ, Window Rock, RNAV (GPS)-B, Amdt 1
Window Rock, AZ, Window Rock, Takeoff Minimums and Obstacle DP, Amdt 2
Window Rock, AZ, Window Rock, VOR–A, Amdt 1
Apple Valley, CA, Apple Valley, RNAV (GPS) RWY 18, Amdt 1
Apple Valley, CA, Apple Valley, RNAV (GPS) Y RWY 18, Amdt 1B, CANCELLED
Hawthorne, CA, Jack Northrop Field/Hawthorne Muni, RNAV (GPS) RWY 25, Amdt 2
Rio Vista, CA, Rio Vista Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Plainville, CT, Robertson Field, RNAV (GPS) RWY 2, Amdt 1
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 10, Amdt 2A
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 1, Amdt 1A
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 19, Amdt 1A
Gainesville, GA, Lee Gilmer Memorial, ILS OR LOC RWY 5, Orig-B
LaGrange, GA, LaGrange-Callaway, Takeoff Minimums and Obstacle DP, Amdt 2
Cambridge, MN, Cambridge Muni, RNAV (GPS) RWY 34, Orig-C
Monticello, MO, Lewis County Rgnl, RNAV (GPS) RWY 18, Orig-D
Hastings, NE, Hastings Muni, RNAV (GPS) RWY 14, Orig-C
Hastings, NE, Hastings Muni, RNAV (GPS) RWY 32, Orig-B
Claremont, NH, Claremont Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 18, Amdt 11
Dayton, OH, James M Cox Dayton Intl, RNAV (GPS) RWY 18, Amdt 2
Henryetta, OK, Henryetta Muni, NDB RWY 36, Amdt 3, CANCELLED
Henryetta, OK, Henryetta Muni, RNAV (GPS) RWY 36, Orig-C
Bridgeport, TX, Bridgeport Muni, RNAV (GPS) RWY 18, Orig-A
Corpus Christi, TX, Corpus Christi Intl, ILS OR LOC RWY 36, Amdt 14A
Corpus Christi, TX, Corpus Christi Intl, VOR OR TACAN RWY 18, Amdt 28C
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, RNAV (GPS) Y RWY 31R, Amdt 3A
Rockport, TX, Aransas Co, VOR OR TACAN–A, Amdt 9B
Richmond, VA, Richmond Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Boscobel, WI, Boscobel, RNAV (GPS) RWY 25, Amdt 2
Boscobel, WI, Boscobel, VOR/DME RWY 25, Orig, CANCELLED
Madison, WI, Dane County Rgnl-Truax Field, ILS OR LOC RWY 18, ILS RWY 18 (SA CAT I), ILS RWY 18 (SA CAT II), Amdt 2A
Prairie Du Sac, WI, Sauk-Prairie, RNAV (GPS) RWY 18, Amdt 1
Prairie Du Sac, WI, Sauk-Prairie, RNAV (GPS) RWY 36, Amdt 1
Reedsburg, WI, Reedsburg Muni, RNAV (GPS) RWY 36, Amdt 1
Reedsburg, WI, Reedsburg Muni, VOR–A, Amdt 6
Richland Center, WI, Richland, RNAV (GPS)-A, Amdt 5

[FR Doc. 2019–22801 Filed 10–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31277; Amdt. No. 3874]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 21, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops—M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 4, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
7–Nov–19	TN	Smithville	Smithville Muni	9/5548	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	OR	Bend	Bend Muni	9/5587	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	OR	Bend	Bend Muni	9/5588	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	OR	Mc Minnville	Mc Minnville Muni	9/5635	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	PA	Ebensburg	Ebensburg	9/5652	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	SC	Pelion	Lexington County	9/5657	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	SC	Pelion	Lexington County	9/5658	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	IA	Algona	Algona Muni	9/5774	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	OH	Mount Vernon	Knox County	9/5838	9/17/19	This NOTAM, published in Docket No. 31275, Amdt No. 3872, TL 19–23 (84 FR 51967; October 1, 2019), is hereby rescinded in its entirety.
7–Nov–19	FL	Zephyrhills	Zephyrhills Muni	9/0295	9/25/19	RNAV (GPS) RWY 23, Orig.
7–Nov–19	OH	Lima	Lima Allen County	9/0884	9/18/19	RNAV (GPS) RWY 10, Amdt 1A.
7–Nov–19	OK	Hinton	Hinton Muni	9/0887	9/18/19	RNAV (GPS) RWY 35, Amdt 1A.
7–Nov–19	FL	Bartow	Bartow Executive	9/1032	9/20/19	RNAV (GPS) RWY 5, Orig-C.
7–Nov–19	FL	Bartow	Bartow Executive	9/1040	9/20/19	RNAV (GPS) RWY 23, Orig-C.
7–Nov–19	TX	Beaumont/Port Arthur	Jack Brooks Rgnl	9/1320	9/20/19	ILS OR LOC RWY 12, Amdt 23C.
7–Nov–19	IN	Sheridan	Sheridan	9/1331	9/20/19	GPS RWY 5, Orig.
7–Nov–19	IN	Sheridan	Sheridan	9/1333	9/20/19	GPS RWY 23, Orig.
7–Nov–19	FL	Bartow	Bartow Executive	9/1710	9/20/19	RNAV (GPS) RWY 27R, Amdt 1B.
7–Nov–19	MI	Muskegon	Muskegon County	9/1781	9/20/19	ILS OR LOC RWY 32, Amdt 20.
7–Nov–19	TX	Austin	Austin-Bergstrom Intl	9/3512	9/23/19	ILS OR LOC RWY 17R, Amdt 5B.
7–Nov–19	TN	Smithville	Smithville Muni	9/5019	9/26/19	RNAV (GPS) RWY 6, Amdt 3A.
7–Nov–19	IA	Algona	Algona Muni	9/5031	9/26/19	RNAV (GPS) RWY 30, Amdt 1C.
7–Nov–19	TX	Big Spring	Big Spring Mc Mahon—Wrinkle.	9/5040	9/26/19	RNAV (GPS) RWY 35, Amdt 1.
7–Nov–19	TN	Waverly	Humphreys County	9/5539	9/20/19	RNAV (GPS) RWY 3, Orig-A.
7–Nov–19	TN	Waverly	Humphreys County	9/5540	9/20/19	RNAV (GPS) RWY 21, Orig-A.
7–Nov–19	TN	Camden	Benton County	9/5541	9/20/19	RNAV (GPS) RWY 4, Orig-A.
7–Nov–19	TN	Camden	Benton County	9/5542	9/20/19	RNAV (GPS) RWY 22, Orig-D.
7–Nov–19	TN	Copperhill	Martin Campbell Field	9/5546	9/20/19	RNAV (GPS) RWY 20, Orig-A.
7–Nov–19	VA	Richmond	Richmond Executive-Chesterfield County.	9/5558	9/20/19	RNAV (GPS) RWY 15, Amdt 1C.
7–Nov–19	PA	Lebanon	Keller Brothers	9/5636	9/20/19	RNAV (GPS) RWY 7, Orig-B.
7–Nov–19	MI	Benton Harbor	Southwest Michigan Rgnl	9/5655	9/18/19	RNAV (GPS) RWY 10, Amdt 1C.
7–Nov–19	SC	Saluda	Saluda County	9/5659	9/20/19	RNAV (GPS) RWY 1, Orig-A.
7–Nov–19	SC	Bamberg	Bamberg County	9/5668	9/20/19	RNAV (GPS) RWY 5, Orig-B.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
7–Nov–19	SC	Bamberg	Bamberg County	9/5669	9/20/19	RNAV (GPS) RWY 23, Orig-B.
7–Nov–19	SC	Aiken	Aiken Rgnl	9/5670	9/20/19	RNAV (GPS) RWY 25, Amdt 1D.
7–Nov–19	SC	Bennettsville	Marlboro County Jetport—H E Avent Field.	9/5671	9/20/19	RNAV (GPS) RWY 7, Amdt 1A.
7–Nov–19	SC	Bennettsville	Marlboro County Jetport—H E Avent Field.	9/5672	9/20/19	RNAV (GPS) RWY 25, Amdt 1A.
7–Nov–19	SD	Gregory	Gregory Muni—Flynn Fld	9/5673	9/18/19	RNAV (GPS) RWY 13, Orig-A.
7–Nov–19	NC	Charlotte	Charlotte/Douglas Intl	9/5675	9/20/19	ILS OR LOC RWY 18L, Amdt 10.
7–Nov–19	NC	Charlotte	Charlotte/Douglas Intl	9/5677	9/20/19	ILS OR LOC RWY 23, Amdt 3D.
7–Nov–19	SD	Aberdeen	Aberdeen Rgnl	9/5681	9/18/19	ILS OR LOC RWY 31, Amdt 13A.
7–Nov–19	NE	Tecumseh	Tecumseh Muni	9/5682	9/18/19	RNAV (GPS) RWY 15, Orig-A.
7–Nov–19	NE	Tecumseh	Tecumseh Muni	9/5683	9/18/19	RNAV (GPS) RWY 33, Orig-A.
7–Nov–19	TX	Kenedy	Kenedy Rgnl	9/5684	9/18/19	RNAV (GPS) RWY 16, Orig-C.
7–Nov–19	TX	Kenedy	Kenedy Rgnl	9/5685	9/18/19	RNAV (GPS) RWY 34, Orig-B.
7–Nov–19	TX	La Grange	Fayette Rgnl Air Center	9/5686	9/18/19	RNAV (GPS) RWY 16, Amdt 2B.
7–Nov–19	TX	La Grange	Fayette Rgnl Air Center	9/5693	9/18/19	RNAV (GPS) RWY 34, Amdt 2B.
7–Nov–19	TX	Carthage	Panola County-Sharpe Field.	9/5694	9/18/19	RNAV (GPS) RWY 17, Orig-A.
7–Nov–19	TX	Carthage	Panola County-Sharpe Field.	9/5697	9/18/19	RNAV (GPS) RWY 35, Orig-A.
7–Nov–19	TX	Burnet	Burnet Muni Kate Craddock Field.	9/5702	9/20/19	RNAV (GPS) RWY 19, Orig-A.
7–Nov–19	TX	Burnet	Burnet Muni Kate Craddock Field.	9/5705	9/20/19	RNAV (GPS) RWY 1, Orig-B.
7–Nov–19	TX	Big Spring	Big Spring Mc Mahon-Wrinkle.	9/5709	9/18/19	RNAV (GPS) RWY 6, Orig-A.
7–Nov–19	TX	Big Spring	Big Spring Mc Mahon-Wrinkle.	9/5715	9/18/19	RNAV (GPS) RWY 17, Amdt 1.
7–Nov–19	NH	Manchester	Manchester	9/5728	9/20/19	RNAV (GPS) RWY 24, Amdt 1B.
7–Nov–19	TX	Big Spring	Big Spring Mc Mahon-Wrinkle.	9/5730	9/18/19	RNAV (GPS) RWY 24, Orig-A.
7–Nov–19	TX	Brenham	Brenham Muni	9/5736	9/18/19	RNAV (GPS) RWY 16, Amdt 2B.
7–Nov–19	TX	Brenham	Brenham Muni	9/5738	9/18/19	RNAV (GPS) RWY 34, Amdt 2A.
7–Nov–19	TX	Brownwood	Brownwood Rgnl	9/5744	9/18/19	RNAV (GPS) RWY 35, Amdt 1A.
7–Nov–19	FL	Bartow	Bartow Executive	9/5752	9/20/19	RNAV (GPS) RWY 9L, Amdt 1C.
7–Nov–19	TX	San Antonio	Boerne Stage Field	9/5755	9/18/19	RNAV (GPS) RWY 17, Amdt 1B.
7–Nov–19	TX	San Antonio	Boerne Stage Field	9/5756	9/18/19	RNAV (GPS) RWY 35, Amdt 1A.
7–Nov–19	TX	Eagle Pass	Maverick County Memorial Intl.	9/5765	9/18/19	RNAV (GPS) RWY 13, Amdt 1A.
7–Nov–19	TX	Fort Worth	Bourland Field	9/5770	9/18/19	RNAV (GPS) RWY 17, Orig-A.
7–Nov–19	TX	Lockhart	Lockhart Muni	9/5771	9/18/19	RNAV (GPS) RWY 36, Orig-A.
7–Nov–19	TX	Lockhart	Lockhart Muni	9/5772	9/18/19	RNAV (GPS) RWY 18, Orig-A.
7–Nov–19	TX	Beaumont/Port Arthur	Jack Brooks Rgnl	9/5775	9/20/19	RNAV (GPS) RWY 16, Orig.
7–Nov–19	TX	Beaumont/Port Arthur	Jack Brooks Rgnl	9/5776	9/20/19	RNAV (GPS) RWY 30, Orig.
7–Nov–19	TX	Beaumont/Port Arthur	Jack Brooks Rgnl	9/5777	9/20/19	RNAV (GPS) RWY 34, Orig.
7–Nov–19	IA	Clarion	Clarion Muni	9/5778	9/18/19	RNAV (GPS) RWY 32, Orig.
7–Nov–19	TX	Madisonville	Madisonville Muni	9/5779	9/18/19	RNAV (GPS) RWY 18, Orig-B.
7–Nov–19	TX	Madisonville	Madisonville Muni	9/5780	9/18/19	RNAV (GPS) RWY 36, Orig-A.
7–Nov–19	TX	Bryan	Coulter Field	9/5781	9/18/19	RNAV (GPS) RWY 15, Amdt 1B.
7–Nov–19	TX	Bryan	Coulter Field	9/5782	9/18/19	RNAV (GPS) RWY 33, Amdt 1A.
7–Nov–19	TX	Navasota	Navasota Muni	9/5793	9/18/19	RNAV (GPS) RWY 17, Orig-B.
7–Nov–19	TX	Navasota	Navasota Muni	9/5794	9/18/19	RNAV (GPS) RWY 35, Orig-B.
7–Nov–19	TX	Winters	Winters Muni	9/5795	9/18/19	RNAV (GPS) RWY 17, Orig-A.
7–Nov–19	TX	Crosbyton	Crosbyton Muni	9/5798	9/18/19	RNAV (GPS) RWY 17, Amdt 1.
7–Nov–19	TX	Dallas	Addison	9/5804	9/18/19	ILS OR LOC RWY 33, Amdt 3A.
7–Nov–19	TX	Alice	Alice Intl	9/5808	9/18/19	RNAV (GPS) RWY 13, Amdt 1A.
7–Nov–19	WI	Boyceville	Boyceville Muni	9/5823	9/18/19	RNAV (GPS) RWY 8, Amdt 1B
7–Nov–19	WI	La Pointe	Major Gilbert Field	9/5845	9/18/19	RNAV (GPS) RWY 22, Orig-C.
7–Nov–19	WI	East Troy	East Troy Muni	9/5846	9/18/19	RNAV (GPS) RWY 8, Orig-C.
7–Nov–19	WI	East Troy	East Troy Muni	9/5847	9/18/19	RNAV (GPS) RWY 26, Orig-C.
7–Nov–19	WI	Fort Atkinson	Fort Atkinson Muni	9/5855	9/18/19	RNAV (GPS) RWY 3, Amdt 1.
7–Nov–19	WI	Fort Atkinson	Fort Atkinson Muni	9/5856	9/18/19	RNAV (GPS) RWY 21, Amdt 1.
7–Nov–19	WI	New Lisbon	Mauston-New Lisbon Union.	9/5857	9/18/19	RNAV (GPS) RWY 14, Orig-B.
7–Nov–19	WI	New Lisbon	Mauston-New Lisbon Union.	9/5858	9/18/19	RNAV (GPS) RWY 32, Orig-C.
7–Nov–19	WI	New Holstein	New Holstein Muni	9/5863	9/18/19	RNAV (GPS) RWY 14, Orig-B.
7–Nov–19	WV	Bluefield	Mercer County	9/5869	9/20/19	RNAV (GPS) RWY 23, Orig-B.
7–Nov–19	TX	Commerce	Commerce Muni	9/5871	9/18/19	RNAV (GPS) RWY 36, Orig-B.
7–Nov–19	WV	Bluefield	Mercer County	9/5872	9/20/19	RNAV (GPS) RWY 5, Orig.
7–Nov–19	TX	Llano	Llano Muni	9/5874	9/18/19	RNAV (GPS) RWY 17, Orig-A.
7–Nov–19	TX	Llano	Llano Muni	9/5875	9/18/19	RNAV (GPS) RWY 35, Orig-A.
7–Nov–19	TX	Wharton	Wharton Rgnl	9/5877	9/20/19	RNAV (GPS) RWY 14, Orig-A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
7–Nov–19	TX	Wharton	Wharton Rgnl	9/5878	9/20/19	RNAV (GPS) RWY 32, Orig-A.
7–Nov–19	TX	Marshall	Harrison County	9/5879	9/18/19	RNAV (GPS) RWY 15, Orig-B.
7–Nov–19	TX	Marshall	Harrison County	9/5880	9/18/19	RNAV (GPS) RWY 33, Orig-B.
7–Nov–19	TX	Atlanta	Hall-Miller Muni	9/5886	9/18/19	RNAV (GPS) RWY 5, Amdt 1A.
7–Nov–19	TX	Austin	Austin-Bergstrom Intl	9/5888	9/23/19	ILS OR LOC RWY 35L, Amdt 6A.
7–Nov–19	TX	Houston	Houston-Southwest	9/5908	9/18/19	RNAV (GPS) RWY 27, Amdt 1.
7–Nov–19	TX	New Braunfels	New Braunfels Rgnl	9/5919	9/18/19	RNAV (GPS) RWY 17, Orig-A.
7–Nov–19	TX	Brady	Curtis Field	9/5920	9/18/19	RNAV (GPS) RWY 17, Amdt 1B.
7–Nov–19	TX	Brady	Curtis Field	9/5921	9/18/19	RNAV (GPS) RWY 35, Amdt 1A.
7–Nov–19	OR	Mc Minnville	Mc Minnville Muni	9/6038	9/27/19	RNAV (GPS) RWY 22, Orig.
7–Nov–19	PA	Ebensburg	Ebensburg	9/6046	9/27/19	RNAV (GPS) RWY 25, Orig-D.
7–Nov–19	OH	Mount Vernon	Knox County	9/6073	9/27/19	RNAV (GPS) RWY 10, Amdt 1A.
7–Nov–19	TX	New Braunfels	New Braunfels Rgnl	9/7848	9/18/19	RNAV (GPS) RWY 35, Amdt 2A.

[FR Doc. 2019–22799 Filed 10–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, and 746

[Docket No. 191011–0062]

RIN 0694–AH90

Restricting Additional Exports and Reexports to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to further restrict exports and reexports of items to Cuba. Specifically, this rule amends the Cuba licensing policy in the EAR to establish a general policy of denial for leases of aircraft to Cuban state-owned airlines. This rule also amends License Exception Aircraft, Vessels and Spacecraft (AVS) to clarify that aircraft and vessels are not eligible for the license exception if they are leased to or chartered by a national of Cuba or a State Sponsor of Terrorism. Additionally, this rule amends the EAR to establish a general 10-percent *de minimis* level for Cuba. Finally, this rule revises License Exception Support for the Cuban People (SCP) to make the Cuban government and communist party ineligible for certain donations, removes an authorization for promotional items that generally benefits the Cuban government, and clarifies the scope of telecommunications items that the Cuban government may receive without a license. BIS is making these amendments to further restrict the Cuban government's access to items subject to the EAR, thereby supporting the Administration's national security and foreign policy decision to hold the Cuban regime accountable for its repression of the Cuban people and its support for the Maduro regime in Venezuela; the Cuban regime denies its people fundamental freedoms while keeping Maduro in power using Cuban military intelligence and state security services. These amendments are consistent with the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba, signed by the President on June 16, 2017.

DATES: This rule is effective October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Alan W. Christian, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security at (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2017, President Trump announced changes to U.S. policy toward Cuba intended to: Enhance compliance with United States law; channel funds toward the Cuban people and away from the regime; encourage the Cuban government to address oppression and human rights abuses; further the national security and foreign policy interests of the United States, as well as express solidarity with the Cuban people; and lay the groundwork to improve human rights, encourage the rule of law, foster free markets and free enterprise, and promote democracy in Cuba. The President's policy is stated in the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM–5), dated June 16, 2017 (82 FR 48875, October 20, 2017). NSPM–5 also directs the Secretary of Commerce, as well as the Secretaries of State and the Treasury, to take certain actions to implement the President's Cuba policy. On November 9, 2017, the Department of Commerce's Bureau of Industry and Security (BIS) and the Department of the Treasury's Office of Foreign Assets Control (OFAC) published rules in the **Federal Register** to implement certain portions of NSPM–5 (82 FR 51983 and 82 FR 51998, respectively). The Department of State also published the List of Restricted Entities and Subentities Associated with Cuba (Cuba Restricted List) (82 FR 52089), which is used by BIS in reviewing license applications submitted pursuant to the Export Administration Regulations (EAR) (15 CFR parts 730 through 774) and by OFAC in prohibiting certain direct financial transactions pursuant to the Cuban Assets Control Regulations (CACR) (31 CFR part 515). Additional entities and subentities have subsequently been added to the Cuba Restricted List (83 FR 57523, 84 FR 8939, 84 FR 17228, and 84 FR 36154). Please also see the Department of State's website at: *https://www.state.gov/cuba-sanctions/cuba-restricted-list/.*

On April 17, 2019, the White House announced that the Administration is holding the Cuban regime accountable for repressing the Cuban people and supporting the Maduro regime in Venezuela through multiple actions, including by restricting non-family travel to Cuba, or in other words, ''veiled tourism.'' BIS and OFAC published rules in the **Federal Register** on June 5, 2019, to implement restrictions on non-family travel to Cuba (84 FR 25986 and 84 FR 25992, respectively). Additionally, OFAC published a rule in the **Federal Register** on September 9, 2019, to remove certain authorizations for remittances to Cuba and amend the general license relating to ''U-turn'' financial transactions to eliminate the authorization to process such transactions and instead only allow the rejection of such transactions (84 FR 47121).

The Cuban government has generated revenue or otherwise benefited from

certain exports and reexports to Cuba. Consequently, BIS is amending the EAR to further restrict the Cuban government's access to items subject to the EAR, thereby supporting the Administration's policy to hold the Cuban regime accountable for its malign activities at home and abroad. Any party that violates the EAR may be subject to criminal and/or civil penalties specified in section 1760 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), and any other sanctions available under U.S. law.

Specific Amendments in This Rule

Cuba Licensing Policy

Consistent with the embargo of Cuba, BIS authorization in the form of a license or license exception is required for the export or reexport to Cuba of all items subject to the EAR. Section 746.2(b) of the EAR explains that license applications for the export or reexport to Cuba of items requiring a license are subject to a general policy of denial unless otherwise specified in that paragraph. This rule amends paragraph (b)(2)(v) to remove the general policy of approval for applications to export or reexport aircraft leased to Cuban state-owned airlines. Consequently, license applications to lease aircraft to Cuban state-owned airlines are now subject to the general policy of denial in § 746.2(b) of the EAR. BIS will also revoke licenses within seven days, through individual notifications to licensees pursuant to § 750.8 of the EAR, for aircraft leased to Cuban state-owned airlines under the former policy. BIS is making these changes because the Cuban government generates revenue from tourists that it transports on leased aircraft.

License Exception Aircraft, Vessels and Spacecraft (AVS)

Section 746.2(a)(1) of the EAR identifies the license exceptions, or portions thereof, that are available for exports and reexports to Cuba, including paragraphs (a) and (d) of License Exception AVS in § 740.15 for, respectively, certain aircraft and vessels on temporary sojourn.

Paragraph (a) of License Exception AVS authorizes the export or reexport to Cuba of certain aircraft on temporary sojourn, provided all of the associated terms and conditions are met. Paragraph (a)(3) identifies the criteria that must be met if a flight is to qualify as a temporary sojourn. This rule adds paragraph (a)(3)(x) to clarify that aircraft leased to or chartered by a Cuban national are not eligible for License Exception AVS. New paragraph (a)(3)(x) also clarifies that aircraft are not eligible for License Exception AVS if leased to or chartered by a national of a destination in Country Group E:1 (Terrorist supporting countries). Additionally, this rule adds Cuba to restrictions in paragraphs (a)(1)(i) and (ii) of License Exception AVS regarding the sale or transfer of operational control of foreign registered aircraft and to restrictions in paragraphs (a)(3)(iv) through (ix) of License Exception AVS regarding the operational control of foreign and U.S. registered aircraft. Instead of identifying Cuba by name, this rule adds references to Country Group E:2 (Unilateral embargo), which currently only includes Cuba. For consistency, this rule changes a reference to Cuba in paragraph (a)(2)(ii) of License Exception AVS to Country Group E:2. This rule also clarifies the existing list of aircraft eligible for paragraph (a)(2)(i) of License Exception AVS.

Paragraph (d) of License Exception AVS authorizes the export or reexport to Cuba of cargo vessels for hire on temporary sojourn, provided all of the associated terms and conditions are met. Paragraph (d)(3) identifies the criteria that must be met if a voyage is to qualify as a temporary sojourn. This rule adds paragraph (d)(3)(v) to clarify that vessels leased to or chartered by a Cuban national are not eligible for License Exception AVS. New paragraph (d)(3)(v) also clarifies that vessels are not eligible for License Exception AVS if leased to or chartered by a national of a destination in Country Group E:1. Additionally, this rule adds Cuba to the restriction in paragraphs (d)(1)(i) and (ii) of License Exception AVS regarding the sale or transfer of operational control of foreign flagged vessels and to restrictions in paragraphs (d)(2)(v) through (vii), (d)(3)(iv), and (d)(4)(v) through (vii) of License Exception AVS regarding the operational control of and related activities involving foreign and U.S. flagged vessels. As is done in paragraph (a), the changes to paragraph (d) reference Country Group E:2 instead of referencing Cuba by name.

License applications for the export or reexport of aircraft or vessels leased to or chartered by, or on the behalf of, the Cuban government, including state-owned airlines or other enterprises, will generally be denied pursuant to the licensing policy in § 746.2(b) of the EAR. License applications for aircraft or vessels leased to or chartered by other nationals of Cuba will be reviewed pursuant to the applicable licensing policy described in § 746.2(b) of the EAR. BIS is making these changes to License Exception AVS because the Cuban government has generated revenue or otherwise benefited from the lease or charter of aircraft and vessels.

***De Minimis* Rule**

Pursuant to part 734 of the EAR, foreign-made items located abroad are subject to the EAR under specified circumstances, including when they incorporate, or are bundled or commingled with, specified levels of controlled U.S.-origin commodities, software, or technology. Paragraph (a) of § 734.4 identifies items for which there is no *de minimis* level, and thus are subject to the EAR if they contain any controlled U.S.-origin content, and paragraph (b) identifies special requirements for certain encryption items. When paragraphs (a) and (b) of § 734.4 are not applicable, either the 10-percent *de minimis* rule described in paragraph (c) or the 25-percent *de minimis* rule described in paragraph (d) applies, depending upon the destination of the items.

This rule amends § 734.4(d) of the EAR to make Cuba subject to the general 10-percent *de minimis* rule in § 734.4(c). Now, a BIS license or an applicable license exception specified in § 746.2(a)(1) of the EAR is required for the reexport to Cuba of foreign-made items that contain greater than 10 percent of U.S.-origin content or, when § 734.4(a) applies, contain any U.S.-origin content. License applications for such items are subject to a general policy of denial, unless eligible for another licensing policy described in § 746.2(b) of the EAR. Instead of referencing Cuba by name in § 734.4, this rule makes Cuba subject to the general 10-percent *de minimis* rule by referencing Country Group E:2. BIS is making this change to *de minimis* because the Cuban government could generate revenue or otherwise benefit from the receipt of items containing greater than 10 percent of U.S.-origin content.

License Exception Support for the Cuban People

License Exception Support for the Cuban People (SCP) in § 740.21 of the EAR was created to authorize certain exports and reexports to Cuba that are intended to support the Cuban people by improving their living conditions and supporting independent economic activity; strengthening civil society in Cuba; and improving the free flow of information to, from, and among the Cuban people. Items exported or reexported pursuant to certain provisions of License Exception SCP may be consigned to or, in some instances, used by the Cuban

government provided the items would be used to benefit the Cuban people.

Paragraph (c)(1) of License Exception SCP authorizes the export or reexport to Cuba of certain *donated* items for use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities provided specified conditions are met. This rule amends paragraph (c)(1) to exclude donations to organizations administered or controlled by the Cuban government or communist party. Consequently, an exporter or reexporter wanting to donate items to organizations administered or controlled by the Cuban government or communist party must submit a license application to BIS, which will be reviewed pursuant to the licensing policy in § 746.2(b) of the EAR. This change will give the U.S. Government the opportunity to determine whether donations to those entities would benefit the Cuban people. Paragraph (c)(1) of License Exception SCP is still available for eligible donations to the Cuban people and civil society organizations provided the items would be used to support activities independent of the Cuban government and communist party.

Paragraph (d)(1) of License Exception SCP authorizes the export or reexport to Cuba of certain items for telecommunications infrastructure creation and upgrades. This rule amends paragraph (d)(1) to clarify that it is limited to eligible items for the creation and upgrades of telecommunications *infrastructure* to improve the free flow of information to, from, and among the Cuban people. For infrastructure items that would be used to connect specific end users (*i.e.,* non-backbone items), those items may be used to connect individual Cubans or the Cuban private sector only. A license is required for the export or reexport to Cuba of items for telecommunications infrastructure that would be used to connect other specific end users (*e.g.,* Cuban government ministries and state-owned hotels), which will be reviewed pursuant to the licensing policy in § 746.2(b) of the EAR. Separately, License Exception Consumer Communications Devices (CCD) in § 740.19 of the EAR authorizes the export or reexport to Cuba of certain consumer communications devices for use by eligible individuals and independent non-governmental organizations.

This rule also revises paragraph (e)(2) of License Exception SCP to eliminate an authorization for items to be given away for free for promotional purposes. This provision regarding such promotional items has been primarily beneficial to the Cuban government since it has a virtual monopoly on importing items into the country. However, items for use by the Cuban private sector for private sector economic activities remain eligible for paragraph (b)(1) of License Exception SCP, provided the associated terms and conditions are met. License applications for the export or reexport of promotional items to the Cuban government will be reviewed pursuant to the general policy of denial in § 746.2(b) of the EAR.

BIS is making these changes to License Exception SCP to ensure that the Cuban people, not the Cuban government or communist party, benefit from items exported or reexported pursuant to the license exception.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. This rule supports the Administration's national security and foreign policy objectives per the direction provided to agencies in National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM–5). National Security Presidential Memoranda are used to promulgate Presidential decisions on national security matters. Thus, the primary direct benefit of this rule is to improve national security. Restricting additional exports and reexports to Cuba, including leased aircraft, will reduce the ability of the Cuban government, including its military, intelligence, and security services, to generate revenue or otherwise derive benefits from the use of items subject to the EAR. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O. 13771. See *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf.*

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

6. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to minimally increase and have limited impact on the existing estimates. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR chapter VII, subchapter C, is amended as follows:

PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 8, 2018, 83 FR 56253 (November 9, 2018).

■ 2. Section 734.4 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 734.4 *De minimis* U.S. content.

* * * * *

(d) *25% De Minimis Rule.* Except as provided in paragraph (a) of this section and subject to the provisions of paragraph (b) of this section, the following reexports are not subject to the EAR when made to countries other than those listed in Country Group E:1 or E:2 of supplement no. 1 to part 740 of the EAR. See supplement no. 2 to this part for guidance on calculating values.

* * * * *

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Section 740.15 is amended by:

■ a. Revising paragraphs (a)(1)(i) and (ii), (a)(2)(i) introductory text, (a)(2)(ii) introductory text, (a)(3) introductory text, and (a)(3)(iv), (v), (vi), (vii), (viii), and (ix);

■ b. Adding paragraph (a)(3)(x);

■ c. Revising paragraphs (d)(1)(i) and (ii), (d)(2)(v), (vi), and (vii), and (d)(3)(iv);

■ d. Adding paragraph (d)(3)(v); and

■ e. Revising paragraphs (d)(4)(v), (vi), and (vii).

The revisions and additions read as follows:

§ 740.15 Aircraft, Vessels and Spacecraft (AVS).

* * * * *

(a) * * *

(1) * * *

(i) No sale or transfer of operational control of the aircraft to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part) has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part); and

* * * * *

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration (FAA) or conducting flights under operating specifications approved by the FAA pursuant to 14 CFR part 129, or an air ambulance of U.S. registry operating under 14 CFR part 135, may depart from the United States under its own power for any destination, provided that:

* * * * *

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to or a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part) (flights to these destinations require a license), provided that:

* * * * *

(3) *Criteria.* The following ten criteria each must be met if the flight is to qualify as a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. An export is for the transfer of operational control unless the exporter retains each of the following indicia of control:

* * * * *

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) *Location of spares.* Spares are not located in a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

(vi) *Place of registration.* The place of registration is not changed to a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

(vii) *Transfer of technology.* No technology is transferred to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part), except the minimum necessary for in-transit maintenance to perform flight line servicing required to depart safely.

(viii) *Color and logos.* The aircraft does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

(ix) *Flight number.* The aircraft does not fly under a flight number issued to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part) as such number appears in the Official Airline Guide.

(x) *Lease or charter.* The aircraft is not leased to or chartered by a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

* * * * *

(d) * * *

(1) * * *

(i) No sale or transfer of operational control of the vessel to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part) has occurred while in the United States;

(ii) The vessel is not departing for the purpose of sale or transfer of operational control to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part); and

* * * * *

(2) * * *

(v) Spares for the vessel are not located in a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

(3) * * *

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the vessel, which principal maintenance is conducted outside a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) *Lease or charter.* The vessel is not leased to or chartered by a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

(4) * * *

(v) Spares for the vessel are not located in a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 or E:2 (see supplement no. 1 to this part).

* * * * *

■ 5. Section 740.21 is amended by:

■ a. Revising paragraphs (c)(1) and (d)(1); and

■ b. Removing and reserving paragraph (e)(2).

The revisions read as follows:

§ 740.21 Support for the Cuban People (SCP).

* * * * *

(c) * * *

(1) The export or reexport to Cuba of *donated* items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities. The items may not be donated to organizations administered or controlled by the Cuban government or communist party, and must support eligible activities independent of the Cuban government and communist party. The activities may not relate to the ''development,'' ''production,'' ''use,'' operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or of any item enumerated or otherwise described on the Commerce Control List (supplement no. 1 to part 774 of the EAR) unless the only reason for control that applies to that item, as set forth in the ECCN that controls that item, is anti-terrorism.

* * * * *

(d) * * *

(1) The export or reexport to Cuba of items for the creation and upgrade of telecommunications *infrastructure* to improve the free flow of information to, from, and among the Cuban people, including infrastructure that enables access to the internet and use of internet services. For infrastructure items that would be used to connect specific end users, those items may be used to connect individual Cubans or the Cuban private sector only (*e.g.,* not Cuban government ministries or state-owned enterprises).

* * * * *

PART 746—[AMENDED]

■ 6. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 8, 2019, 84 FR 20537 (May 10, 2019).

■ 7. Section 746.2 is amended by revising paragraph (b)(2)(v) to read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(2) * * *

(v) Items necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation, excluding the export or reexport of such aircraft leased to state-owned enterprises; and

* * * * *

Dated: October 15, 2019.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2019–22876 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0403; FRL–10001–24–Region 10]

Air Plan Approval: ID; Update to CRB Fee Billing Procedures; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the direct final rule approving revisions to the Idaho State Implementation Plan (SIP) relating to Idaho crop residue burning fee billing procedures, published on September 3, 2019.

DATES: The direct final rule published on September 3, 2019 (84 FR 45918), is withdrawn effective October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553–1999, or *ruddick.randall@epa.gov,* U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Suite 155–15–H13, Seattle, WA 98101–3188.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the direct final rule approving revisions to the Idaho SIP relating to revisions to the Idaho crop residue burning fee billing procedures, published on September 3, 2019 (84 FR 45918). We stated in that direct final rule that if we received adverse comment by October 3, 2019, we would publish a timely withdrawal in the **Federal Register** and the direct final rule would not take effect. We subsequently received an adverse comment on that direct final rule prior to October 3, 2019. Accordingly, we are withdrawing the direct final rule. We will address the comment in a subsequent final action based upon the parallel proposed rule also published on September 3, 2019 (84 FR 45930). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

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

Dated: October 9, 2019.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ Accordingly, the amendments to 40 CFR 52.670 published in the **Federal Register** on September 3, 2019 (84 FR 45918) on pages 45919–45920 are withdrawn effective October 21, 2019.

[FR Doc. 2019–22813 Filed 10–18–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2011–0140; FRL–9999–40–Region 9]

Outer Continental Shelf Air Regulations; Consistency Update for Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Virginia is the designated COA. The Commonwealth of Virginia's requirements discussed in this document and listed in the appendix to the Federal OCS air regulations, are approved for incorporation into the compilation of state provisions that is incorporated by reference.

DATES: This rule is effective on November 20, 2019. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of November 20, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0140. 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: Mrs. Amy Johansen, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2156. Mrs. Johansen can also be reached via electronic mail at *johansen.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 2019, EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve various Virginia air pollution control requirements for inclusion in the updated compilation of ''Commonwealth of Virginia Requirements Applicable to OCS Sources,'' dated February 20, 2019, which is incorporated by reference into 40 CFR part 55. See 84 FR 15549.

Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken in response to the submittal of a NOI, received on January 28, 2019, by Dominion Energy Virginia, for the proposed installation of a 12-megawatt offshore wind technology testing facility located approximately 24 nautical miles east of the City of Virginia Beach, Virginia.[1]

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA reviewed Virginia's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. See 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. See 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards. Other specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the April 16, 2019 NPRM and will not be restated here.

II. Public Comments and EPA Responses

EPA received three sets of comments on the April 16, 2019 NPRM. See 84 FR 15549. A summary of the relevant comments and EPA's responses are discussed in this Section. A copy of the comments can be found in the docket for this rulemaking action.

Comment: The Virginia Department of Environmental Quality (VADEQ) requested that EPA remove references to state-only toxics programs from being incorporated by reference into 40 CFR part 55, as proposed in EPA's April 16, 2019 NPRM. See 84 FR 15549. This affects the following sections of the Virginia Administrative Code (VAC): 9VAC5–40–350, 9VAC5–40–790, 9VAC5–40–970, 9VAC5–40–1880, 9VAC5–40–2310, 9VAC5–40–2460, 9VAC5–40–2610, 9VAC5–40–3330, 9VAC5–40–3480, 9VAC5–40–4830, 9VAC5–40–5270, 9VAC5–40–6390, 9VAC5–40–6690, 9VAC5–40–6880, 9VAC5–40–7030, 9VAC5–40–7470, 9VAC5–40–8090, 9VAC5–50–320, and Article 4 (9VAC5–60–200 *et seq.*) and Article 5 (9VAC5–60–300 *et seq.*) of 9VAC5–60 in their entirety.

EPA Response: At Virginia's request, in this final rulemaking action, EPA removed all references to the air toxics regulations in the compilation of the ''Commonwealth of Virginia Requirements Applicable to OCS Sources'' in 40 CFR part 55. EPA does not believe removal of the toxics sections of VAC will have any adverse impact on VADEQ's ability to properly implement air quality permitting for OCS sources, since they are not related to the attainment and maintenance of Federal and state ambient air quality standards.

[1] The EPA Region III Office was directly impacted by Congress' failure to appropriate funds during the 2018–19 Federal government shutdown and resulting furlough of many Federal employees, including Region III personnel. As a result, although the NOI from Dominion Energy Virginia was signed on December 21, 2018, it was not received and date-stamped by EPA Region III until January 28, 2019, when the Region III office returned to operation.

[2] Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4). Virginia has been delegated authority to implement and enforce the requirements of the OCS Regulations within 25 miles of Virginia's seaward boundary. See 77 FR 44231 (July 27, 2012).

Comment: VADEQ requested that Part I (9VAC5–80–5 *et seq.*) of 9VAC5–80 be removed in its entirety from 40 CFR part 55, noting that this section, Permit Actions Before the Board, is a requirement of state code and cannot be implemented or enforced by EPA.

EPA Response: At Virginia's request, in this final rulemaking action, EPA removed Part I of 9VAC5–80 from the compilation of the ''Commonwealth of Virginia Requirements Applicable to OCS Sources'' in 40 CFR part 55. EPA does not believe removal of Part I (9VAC5–80–5 *et seq.*) of 9VAC5–80 will have any adverse impact on VADEQ's ability to properly implement air quality permitting on OCS sources, since they are not related to the attainment and maintenance of Federal and state ambient air quality standards.

Additionally, for clarification purposes, because Virginia has been delegated authority to implement and enforce the requirements of the OCS Regulations within 25 miles of Virginia's seaward boundary, the inclusion of a regulation into 40 CFR part 55 does not designate EPA as the appropriate authority to implement or enforce those provisions of Virginia's regulations, but, rather, reinforces that VADEQ has the ability to implement and enforce those potentially applicable provisions on OCS sources, for which Virginia is designated as the COA. See 77 FR 44231 (July 27, 2012).

Comment: VADEQ noted a typographical error in EPA's April 16, 2019 NPRM under Article 1 (9VAC5–80–50 *et seq.*) of Part II of 9VAC5–80, the effective date of 03/02/2011 should be corrected to be 11/16/2016.

EPA Response: EPA agrees with the commenter and has made the requested typographical correction.

Comment: VADEQ requested that Part IV (9VAC5–130–100) of 9VAC5–130 be removed. VADEQ noted that this section, Local Ordinances, is a template for the use of local jurisdictions to develop their own open burning ordinances. VADEQ also noted that this is a requirement of state code and cannot be implemented or enforced by EPA.

EPA Response: At Virginia's request, in this final rulemaking action, EPA removed Part IV (9VAC5–130–100) of 9VAC5–130 from the compilation of the ''Commonwealth of Virginia Requirements Applicable to OCS Sources'' in 40 CFR part 55. EPA does not believe removal of Part IV (9VAC5–130–100) of 9VAC5–130 will have any adverse impact on VADEQ's ability to properly implement air quality permitting on OCS sources, since they are not related to the attainment and maintenance of Federal and state ambient air quality standards.

In a previous response to comment, EPA addressed VADEQ's statement regarding EPA's ability to implement or enforce VAC provisions and will not be restating that here.

Comment: One commenter stated that regulating emissions from OCS sources within 25 miles of the coast to make them in accordance with onshore sources could make existing OCS sources within 25 miles obsolete. The commenter further asserts that dozens of oil rigs inside 25 miles comply with current OCS regulations, which require them to lower their emissions. In turn, the commenter states that requiring sources to comply with OCS requirements could cost rig owners a significant amount of money if they have to update or modify the rigs to comply. The commenter asserts that this could hurt many drilling businesses and as a result, hurt the economy. Finally, the commenter asks EPA to not go through with this proposal and allow companies to continue drilling within 25 miles of the shore under the current OCS regulations.

EPA Response: As noted in EPA's April 16, 2019 NPRM, this action is being taken because section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. See 84 FR 15549. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. This rulemaking action is simply updating requirements that were previously incorporated by reference into 40 CFR part 55. See 76 FR 43185 (July 20, 2011). Further, as noted in EPA's April 16, 2019 NPRM and 40 CFR part 55.1, EPA reviewed all of the potentially applicable sections of VAC to ensure they are not designed expressly to prevent exploration and development of the OCS.

Comment: Another commenter expressed that the proposed rule should take effect. The commenter then discusses Virginia's designation as the COA and that the designation enhances the OCS sources' protection. The commenter then goes on to discuss tourism in Virginia. Finally, the commenter concludes that Virginia should go further to control air pollution from OCS sources and comply with standards of the COA.

EPA Response: While it is unclear to EPA exactly what the commenter's main concern is with respect to this rulemaking action, EPA is meeting its statutory obligations in CAA section 328(a)(1) and the requirements of 40 CFR part 55 with respect to specific OCS requirements, upon finalizing this rulemaking action. Additionally, the ability of VADEQ to implement and enforce air quality provisions potentially applicable to an OCS source, for which Virginia is the COA, occurs because Virginia has been delegated the authority, by the EPA, to administer and enforce OCS air requirements. See 77 FR 44231 (July 27, 2012). Lastly, it should be noted that there are many other Federal, state, and local agencies involved in the process of developing the OCS, and in this final rulemaking action, EPA is ensuring that VADEQ has the ability to implement and enforce any necessary applicable air quality regulations for which they have been designated as the COA for that source.

III. Final Action

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the Commonwealth of Virginia will be the COA. The rules that EPA is taking final action to incorporate are applicable provisions of VAC, as amended through February 20, 2019. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into ''Commonwealth of Virginia Requirements Applicable to OCS Sources,'' dated March 2, 2011, which was incorporated by reference into 40 CFR part 55. See 76 FR 43185 (July 20, 2011).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ''Commonwealth of Virginia Requirements Applicable to OCS Sources,'' dated February 20, 2019, which is the compilation of provisions of the VAC described in the amendments to 40 CFR part 55 set forth below. EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. See 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.[3] The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 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).)

EPA is incorporating the rules potentially applicable to sources for which the Commonwealth of Virginia is the COA. The rules that EPA is incorporating are applicable provisions of VAC.

List of Subjects in 40 CFR Part 55

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

Dated: August 27, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

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

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

■ 2. Section 55.14 is amended by revising paragraph (e)(22)(i)(A) to read as follows:

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

* * * * *

(e) * * *

(22) * * *

(i) * * *

(A) Commonwealth of Virginia Requirements Applicable to OCS Sources, February 20, 2019.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Virginia'' to read as follows:

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

* * * * *

Virginia:

(a) * * *

[3] OMB's approval of the ICR can be viewed at *www.reginfo.gov.*

(1) The following Commonwealth of Virginia requirements are applicable to OCS Sources, February 20, 2019, Commonwealth of Virginia—Virginia Department of Environmental Quality.

The following sections of Virginia Regulations for the Control and Abatement of Air Pollution Control (VAC), Title 9, Agency 5:

Chapter 10—General Definitions

(Effective 05/19/2017)

9VAC5–10–10. General.
9VAC5–10–20. Terms defined.
9VAC5–10–30. Abbreviations.

Chapter 20—General Provisions

(Effective 02/19/2018)

Part I—Administrative

9VAC5–20–10. Applicability.
9VAC5–20–21. Documents incorporated by reference.
9VAC5–20–50. Variances.
9VAC5–20–70. Circumvention.
9VAC5–20–80. Relationship of state regulations to federal regulations.
9VAC5–20–121. Air quality program policies and procedures.

Part II—Air Quality Programs

9VAC5–20–160. Registration.
9VAC5–20–170. Control programs.
9VAC5–20–180. Facility and control equipment maintenance or malfunction.
9VAC5–20–200. Air quality control regions.
9VAC5–20–203. Maintenance areas.
9VAC5–20–204. Nonattainment areas.
9VAC5–20–205. Prevention of significant deterioration areas.
9VAC5–20–206. Volatile organic compound and nitrogen oxides emission control areas.
9VAC5–20–220. Shutdown of a stationary source.
9VAC5–20–230. Certification of documents.

Chapter 30—Ambient Air Quality Standards

(Effective 05/15/2017)

9VAC5–30–10. General.
9VAC5–30–15. Reference conditions.
9VAC5–30–30. Sulfur oxides (sulfur dioxide).
9VAC5–30–40. Carbon monoxide.
9VAC5–30–50. Ozone (1-hour).
9VAC5–30–55. Ozone (8-hour, 0.08 ppm).
9VAC5–30–56. Ozone (8-hour, 0.075 ppm).
9VAC5–30–57. Ozone (8-hour, 0.070 ppm).
9VAC5–30–60. Particulate matter (PM_{10}).
9VAC5–30–65. Particulate matter ($PM_{2.5}$).
9VAC5–30–66. Particulate matter ($PM_{2.5}$).
9VAC5–30–67. Particulate matter ($PM_{2.5}$).
9VAC5–30–70. Oxides of nitrogen with nitrogen dioxide as the indicator.
9VAC5–30–80. Lead.

Chapter 40—Existing Stationary Sources

Part I—Special Provisions

(Effective 12/12/2007)

9VAC5–40–10. Applicability.
9VAC5–40–20. Compliance.
9VAC5–40–21. Compliance schedules.
9VAC5–40–22. Interpretation of emission standards based on process weight-rate tables.
9VAC5–40–30. Emission testing.
9VAC5–40–40. Monitoring.
9VAC5–40–41. Emission monitoring procedures for existing sources.
9VAC5–40–50. Notification, records and reporting.

Part II—Emission Standards

Article 1—Visible Emissions and Fugitive Dust/Emissions

(Effective 02/01/2003)

9VAC5–40–60. Applicability and designation of affected facility.
9VAC5–40–70. Definitions.
9VAC5–40–80. Standard for visible emissions.
9VAC5–40–90. Standard for fugitive dust/emissions.
9VAC5–40–100. Monitoring.
9VAC5–40–110. Test methods and procedures.
9VAC5–40–120. Waivers.

Article 4—General Process Operations

(Effective 12/15/2006)

9VAC5–40–240. Applicability and designation of affected facility.
9VAC5–40–250. Definitions.
9VAC5–40–260. Standard for particulate matter (AQCR 1–6).
9VAC5–40–270. Standard for particulate matter (AQCR 7).
9VAC5–40–280. Standard for sulfur dioxide.
9VAC5–40–290. Standard for hydrogen sulfide.
9VAC5–40–320. Standard for visible emissions.
9VAC5–40–330. Standard for fugitive dust/emissions.
9VAC5–40–360. Compliance.
9VAC5–40–370. Test methods and procedures.
9VAC5–40–380. Monitoring.
9VAC5–40–390. Notification, records and reporting.
9VAC5–40–400. Registration.
9VAC5–40–410. Facility and control equipment maintenance or malfunction.
9VAC5–40–420. Permits.

Article 7—Incinerators

(Effective 01/01/1985)

9VAC5–40–730. Applicability and designation of affected facility.
9VAC5–40–740. Definitions.
9VAC5–40–750. Standard for particulate matter.
9VAC5–40–760. Standard for visible emissions.
9VAC5–40–770. Standard for fugitive dust/emissions.
9VAC5–40–800. Prohibition of flue-fed incinerators.
9VAC5–40–810. Compliance.
9VAC5–40–820. Test methods and procedures.
9VAC5–40–830. Monitoring.
9VAC5–40–840. Notification, records and reporting.
9VAC5–40–850. Registration.
9VAC5–40–860. Facility and control equipment maintenance or malfunction.
9VAC5–40–870. Permits.

Article 8—Fuel Burning Equipment

(Effective 01/01/2002)

9VAC5–40–880. Applicability and designation of affected facility.
9VAC5–40–890. Definitions.
9VAC5–40–900. Standard for particulate matter.
9VAC5–40–910. Emission allocation system.
9VAC5–40–920. Determination of collection equipment efficiency factor.
9VAC5–40–930. Standard for sulfur dioxide.
9VAC5–40–940. Standard for visible emissions.
9VAC5–40–950. Standard for fugitive dust/emissions.
9VAC5–40–980. Compliance.
9VAC5–40–990. Test methods and procedures.
9VAC5–40–1000. Monitoring.
9VAC5–40–1010. Notification, records and reporting.
9VAC5–40–1020. Registration.
9VAC5–40–1030. Facility and control equipment maintenance or malfunction.
9VAC5–40–1040. Permits.

Article 14—Sand-Gravel Processing; Stone Quarrying & Processing

(Effective 01/01/1985)

9VAC5–40–1820. Applicability and designation of affected facility.
9VAC5–40–1830. Definitions.
9VAC5–40–1840. Standard for particulate matter.
9VAC5–40–1850. Standard for visible emissions.
9VAC5–40–1860. Standard for fugitive dust/emissions.
9VAC5–40–1890. Compliance.
9VAC5–40–1900. Test methods and procedures.
9VAC5–40–1910. Monitoring.
9VAC5–40–1920. Notification, records and reporting.
9VAC5–40–1930. Registration.
9VAC5–40–1940. Facility and control equipment maintenance or malfunction.
9VAC5–40–1950. Permits.

Article 17—Woodworking Operations

(Effective 01/01/1985)

9VAC5–40–2250. Applicability and designation of affected facility.
9VAC5–40–2260. Definitions.
9VAC5–40–2270. Standard for particulate matter.
9VAC5–40–2280. Standard for visible emissions.
9VAC5–40–2290. Standard for fugitive dust/emissions.
9VAC5–40–2320. Compliance.
9VAC5–40–2330. Test methods and procedures.
9VAC5–40–2340. Monitoring.
9VAC5–40–2350. Notification, records and reporting.
9VAC5–40–2360. Registration.
9VAC5–40–2370. Facility and control equipment maintenance or malfunction.
9VAC5–40–2380. Permits.

Article 18—Primary and Secondary Metal Operations

(Effective 01/01/1985)

9VAC5–40–2390. Applicability and designation of affected facility.
9VAC5–40–2400. Definitions.
9VAC5–40–2410. Standard for particulate matter.

9VAC5–40–2420. Standard for sulfur oxides.
9VAC5–40–2430. Standard for visible emissions.
9VAC5–40–2440. Standard for fugitive dust/emissions.
9VAC5–40–2470. Compliance.
9VAC5–40–2480. Test methods and procedures.
9VAC5–40–2490. Monitoring.
9VAC5–40–2500. Notification, records and reporting.
9VAC5–40–2510. Registration.
9VAC5–40–2520. Facility and control equipment maintenance or malfunction.
9VAC5–40–2530. Permits.

Article 19—Lightweight Aggregate Process Operations

(Effective 01/01/1985)

9VAC5–40–2540. Applicability and designation of affected facility.
9VAC5–40–2550. Definitions.
9VAC5–40–2560. Standard for particulate matter.
9VAC5–40–2570. Standard for sulfur oxides.
9VAC5–40–2580. Standard for visible emissions.
9VAC5–40–2590. Standard for fugitive dust/emissions.
9VAC5–40–2620. Compliance.
9VAC5–40–2630. Test methods and procedures.
9VAC5–40–2640. Monitoring.
9VAC5–40–2650. Notification, records and reporting.
9VAC5–40–2660. Registration.
9VAC5–40–2670. Facility and control equipment maintenance or malfunction.
9VAC5–40–2680. Permits.

Article 24—Solvent Metal Cleaning Operations

(Effective 03/24/2004)

9VAC5–40–3260. Applicability and designation of affected facility.
9VAC5–40–3270. Definitions.
9VAC5–40–3280. Standard for volatile organic compounds.
9VAC5–40–3290. Control technology guidelines.
9VAC5–40–3300. Standard for visible emissions.
9VAC5–40–3310. Standard for fugitive dust/emissions.
9VAC5–40–3340. Compliance.
9VAC5–40–3350. Test methods and procedures.
9VAC5–40–3360. Monitoring.
9VAC5–40–3370. Notification, records and reporting.
9VAC5–40–3380. Registration.
9VAC5–40–3390. Facility and control equipment maintenance or malfunction.
9VAC5–40–3400. Permits.

Article 25—VOC Storage & Transfer Operations

(Effective 07/01/1991)

9VAC5–40–3410. Applicability and designation of affected facility.
9VAC5–40–3420. Definitions.
9VAC5–40–3430. Standard for volatile organic compounds.
9VAC5–40–3440. Control technology guidelines.
9VAC5–40–3450. Standard for visible emissions.
9VAC5–40–3460. Standard for fugitive dust/emissions.
9VAC5–40–3490. Compliance.
9VAC5–40–3500. Test methods and procedures.
9VAC5–40–3510. Monitoring.
9VAC5–40–3520. Notification, records and reporting.
9VAC5–40–3530. Registration.
9VAC5–40–3540. Facility and control equipment maintenance or malfunction.
9VAC5–40–3550. Permits.

Article 34—Miscellaneous Metal Parts/Products Coating Application

(Effective 02/01/2016)

9VAC5–40–4760. Applicability and designation of affected facility.
9VAC5–40–4770. Definitions.
9VAC5–40–4780. Standard for volatile organic compounds.
9VAC5–40–4790. Control technology guidelines.
9VAC5–40–4800. Standard for visible emissions.
9VAC5–40–4810. Standard for fugitive dust/emissions.
9VAC5–40–4840. Compliance.
9VAC5–40–4850. Test methods and procedures.
9VAC5–40–4860. Monitoring.
9VAC5–40–4870. Notification, records and reporting.
9VAC5–40–4880. Registration.
9VAC5–40–4890. Facility and control equipment maintenance or malfunction.
9VAC5–40–4900. Permits.

Article 37—Petroleum Liquid Storage and Transfer Operations

(Effective 07/30/2015)

9VAC5–40–5200. Applicability and designation of affected facility.
9VAC5–40–5210. Definitions.
9VAC5–40–5220. Standard for volatile organic compounds.
9VAC5–40–5230. Control technology guidelines.
9VAC5–40–5240. Standard for visible emissions.
9VAC5–40–5250. Standard for fugitive dust/emissions.
9VAC5–40–5280. Compliance.
9VAC5–40–5290. Test methods and procedures.
9VAC5–40–5300. Monitoring.
9VAC5–40–5310. Notification, records and reporting.
9VAC5–40–5320. Registration.
9VAC5–40–5330. Facility and control equipment maintenance or malfunction.
9VAC5–40–5340. Permits.

Article 41—Mobile Sources

(Effective 08/01/1991)

9VAC5–40–5650. Applicability and designation of affected facility.
9VAC5–40–5660. Definitions.
9VAC5–40–5670. Motor vehicles.
9VAC5–40–5680. Other mobile sources.
9VAC5–40–5690. Export/import of motor vehicles.

Article 45—Commercial/Industrial Solid Waste Incinerators

(Effective 11/16/2016)

9VAC5–40–6250. Applicability and designation of affected facility.
9VAC5–40–6260. Definitions.
9VAC5–40–6270. Standard for particulate matter.
9VAC5–40–6360. Standard for visible emissions.
9VAC5–40–6370. Standard for fugitive dust/emissions.
9VAC5–40–6400. Operator training and qualification.
9VAC5–40–6410. Waste management plan.
9VAC5–40–6420. Compliance schedule.
9VAC5–40–6430. Operating limits.
9VAC5–40–6440. Facility and control equipment maintenance or malfunction.
9VAC5–40–6450. Test methods and procedures.
9VAC5–40–6460. Compliance.
9VAC5–40–6470. Monitoring.
9VAC5–40–6480. Recordkeeping and reporting.
9VAC5–40–6490. Requirements for air curtain incinerators.
9VAC5–40–6500. Registration.
9VAC5–40–6510. Permits.
9VAC5–40–6520. Documents Incorporated by Reference.

Article 46—Small Municipal Waste Combustors

(Effective 05/04/2005)

9VAC5–40–6550. Applicability and designation of affected facility.
9VAC5–40–6560. Definitions.
9VAC5–40–6570. Standard for particulate matter.
9VAC5–40–6580. Standard for carbon monoxide.
9VAC5–40–6590. Standard for dioxins/furans.
9VAC5–40–6600. Standard for hydrogen chloride.
9VAC5–40–6610. Standard for sulfur dioxide.
9VAC5–40–6620. Standard for nitrogen oxides.
9VAC5–40–6630. Standard for lead.
9VAC5–40–6640. Standard for cadmium.
9VAC5–40–6650. Standard for mercury.
9VAC5–40–6660. Standard for visible emissions.
9VAC5–40–6670. Standard for fugitive dust/emissions.
9VAC5–40–6700. Operator training and certification.
9VAC5–40–6710. Compliance schedule.
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9VAC5–40–6750. Monitoring.
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9VAC5–40–6770. Reporting.
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Article 47—Solvent Cleaning

(Effective 03/24/2004)

9VAC5–40–6820. Applicability and designation of affected facility.

9VAC5–40–6830. Definitions.
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9VAC5–40–6960. Permits.

Article 48—Mobile Equipment Repair and Refinishing

(Effective 10/01/2013)

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Article 51—Stationary Sources Subject to Case-by-Case RACT Determinations

(Effective 12/02/2015)

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9VAC5–40–7400. Standard for volatile organic compounds (8-hour ozone standard).
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9VAC5–40–7480. Compliance.
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(Effective 07/01/2003)

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(Effective 12/12/2007)

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(Effective 02/01/2003)

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(Effective 08/01/2002)

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Part II—Emission Standards

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(Effective 02/20/2019)

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(Effective 03/02/2011)

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(Effective 04/01/1999)

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Chapter 80—Permits for Stationary Sources

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Article 1—Federal (Title V) Operating Permits for Stationary Sources

(Effective 11/16/2016)

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(Effective 01/01/2001)

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(Effective 12/31/2008)

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(Effective 03/27/2014)

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(Effective 08/13/2015)

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(Effective 05/15/2017)

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9VAC5–80–2080. Compliance determination and verification by performance testing.
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Article 10—Permit Application Fees for Stationary Sources

(Effective 01/01/2018)

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Article 11—Annual Permit Maintenance Fees for Stationary Sources

(Effective 01/01/2018)

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Chapter 85—Permits for Stationary Sources of Pollutants Subject to Regulation

(Effective 08/13/2015)

Part I—Applicability

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Part II—Federal (Title V) Operating Permit Actions

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9VAC5–85–30. Definitions.

Part III—Prevention of Significant Deterioration Area Permit Actions

9VAC5–85–40. Prevention of Significant Deterioration Area permit actions.
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Part IV—State Operating Permit Actions

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Chapter 130—Open Burning

(Effective 07/15/2015)

Part I—General Provisions

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Part II—Volatile Organic Compound Emissions Control Areas

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Part III—Special Statewide Requirements for Forestry, Agricultural and Highway Programs

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(Effective 11/16/2016)

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Chapter 160—General Conformity

(Effective 05/15/2017)

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Part II—General Provisions

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Part III—Criteria and Procedures for Making Conformity Determinations

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9VAC5–160–150. Reevaluation of conformity.
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9VAC5–160–170. Procedures for conformity determinations.
9VAC5–160–180. Mitigation of air quality impacts.
9VAC5–160–190. Savings provision.

(2) [Reserved]

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[FR Doc. 2019–22704 Filed 10–18–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 624

[Docket No. FTA–2019–000X]

RIN 2132–AB36

Clean Fuels Grant Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking rescinds the FTA regulation that implements the Clean Fuels Grants Program, which was rescinded by statute in 2012.

DATES: This final rule is effective on October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Montgomery, Office of Chief

Counsel, (202) 366–1017 or *mark.montgomery@dot.gov*. Office hours are from 9 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

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Background

Part 624 of title 49, Code of Federal Regulations, established the application procedures for the Clean Fuels Grant Program. This part implemented section 3008 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), codified at section 5308 of title 49, United States Code (Section 5308), which required FTA to establish a new grant program intended to assist nonattainment and maintenance areas in achieving or maintaining air quality attainment status, to support emerging clean fuel and advanced propulsion technologies for transit buses, and to create markets for these technologies. Section 20002 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141) repealed section 5308, effectively ending the Clean Fuels Grant Program. For this reason, FTA is issuing this final rule to rescind 49 CFR part 624.

Discussion of the Changes

This action rescinds 49 CFR part 624, which implements the Clean Fuels Grant Program. The statutory basis for this regulation, 49 U.S.C. 5308, was repealed by MAP–21. While 49 CFR part 624 cites 49 U.S.C. 5334(a) as additional statutory authority, that statute provides only for the general authority of the Secretary of Transportation to implement statutory transit programs. However, the Secretary may not regulate a program repealed by statute. Thus, the requirements set forth in part 624 are superfluous.

Good Cause for Dispensing With Notice and Comment and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

Section 20002 of MAP–21 repealed section 5308, effectively ending the Clean Fuels Grant Program. FTA finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions (*i.e.,* the rule simply carries out the nondiscretionary statutory language found in MAP–21). The statutory language does not require regulatory interpretation to carry out its intent, and comments cannot alter the regulation given that the statute abrogated its purpose. Further, the delayed effective date is unnecessary because the removal of the program was made effective by MAP–21. Accordingly, FTA finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive notice and opportunity for comment and the delayed effective date.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866, 13563 and 13771 to improve regulation.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

Because FTA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. FTA evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of $155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This E.O. applies because State and local governments would be directly affected by the regulation. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.519, Clean Fuels, for further information.

Paperwork Reduction Act

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FTA has analyzed this rule under the Paperwork Reduction Act and believes that it does not impose additional information collection requirements for the purposes

of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule effects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at *https://www.govinfo.gov/content/pkg/FR-2012-05-10/pdf/2012-11309.pdf*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at *http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf*).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular. The rule rescinds the implementing regulations of a program repealed by statute, and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

List of Subjects in 49 CFR Part 624

Grant programs—transportation, Mass transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.90.

K. Jane Williams,

Acting Administrator.

PART 624—[REMOVED AND RESERVED]

■ In consideration of the foregoing, and under the authority of Public Law 112–141, 49 CFR chapter VI is amended by removing part 624.

[FR Doc. 2019–22859 Filed 10–18–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2017–0094; 4500030113]

RIN 1018–BC52

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Barrens Topminnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973, as amended (Act), for the Barrens topminnow (*Fundulus julisia*), a freshwater fish species from Cannon, Coffee, Dekalb, and Warren Counties, Tennessee. This rule adds this species to the Federal List of Endangered and Threatened Wildlife.

DATES: This rule is effective November 20, 2019.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0094 and at *https://www.fws.gov/southeast/*. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0094. Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office; 446 Neal Street, Cookeville, TN; telephone 931–877–8339.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN; telephone 931–525–4973. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Supporting Documents

We prepared a species status assessment (SSA) report for the Barrens topminnow. Written in consultation with species experts, the SSA report represents the best scientific and commercial data available concerning the status of the Barrens topminnow, including the impacts of past, present and future factors (both negative and beneficial) affecting the species. Scientific expertise informing the SSA report came primarily from the Barrens Topminnow Working Group, which is a team of biologists from the Service, Tennessee Wildlife Resources Agency, Tennessee universities, and nongovernment organizations that have been working on Barrens topminnow conservation since 2001. Scientists on the Barrens Topminnow Working Group provided expertise in fish biology, habitat management, and stressors (factors negatively affecting the species). One biologist outside the Barrens Topminnow Working Group conducted independent peer review of the SSA report. The SSA report; the January 4, 2018, proposed rule (83 FR 490); this final rule; and other materials relating to this rulemaking can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0094.

Previous Federal Actions

Please refer to the proposed listing rule for the Barrens topminnow (83 FR 490; January 4, 2018) for a detailed description of previous Federal actions concerning this species.

Background

The Barrens topminnow is a small fish with an average lifespan of 2 years that is endemic to springs and gently flowing portions of spring-fed streams in middle Tennessee. This species relies on aquatic vegetation for spawning substrate and cover. Owing primarily to invasive western mosquitofish (*Gambusia affinis*) that prey upon and harass Barrens topminnows, the species' range has been curtailed and its status rangewide is low, based upon the best available scientific and commercial data available.

Please refer to the January 4, 2018, proposed listing rule for the Barrens topminnow (83 FR 490) and the SSA report for a full summary of species information. Both are available on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0094.

Summary of Comments and Recommendations

In the January 4, 2018, proposed rule (83 FR 490), we requested that all interested parties submit written comments on the proposal by March 5, 2018. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review actions under the Act (16 U.S.C. 1531 *et seq.*), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the Barrens topminnow and its habitat, biological needs, and threats. We received a response from one peer reviewer.

We updated the SSA report based on the peer reviewer's comments. The changes consisted of clarifications and corrections to the SSA report, including typographical edits, incorporation of omitted references, and a clarification regarding the definition of a genetic term. The peer reviewer's comments did not change our determination that the Barrens topminnow meets the definition of an endangered species under the Act.

Public Comments

We received 24 public comments on the proposed rule. Eleven of the comments were supportive of listing the Barrens topminnow as endangered but did not provide any new information on the species' status. None of the remaining 13 comments provided substantive comments concerning the proposed listing of the Barrens topminnow. Ten of those did not address or provide any information concerning the Barrens topminnow, and three focused on the need for transparency in regulations implemented under the Act. Regarding transparency for our listing decision for the Barrens topminnow, we note that we provide our SSA report, as well as several other reports and surveys that helped inform this listing decision, to the public on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0094. Thus, none of the public comments changed our determination that the Barrens topminnow meets the definition of an endangered species under the Act.

Summary of Changes From the Proposed Rule

As discussed above, we made no changes to this final rule after consideration of the comments we received.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in title 50 of the Code of Federal Regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Our assessment evaluates the biological status of the species and possible threats to its continued existence based upon the best available scientific and commercial data.

Please refer to the SSA report for a more detailed discussion of the factors affecting the Barrens topminnow.

Current Condition of the Barrens Topminnow

To evaluate the current and future viability of the Barrens topminnow, we assessed a range of conditions to consider the species' resiliency, representation, and redundancy (the ''3 Rs'' described in detail in the SSA report). The historical range of the Barrens topminnow included springs and spring runs (first and second order streams with a spring source) on the Barrens Plateau, which is part of the Eastern Highland Rim physiographic province in middle Tennessee. Historical species records are from the Duck River, Elk River, and Caney Fork River drainages. The Duck River and Elk River drain to the Tennessee River, and the Caney Fork River drains to the Cumberland River. Captively held Elk River and wild Caney Fork River stock exist today and are considered ''evolutionary significant units'' (ESUs, historically isolated groups of populations that are on independent evolutionary trajectories). Historical Duck River stock became extinct in the 1960s, before genetic material could be examined to assess whether the Duck River stock was a unique ESU or belonged to one of the two extant ESUs.

Once known to occupy 18 sites (and likely more sites that were not sampled

prior to extirpation) within the three drainages, the Barrens topminnow currently occurs in the wild at 5 sites. The species occurs in the Duck River drainage in Short Spring and Marcum Spring, and in the Caney Fork drainage in Benedict Spring, McMahan Creek, and Greenbrook Pond. The Benedict Spring and McMahan Creek occurrences consist of native stock, while the remaining three, including the two Duck River occurrences, are populated with individuals introduced from Caney Fork drainage sites. An ark population of Barrens topminnows from Pond Spring in the Elk River drainage is held in captivity at three facilities, with the intention to reintroduce individuals from that population to the drainage where habitat conditions are, or can be made, suitable.

Of the five sites currently occupied by the species, the Greenbrook Pond and Marcum Spring populations are estimated to have medium resiliency, and the other three populations low resiliency. Rangewide, the Barrens topminnow has low representation, owing to the species' reduced genetic diversity, loss of at least one ESU from the wild, and restriction to a single ecoregion and specific habitat type. Redundancy is also low, as the species is extant at only 5 of 18 known historical sites. Based on the 3 Rs, the species' overall current condition is low.

Threats

The greatest threat to Barrens topminnow is predation from the western mosquitofish (Factor C), an invasive species native to portions of Tennessee west of the Barrens Plateau that preys upon young topminnows and harasses adults. Extirpation of Barrens topminnows has occurred consistently within 3 to 5 years of western mosquitofish invasion of a site, and the five sites where Barrens topminnows remain extant are the only sites not occupied by western mosquitofish.

Predation upon Barrens topminnows by western mosquitofish (Factor C) is the primary driver of Barrens topminnow range curtailment and habitat modification (Factor A), as well as adverse demographic changes (Factor E). The presence of predatory western mosquitofish in most spring and stream systems of the Barrens Plateau has rendered otherwise suitable habitat for the Barrens topminnow uninhabitable. In addition to modification of habitat by a biological feature (invasive western mosquitofish), alteration of physical habitat features has occurred due to conversion of surrounding upland habitat to pasture, with concomitant removal of riparian vegetation and livestock accessing streams.

Livestock access increases bank erosion, sedimentation, and nutrient loading in streams. Removal of riparian vegetation can also increase sedimentation and may raise water temperatures above levels suitable for Barrens topminnows. While such physical habitat alteration (Factor A) has occurred and has been a factor in curtailing some of the species' range, its impact on the topminnow is much less substantial than predation by western mosquitofish.

Adverse demographic changes (Factor E) also are largely driven by invasive western mosquitofish (Factor C). The expansion of western mosquitofish into topminnow habitat has eliminated connectivity between sites that would allow gene flow and maintenance of genetic diversity. Each occupied site is vulnerable to extirpation due to prolonged drought or a flood that enables western mosquitofish invasion. Topminnows cannot move from these sites during droughts or floods because western mosquitofish are downstream. Further, the erosion of genetic variability due to site isolation reduces the capacity of the species to withstand stochastic events.

Climate change (Factor E) is a threat to the Barrens topminnow. Drought poses a threat to Barrens topminnows as evidenced by the Benedict Spring site drying up three times since 2006, although each time topminnows were rescued from the drying spring and held in captivity until they could be returned to the spring after the drought subsided. Climate models at the scale of the Barrens Plateau are lacking, but in the broader southeastern United States, variability in weather is expected to increase over the next century, resulting in more extreme dry and wet years.

We did not find that the Barrens topminnow is impacted by overutilization (Factor B). Regarding the adequacy of existing regulatory mechanisms (Factor D), such as regulations implemented under the Clean Water Act to protect water quality and instream habitat, we found that they do not address, nor do they contribute to, the threat of invasive mosquitofish, which is the primary driver of the Barrens topminnow's status.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Barrens topminnow. The Barrens topminnow is extirpated from 13 of 18 historically occupied sites, which is equivalent to a 72 percent loss in the species' range. Native Duck River populations have been lost, and the ESU from the Elk River drainage currently persists only in captivity. Due primarily to predation by the western mosquitofish, but secondarily to habitat alternation exacerbated by climate change, the overall condition of the species is low, based on population resiliency and rangewide representation and redundancy.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' As discussed above, the resiliency, representation, and redundancy of the species has been severely compromised by the operation of threats in the past, primarily due to predation by introduced and expanding populations of nonnative western mosquitofish. In addition, all of the remaining populations of Barrens topminnow are at imminent risk of further expansion of western mosquitofish, as well as drought events, with no reasonable prospect of natural reestablishment once a population is extirpated. Therefore, we conclude that the species is currently at risk of extinction throughout its range, thus meeting the definition of an endangered species. For the same reasons, we find that a threatened species status is not appropriate for the Barrens topminnow.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Barrens topminnow is in danger of extinction throughout 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 statute. Under this reading, we should first consider whether listing is appropriate based on a rangewide analysis and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either endangered or threatened according to the ''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 list the Barrens topminnow as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Recovery Actions

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*) or from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Tennessee will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Barrens topminnow. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Barrens topminnow. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that we designate critical habitat at the time a species is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. In the proposed listing rule (83 FR 490; January 4, 2018), we determined that designation of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking. We are still in the process of assessing this information. We plan to publish a proposed rule to designate critical habitat for the Barrens topminnow in the near future.

Regulatory Provisions

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Service; technical assistance and projects funded through the U.S. Department of Agriculture Natural Resources Conservation Service; issuance of permits by the Tennessee Valley Authority for right-of-way stream crossings; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, also codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the

course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22. A permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscaping activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

(1) Collection or handling of the Barrens topminnow;

(2) Introduction of nonnative species that compete with or prey upon the Barrens topminnow, including western mosquitofish and other species in the mosquitofish genus *Gambusia;*

(3) Removal or destruction of native aquatic vegetation in any body of water in which the Barrens topminnow is known to occur; and

(4) Discharge of chemicals or fill material into any waters in which the Barrens topminnow is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. There are no tribal lands affected by this listing determination.

References Cited

A complete list of references cited in the SSA report that informed this rulemaking is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0094 and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Service's Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Topminnow, Barrens'' to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
FISHES				
*	*	*	*	*
Topminnow, Barrens	*Fundulus julisia*	Wherever found	E	83 FR [insert **Federal Register** page where the document begins], 10/21/2019.
*	*	*	*	*

Dated: August 20, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–22857 Filed 10–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 191011–0060]

RIN 0648–BJ29

Atlantic Highly Migratory Species; Removal of Billfish Certificate of Eligibility Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule removes obsolete language in the Atlantic highly migratory species (HMS) regulations requiring that a Billfish Certificate of Eligibility accompany certain product. The requirement to possess a Billfish Certificate of Eligibility no longer applies because passage of 2018 amendments to the Billfish Conservation Act of 2012 prohibited the associated product sales. This amendment removes a now-obsolete requirement consistent with an already-effective statutory provision. As further discussed below, we anticipate finding good cause that notice is unnecessary and that it will not be necessary to provide an opportunity for public comment. No aspect of this action is controversial.

DATES: This final rule is effective on October 21, 2019.

ADDRESSES: Documents related to HMS fisheries management, such as the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or upon request from the HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford by phone at 301–427–8503 or Rick Pearson by phone at 727–551–5742.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.,* (ATCA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) regulations implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries; these management measures have been amended or otherwise modified numerous times. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

The regulations at 50 CFR part 635 are promulgated under ATCA and the Magnuson-Stevens Act for the conservation and management of Atlantic HMS, including species of tunas, billfish, sharks, and swordfish. The sale of Atlantic billfish has been prohibited by regulation since implementation of the 1988 Fishery Management Plan (FMP) for the Atlantic Billfishes (53 FR 21501; June 8, 1988). The Billfish Conservation Act of 2012 prohibited any person from possessing or offering billfish or billfish products for sale but included a limited exception for Pacific billfish, with the result that Pacific billfish product could continue to be sold throughout the United States. Thus, HMS regulations continued to require that a Billfish Certificate of Eligibility accompany any billfish product sold to ensure that the product did not come from the Atlantic Ocean. In 2018, amendments to the Billfish Conservation Act of 2012, clarified that billfish are only exempted from the sales prohibition when they are retained in Hawaii or the Pacific Insular Areas. Accordingly, such billfish may only be sold in the same location where landed or when legally transported to the other exempted location (*i.e.,* from Hawaii to the Pacific Insular Areas or vice versa). The new prohibition became effective when the legislation was signed into law on August 2, 2018. Thus, the Billfish Certificate of Eligibility requirement in 50 CFR part 635 is no longer necessary, and this final rule removes the requirement.

Corrections To Remove Billfish Conservation Act of 2012 Language

Regulations at §§ 635.2 (definition of ''Billfish Certificate of Eligibility (COE)'' and 635.31(b)(2) and (3) are out of date. Except for two specific exemptions that apply to Hawaii and Pacific Insular Areas, the Billfish Conservation Act, as amended in 2018, prohibits any person from offering billfish or billfish products for sale, selling them, or having custody, control, or possession of them for purposes of offering them for sale. Therefore, any language in 50 CFR part 635 referencing the Billfish COE is obsolete. In order to be consistent with **Federal Register** guidelines, this final action removes the out of date definition at § 635.2 and the language at § 635.31(b)(2) and (3). This final action also revises the language at § 635.31(b)(1).

Classification

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of U.S. fisheries and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. This action removes regulatory text at 50 CFR part 635 for a requirement that became obsolete as a result of a statutory change that took place in 2018. For this reason, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, and a proposed rule is not being published, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act, because the action only removes obsolete regulatory text at 50 CFR part 635.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 16, 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 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

§ 635.2 [Amended]

■ 2. In § 635.2, remove the definition of ''Billfish Certificate of Eligibility (COE).''

■ 3. In 635.31, revise paragraph (b) to read as follows.

§ 635.31 Restrictions on sale and purchase.

* * * * *

(b) *Billfish.* Persons may not sell or purchase a billfish taken from its management unit.

* * * * *

[FR Doc. 2019–22882 Filed 10–18–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180702602–9400–01]

RIN 0648–XW007

Fisheries Off West Coast States; Modifications of the West Coast Recreational and Commercial Salmon Fisheries; Inseason Actions #6 Through #27

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons.

SUMMARY: NMFS announces 22 inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial and recreational salmon fisheries in the area from the U.S./Canada border to the U.S./Mexico border.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2019 annual management measures for ocean salmon fisheries (84 FR 19729, May 6, 2019), NMFS announced management measures for the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 6, 2019, until the effective date of the 2020 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultations described in this document were: California Department of Fish and Wildlife (CDFW), Oregon Department of Fish and Wildlife (ODFW), and Washington Department of Fish and Wildlife (WDFW).

Management Areas

Management of the salmon fisheries is generally divided into two geographic areas: North of Cape Falcon (U.S./Canada border to Cape Falcon, OR) and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). Within the north and south of Cape Falcon areas, there are further subarea divisions used to manage impacts on salmon stocks or stock groups as well as economic impacts to communities.

North of Cape Falcon: Recreational fisheries north of Cape Falcon are divided into four subareas: U.S./Canada border to Cape Alava, WA (Neah Bay subarea), Cape Alava, WA, to Queets River, WA (La Push subarea), Queets River, WA, to Leadbetter Point, WA (Westport subarea), and Leadbetter Point, WA, to Cape Falcon, OR (Columbia River subarea). Commercial fisheries north of Cape Falcon are divided at Queets River, WA, and Leadbetter Point, WA.

South of Cape Falcon: South of Cape Falcon, the area from Humbug Mountain, OR, to Horse Mountain, CA, is the Klamath Management Zone (KMZ) and is managed in two subareas, Oregon KMZ and California KMZ, divided at the Oregon/California border. The Oregon KMZ is the area from Humbug Mountain, OR, to the Oregon/California border. The California KMZ is the area from the Oregon/California border to Horse Mountain, CA. However, the area from Humboldt South Jetty, CA, to Horse Mountain, CA, has been closed to commercial salmon fishing since 1992.

Inseason Actions

Inseason Action #6

Description of the action: Inseason action #6 temporarily closed the commercial salmon fishery from the U.S./Canada border to Queets River, WA.

Effective dates: Inseason action #6 took effect on June 19, 2019, and remained in effect until superseded by inseason action #8 on June 24, 2019.

Reason and authorization for the action: The purpose of inseason action #6 was to avoid exceeding the subarea quota for Chinook salmon. The 2019 annual management measures (84 FR 19729, May 6, 2019) state that inseason action will be considered when approximately 60 percent of the subarea guideline for the area from the U.S./Canada border to Queets River, WA, has been landed. At the time of this inseason consultation, 75 percent of the subarea guideline had been landed. The Regional Administrator (RA) considered Chinook salmon landings and fishery effort and determined inseason action was necessary to stay within the quota. Inseason action to modify fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #6 occurred on June 14, 2019. Representatives from NMFS, WDFW, and ODFW participated in this consultation. Council staff were unavailable to participate, but were notified of the RA's decision immediately after the consultation.

Inseason Action #7

Description of the action: Inseason action #7 allowed retention of halibut caught incidental to the commercial salmon fishery by International Pacific Halibut Commission license holders to continue past June 30, 2019. Inseason action #7 also reduced the landing limit for incidental halibut from 35 halibut per vessel per trip to 15 halibut per vessel per trip; other landing restrictions remained as set preseason. This inseason action applied to commercial

salmon fisheries from the U.S./Canada border to the U.S./Mexico border.

Effective dates: Inseason action #7 took effect on July 1, 2019, and remained in effect until superseded on July 19, 2019 by inseason action #16.

Reason and authorization for the action: The 2019 annual management measures for ocean salmon fisheries (84 FR 19729, May 6, 2019) announced the conditions for incidental halibut harvest: ''incidental harvest is authorized only during April, May, and June of the 2019 troll seasons, and after June 30 in 2019 if quota remains.'' At the time of this consultation, 49 percent of the incidental halibut allocation remained uncaught. The RA considered Chinook salmon and halibut landings and fishery effort in the commercial ocean salmon fishery and determined that this inseason action was necessary to meet management objectives set preseason and to allow access to the available halibut allocation, as provided for in the 2019 annual management measures for ocean salmon fisheries (84 FR 19729, May 6, 2019). Inseason action to modify species that may be caught and landed during specific seasons and the establishment of modification of limited retention regulations are authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #7 occurred on June 24, 2019. Representatives from NMFS, WDFW, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #8

Description of the action: Inseason action #8 reopened the commercial salmon fishery from the U.S./Canada border to Queets River, WA, from 1 p.m., June 24, 2019, to 11:59 p.m., June 28, 2019, with a landing and possession limit of 20 Chinook salmon per vessel for the landing period.

Effective dates: Inseason action #8 superseded inseason action #6, above, on June 24, 2019, and remained in effect through the scheduled closure of this fishery on June 28, 2019.

Reason and authorization for the action: The purpose of inseason action #8 was to allow access to available subarea Chinook salmon quota for the May-June season for the economic benefit of local fishery dependent communities. The RA considered Chinook landings to date, remaining Chinook salmon quota, and fishery effort projections and determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #8 occurred on June 24, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #9

Description of the action: Inseason action #9 adjusted the July quota in the commercial salmon fishery in the Oregon KMZ to account for an impact-neutral rollover of unused quota from June. The July quota was adjusted from 2,500 Chinook salmon to 4,495 Chinook salmon.

Effective dates: Inseason action #9 took effect July 4, 2019, and remained in effect through the end of the July quota period on July 31, 2019.

Reason and authorization for the action: The purpose of inseason action #9 was to be consistent with the annual management measures, which state that any remaining portion of Chinook quotas in the Oregon KMZ may be transferred inseason on an impact-neutral basis to the next open quota period (84 FR 19729, May 6, 2019). The RA considered Chinook salmon landings to date and the calculations of the Council's Salmon Technical Team (STT) for rolling over quota on an impact-neutral basis for impacts to Klamath River fall-run Chinook salmon (KRFC), impacts to age-4 KRFC which serves as a surrogate for impacts to California Coastal Chinook salmon (listed as threatened under the Endangered Species Act (ESA)), and fifty-fifty tribal/nontribal sharing of KRFC allowable catch. The RA determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #9 occurred on July 3, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #10

Description of the action: Inseason action #10 increased the landing limit in the commercial salmon fishery in the Oregon KMZ from 50 Chinook salmon to 125 Chinook salmon per vessel per landing week (set preseason as Thursday through Wednesday).

Effective dates: Inseason action #10 took effect July 4, 2019, and remained in effect through the scheduled closure of this fishery on August 29, 2019.

Reason and authorization for the action: The purpose of inseason action #10 was to provide greater access to available quota. The RA considered Chinook landings to date, remaining Chinook salmon quota, and fishery effort projections and determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #10 occurred on July 3, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #11

Description of the action: Inseason action #11 adjusted the July quota in the commercial salmon fishery in the California KMZ to account for an impact-neutral rollover of unused quota from June. The July quota was adjusted from 2,500 Chinook salmon to 3,997 Chinook salmon.

Effective dates: Inseason action #11 took effect July 4, 2019, and remained in effect through the end of the July quota period on July 31, 2019.

Reason and authorization for the action: The purpose of inseason action #11 was to be consistent with the annual management measures, which state that any remaining portion of Chinook quotas in the California KMZ may be transferred inseason on an impact-neutral basis to the next open quota period (84 FR 19729, May 6, 2019). The RA considered Chinook salmon landings to date and the calculations of the STT for rolling over quota on an impact-neutral basis for impacts to Sacramento River fall-run Chinook salmon. The RA determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #11 occurred on July 3, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #12

Description of the action: Inseason action #12 modified the daily bag limit in the recreational fishery in the Neah Bay subarea to two salmon, only one of which can be a Chinook salmon; previously, two Chinook salmon could be retained.

Effective dates: Inseason action #12 took effect July 8, 2019, and remained in effect until superseded by inseason action #14 on July 14, 2019.

Reason and authorization for the action: The purpose of inseason action

#12 was to avoid exceeding the subarea quota for Chinook salmon. This fishery opened on June 22, 2019, and had landed 28 percent of the subarea Chinook salmon guideline in less than two weeks. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to stay within the quota. Inseason action to modify recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Consultation date and participants: Consultation on inseason action #12 occurred on July 3, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #13

Description of the action: Inseason action #13 adjusted the July–September quota in the commercial salmon fishery north of Cape Falcon to account for an impact-neutral rollover of unused quota from the May–June fishery in the same area. The July–September quota was increased from 13,050 to 19,257 Chinook salmon.

Effective dates: Inseason action #13 took effect July 12, 2019, and remained in effect through the scheduled closure of the fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #13 was to be consistent with the annual management measures, which state that any remaining portion of Chinook quotas in the north of Cape Falcon commercial fishery may be transferred inseason on an impact-neutral basis to the next open quota period (84 FR 19729, May 6, 2019). The RA considered Chinook salmon landings to date and the calculations of the STT for rolling over quota on an impact-neutral basis for impacts to ESA-listed Lower Columbia River tule Chinook salmon and Puget Sound Chinook salmon. The RA determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #13 occurred on July 12, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #14

Description of the action: Inseason action #14 modified the daily bag limit in the recreational ocean salmon fishery in the Neah Bay subarea to prohibit retention of Chinook salmon.

Effective dates: Inseason action #14 superseded inseason action #12, above, on July 14, 2019, and remained in effect through the scheduled closure of the fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #14 was to avoid exceeding the subarea guideline for Chinook salmon. In the two weeks since this fishery opened on June 22, 2019, nearly 60 percent of the subarea guideline for Chinook salmon had been landed. WDFW recommended prohibiting retention of Chinook salmon to ensure sufficient impacts available to account for incidental mortality of Chinook salmon while the fishery targeted coho salmon for the remainder of the season. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to stay within the guideline and meet management objectives set preseason. Inseason action to modify recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Consultation date and participants: Consultation on inseason action #14 occurred on July 12, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #15

Description of the action: Inseason action #15 modified the daily bag limit in the recreational ocean salmon fishery in the La Push subarea, to two salmon per day, only one of which can be a Chinook salmon; previously, two Chinook salmon could be retained.

Effective dates: Inseason action #15 took effect on July 15, 2019, and remained in effect through the scheduled closure of the fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #15 was to avoid exceeding the subarea guideline for Chinook salmon. This subarea had a small guideline for Chinook salmon and, with the prohibition of Chinook salmon retention in the neighboring Neah Bay subarea (see inseason action #14, above), there was concern that effort shift to La Push would quickly exhaust the available Chinook salmon guideline. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to stay within the guideline and meet management objectives set preseason. Inseason action to modify recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Consultation date and participants: Consultation on inseason action #15 occurred on July 12, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #16

Description of the action: Inseason action #16 reduced the landing and possession limit for halibut caught incidental to the commercial ocean salmon fishery from the U.S./Canada border to the U.S./Mexico border from 15 to 4 halibut per vessel per trip, all other restrictions remained as set preseason.

Effective dates: Inseason action #16 superseded inseason action #7, above, on July 19, 2019, and remained in effect until superseded by inseason action #19, below, on July 27, 2019.

Reason and authorization for the action: The purpose of inseason action #16 was to extend access to available incidental halibut allocation without exceeding the allocation. At the time of this inseason consultation, 10.6 percent of the halibut allocation remained available. The RA considered Chinook salmon and halibut landings and fishery effort and determined inseason action was necessary to extend access to available halibut and stay within the allocation. Inseason action to modify species that may be caught and landed during specific seasons and the establishment of modification of limited retention regulations are authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #16 occurred on July 17, 2019. Representatives from NMFS, WDFW, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #17

Description of the action: Inseason action #17 increased the landing limit in the commercial ocean salmon fishery in the California KMZ from 20 to 50 Chinook salmon per vessel per day.

Effective dates: Inseason action #17 took effect on July 19, 2019, and remained in effect until superseded by inseason action #24 on August 12, 2019.

Reason and authorization for the action: The purpose of inseason action #17 was to provide increased access available Chinook salmon quota. Landings in the California KMZ in June and early July were low. At the time of this inseason consultation, the fishery had only landed two percent of the adjusted July quota. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to meet management goals set preseason. Inseason action to modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #17 occurred on July 17, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #18

Description of the action: Inseason action #18 imposed a landing limit of 125 Chinook salmon per vessel per landing week (set preseason as Thursday through Wednesday) in the commercial ocean salmon fishery from the U.S./Canada border to Cape Falcon, OR.

Effective dates: Inseason action #18 took effect on July 19, 2019, and remained in effect until superseded by inseason action #25 on August 16, 2019.

Reason and authorization for the action: The purpose of inseason action #18 was to set a precautionary landing limit on this fishery which opened July 1, 2019, with a Chinook salmon quota, but no landing limit, set preseason. The fishery landed 43 percent of the Chinook salmon quota in the first 17 days of the fishery. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to sustain season length while remaining within the quota. Inseason action to establish or modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #18 occurred on July 17, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #19

Description of the action: Inseason action #19 reduced the landing and possession limit for halibut caught incidental to the commercial ocean salmon fishery from the U.S./Canada border to the U.S./Mexico border from 4 to 2 halibut per vessel per trip, all other restrictions remained as set preseason.

Effective dates: Inseason action #19 superseded inseason action #16, above, on July 27, 2019, and remains in effect until all 2019 commercial salmon fisheries close, unless superseded by inseason action.

Reason and authorization for the action: The purpose of inseason action #19 was to extend access to available incidental halibut allocation without exceeding the allocation. At the time of this inseason consultation, 9.1 percent of the allocation remained available. The RA considered Chinook salmon and halibut landings and fishery effort and determined inseason action was necessary to extend access to available halibut and stay within the allocation. Inseason action to modify species that may be caught and landed during specific seasons and the establishment of modification of limited retention regulations are authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #19 occurred on July 24, 2019. Representatives from NMFS, WDFW, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #20

Description of the action: Inseason action #20 adjusted the August quota in the commercial salmon fishery in the California KMZ to account for an impact-neutral rollover of unused quota from July. The August quota was adjusted from 2,000 Chinook salmon to 4,293 Chinook salmon.

Effective dates: Inseason action #20 took effect August 2, 2019, and remained in effect through the scheduled closure of this fishery on August 31, 2019.

Reason and authorization for the action: The purpose of inseason action #20 was to be consistent with the annual management measures, which state that any remaining portion of Chinook quotas in the California KMZ may be transferred inseason on an impact-neutral basis to the next open quota period (84 FR 19729, May 6, 2019). The RA considered Chinook salmon landings to date and the calculations of the STT for rolling over quota on an impact-neutral basis for impacts to Sacramento River fall-run Chinook salmon. The RA determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #20 occurred on August 2, 2019. Representatives from NMFS, ODFW, and CDFW. Council staff were unavailable to participate, but were notified of the RA's decision immediately after the consultation.

Inseason Action #21

Description of the action: Inseason action #21 adjusted the August quota in the commercial salmon fishery in the Oregon KMZ to account for an impact-neutral rollover of unused quota from July. The August quota was adjusted from 1,200 Chinook salmon to 4,330 Chinook salmon.

Effective dates: Inseason action #21 took effect August 2, 2019, and remained in effect through the scheduled closure of this fishery on August 29, 2019.

Reason and authorization for the action: The purpose of inseason action #21 was to be consistent with the annual management measures, which state that any remaining portion of Chinook quotas in the Oregon KMZ may be transferred inseason on an impact-neutral basis to the next open quota period (84 FR 19729, May 6, 2019). The RA considered Chinook salmon landings to date and the calculations of the STT for rolling over quota on an impact-neutral basis for impacts to KRFC, impacts to age-4 KRFC which serves as a surrogate for impacts to California Coastal Chinook salmon (listed as threatened under the ESA), and fifty-fifty tribal/nontribal sharing of KRFC allowable catch. The RA determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #21 occurred on August 2, 2019. Representatives from NMFS, ODFW, and CDFW. Council staff were unavailable to participate, but were notified of the RA's decision immediately after the consultation.

Inseason Action #22

Description of the action: Inseason action #22 temporarily closed the commercial salmon fishery in the California KMZ.

Effective dates: Inseason action #22 took effect on August 5, 2019, and remained in effect until superseded by inseason action #24 on August 12, 2019.

Reason and authorization for the action: The purpose of inseason action #22 was to avoid exceeding the subarea quota for Chinook salmon. Landings in the first two open days of August were unexpectedly high and there was concern the quota would be exceeded. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to prevent exceeding the quota. Inseason action to modify fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #22 occurred on August 5, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #23

Description of the action: Inseason action #23 modified the daily bag limit in the recreational ocean salmon fishery

in the Westport subarea to allow retention of two Chinook salmon per day. Previously, the two salmon per day landing limit allowed retention of only one Chinook salmon.

Effective dates: Inseason action #23 took effect on August 10, 2019, and remained in effect until the scheduled closure of the fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #23 was to allow access to available subarea guideline for Chinook salmon. At the time of this inseason consultation the Westport fishery had only landed 11 percent of the subarea guideline for Chinook salmon. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Consultation date and participants: Consultation on inseason action #23 occurred on August 7, 2019. Representatives from NMFS, WDFW, and ODFW participated in this consultation. Council staff were unavailable to participate, but were notified of the RA's decision immediately after the consultation.

Inseason Action #24

Description of the action: Inseason action #24 reopened the commercial ocean salmon fishery in the California KMZ with a landing and possession limit of 15 Chinook salmon per vessel per day; the previous landing and possession limit was 50 Chinook salmon per vessel per day.

Effective dates: Inseason action #24 took effect on August 12, 2019, superseding inseason actions #17 and #22, above, to reopen the fishery and modify the landing and possession limit. Inseason action #24 remained in effect through the scheduled closure of the fishery on August 31, 2019.

Reason and authorization for the action: The purpose of inseason action #24 was to allow access to available Chinook salmon quota without exceeding the quota. Subsequent to the temporary closure of this fishery on August 5, 2019 (see inseason action #22, above), 1,093 Chinook salmon remained available on the August quota. CDFW recommended reopening the fishery to access this quota, but reducing the landing limit to keep landings within the quota. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to stay within the quota. Inseason action to modify fishing seasons is authorized by 50 CFR 660.409(b)(1)(i). Inseason action to modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #24 occurred on August 8, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

Inseason Action #25

Description of the action: Inseason action #25 increased the landing limit from 125 to 160 Chinook salmon per vessel per landing week (set preseason as Thursday through Wednesday) in the commercial ocean salmon fishery from the U.S./Canada border to Cape Falcon, OR. The landing limit for coho in this fishery was unchanged.

Effective dates: Inseason action #25 superseded inseason action #18 on August 16, 2019, and remained in effect until the scheduled closure of this fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #25 was to provide access to available Chinook salmon quota without exceeding the quota. At the time of the inseason consultation, the fishery had 28 percent of the adjusted July–September Chinook salmon quota remaining. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to sustain season length while remaining within the quota. Inseason action to establish or modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(ii).

Consultation date and participants: Consultation on inseason action #25 occurred on August 15, 2019. Representatives from NMFS, WDFW, ODFW, and the Council participated in this consultation.

Inseason Action #26

Description of the action: Inseason action #26 modified the quota for the recreational non-mark-selective coho fishery from Cape Falcon, OR, to Humbug Mountain, OR, from 9,000 to 15,640 non-mark-selective coho due to an impact-neutral rollover of remaining quota from the recreational mark-selective coho fishery that ended August 25, 2019.

Effective dates: Inseason action #26 took effect on September 6, 2019, and remained in effect through the scheduled closure of this fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #26 was to be consistent with the annual management measures, which state that any remainder of the mark-selective coho quota may be transferred inseason on an impact-neutral basis to the non-mark-selective coho quota from Cape Falcon, OR, to Humbug Mountain, OR (84 FR 19729, May 6, 2019). The RA considered Chinook salmon landings to date and the calculations of the STT for rolling over quota on an impact-neutral basis for impacts to Oregon Coast Natural coho. The RA determined inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #26 occurred on September 4, 2019. Representatives from NMFS, ODFW, CDFW and the Council participated in this consultation.

Inseason Action #27

Description of the action: Inseason action #27 modified the open dates in the recreational non-mark-selective coho fishery from Cape Falcon, OR, to Humbug Mountain, OR. This action added Monday, September 23, 2019 through Thursday, September 26, 2019, to the scheduled open dates for this fishery.

Effective dates: Inseason action #27 took effect on September 23, 2019, and remained in effect until the scheduled closure of this fishery on September 30, 2019.

Reason and authorization for the action: The purpose of inseason action #27 was to provide access to available coho quota. With ten days remaining on the season, 41 percent of the non-mark-selective coho quota remained uncaught. The RA considered Chinook salmon landings and fishery effort and determined inseason action was necessary to be consistent with management objectives set preseason. Inseason action to modify fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #27 occurred on September 20, 2019. Representatives from NMFS, ODFW, CDFW, and the Council participated in this consultation.

All other restrictions and regulations remain in effect as announced for the 2019 ocean salmon fisheries and 2020 salmon fisheries opening prior to May 1, 2020 (84 FR 19729, May 6, 2019), and as modified by prior inseason actions.

The RA determined that the best available information indicated that Chinook salmon abundance forecasts, incidental halibut allocation, and expected fishery effort in 2019 supported the above inseason actions recommended by the states of

Washington, Oregon, and California. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone consistent with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory action was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NOAA's Assistant Administrator (AA) for NMFS finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (84 FR 19729, May 6, 2019), the Pacific Coast Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon catch and effort projections and abundance forecasts were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, ensuring that conservation objectives and limits for impacts to salmon species listed under the ESA are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2019.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–22772 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180625576–8999–02]

RIN 0648–BJ36

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–2020 Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial groundfish fisheries. This action is intended to allow commercial fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, phone: 206–526–4491 or email: *karen.palmigiano@noaa.gov.*

Electronic Access

This 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 Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2019–2020 biennium for most species managed under the PCGFMP on December 12, 2018 (83 FR 63970). In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its September 12–18, 2019 meeting, the Council recommended increasing the limited entry fixed gear (LEFG) and open access (OA) trip limits for sablefish both north of 36° N lat. Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also recommends mitigation measures (*e.g.,* trip limits, area closures, and bag limits) that are meant to mitigate catch so as not to exceed the harvest specifications. The harvest specifications and mitigation measures developed for the 2019–2020 biennium used data through the 2017 fishing year. Each of the adjustments to mitigation measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, adjustments to mitigation measures are projected so as to help harvesters achieve but not exceed the harvest limits.

Sablefish is an important commercial species on the west coast with vessels targeting sablefish with both trawl and fixed gear (longlines and pots/traps). Sablefish is managed with a coast-wide ACL that is apportioned north and south of 36° N lat. with 73.8 percent going to the north and 26.2 percent going to the south. In 2019, the portion of the ACL for sablefish north of 36° N lat. is 5,606 mt with a fishery HG of 5,007 mt. The fishery HG north of 40°10′ N lat. is further divided between the LEFG and OA sectors with 90.6 percent, or 4,537 mt, going to the LEFG sector and 9.4 percent, or 471 mt, going to the OA sector. The 2019 portion of ACL for sablefish south of 36° N lat. is 1,990 mt with a fishery HG of 1,986 mt. South of 36° N lat., the fishery HG is further divided between the trawl (limited entry) and non-trawl (LEFG and OA) sectors with 42 percent or 834 mt going

to the trawl sector, and the remaining 58 percent or 1,152 mt going to the fixed gear sector.

At the September 2019 Council meeting, the Council's Groundfish Management Team (GMT) received requests from industry members and members of the Council's Groundfish Advisory Subpanel to examine the potential to increase sablefish trips limits for the LEFG and OA fisheries north of 36° N lat. The intent of increasing trip limits is to increase harvest opportunities for vessels targeting sablefish which have been trending low in recent years. To evaluate potential increases to sablefish trip limits, the GMT made model-based landings projections under current regulations and alternative sablefish trip limits, including the limits ultimately recommended by the Council, for the LEFG and OA fisheries through the remainder of the year. Table 1 shows the projected sablefish landings, the sablefish allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits. These projections were based on the most recent catch information available through early September 2019. Industry did not request changes to sablefish trip limits for the LEFG or OA fishery south of 36° N lat. Therefore, NMFS and the Council did not consider trip limit changes for these fisheries at this time.

TABLE 1—PROJECTED LANDINGS OF SABLEFISH, SABLEFISH ALLOCATION, AND PROJECTED PERCENTAGE OF SABLEFISH ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)	Allocation (mt)	Projected percentage attained
LEFG North of 36° N lat.	Current: 1,300 lb (560 kg)/week, not to exceed 3,900 lb (1,769 kg)/two months.	190–213	273	70–78
	Recommended: 1,700 lb (771 kg)/week, not to exceed 5,100 lb (2,313 kg)/two months.	247–283		90–104
OA North of 36° N lat.	Current: 300 lb (136 kg)/day, or 1 landing per week of up to 1,400 lb (635 kg), not to exceed 2,800 lb (1,179 kg)/two months.	340–420	449	75–93
	Recommended: 300 lb (136 kg)/day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 3,000 lb (1,361 kg)/two months.	360–460		81–102

As shown in Table 1, under the current trip limits, the model predicts catches of sablefish will be at or below 78 percent, or 213 mt of the 273 mt allocation, for LEFG and 93 percent, or 420 mt of the 449 mt allocation, for OA fishery north of 36° N lat. Under the Council's recommended trip limits, sablefish attainment is projected to increase in the LEFG and OA fisheries north of 36° N lat. up to 104 and 102 percent, respectively. However, to date in 2019, the model has overestimated landings by an average of 38 percent. Assuming this trend continues for 2019, the percentage attainment would likely be closer to the lower bound for both LEFG (90 percent or 247 mt) and OA (81 percent or 360 mt) north of 36° N lat.

Trip limit increases for sablefish are intended to increase attainment of the non-trawl HG. The proposed trip limit increases do not change projected impacts to co-occurring overfished species compared to the impacts anticipated in the 2019–20 harvest specifications because the projected impacts to those species assume that the entire sablefish ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying Tables 2 North and South to part 660, subpart E, trip limit changes for the LEFG fishery north of 36° N lat. to increase the limits from ''1,300 lb (560 kg)/week, not to exceed 3,900 lb (1,769 kg)/two months'' to ''1,700 lb (771 kg)/week, not to exceed 5,100 lb (2,313 kg)/two months'' beginning in period 5 (September and October) through the end of the year. NMFS is also implementing, by modifying Tables 3 North and South to part 660, subpart F, trip limit changes for the OA sablefish fishery north of 36° N lat. to increase the limits from ''300 lb (136 kg)/day, or 1 landing per week of up to 1,400 lb (635 kg), not to exceed 2,800 lb (1,179 kg)/two months'' to ''300 lb (136 kg) per day, or one landing per week of up to 1,500 lb (680 kg), not to exceed 3,000 lb (1,360 kg) per two months'' starting with period 5 (September and October) through the end of the year.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Karen Palmigiano in NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document ease restrictive trip limits fisheries in Washington, Oregon, and California. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2019–2020 harvest specifications and management measures which published on December 12, 2018 (83 FR 63970).

At its September 2019 meeting, the Council recommended increases to the commercial trip limits be implemented as soon as possible so that harvesters may be able to take advantage of these higher limits before the end of the calendar year. Each of the adjustments to commercial management measures in this rule will create more harvest opportunity and allow fishermen to better attain species that are currently under attained without causing any additional impacts to the fishery. Each of these recommended adjustments also rely on new catch data that were not

available and thus not considered during the 2019–2020 biennial harvest specifications process. New catch information through the end of the 2018 fishing year shows that attainment of sablefish) has been below its management points (*i.e.,* HG, ACL, and non-trawl allocation) in 2018 and would likely remain below state catch targets under status quo limits in 2019 and 2020.

These trip limit adjustments could provide up to an additional $508-thousand in ex-vessel revenue to harvesters, as well as $1.04-million in income and 16 jobs when including benefits to communities and associated businesses. Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry because it is unlikely the new regulations would publish and could be implemented before the end of the calendar year. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

Therefore, the NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by increasing opportunity and relieving participants of the more restrictive trip limits. These adjustments were requested by the Council's advisory bodies, as well as members of industry during the Council's September 2019 meetings, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2019–2020 (83 FR 63970).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: October 15, 2019.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is 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. Table 2 (North) to part 660, subpart E, is revised to read as follows:

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TABLE 2 (NORTH) TO PART 660, SUBPART E—NON-TRAWL ROCKFISH CONSERVATION AREAS AND TRIP LIMITS FOR LIMITED ENTRY FIXED GEAR NORTH OF 40°10′ N LAT.

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/14/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 month					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,700 lb/week, not to exceed 5,100 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9 10 11 12 13 14	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish[2/], Shortbelly, & Widow rockfish**	200 lb/ month					
17	**Yellowtail rockfish**	1,000 lb/ month					
18	**Canary rockfish**	300 lb/ 2 months					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish & Oregon Black/blue/deacon rockfish**						
21	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
22	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish		7,000 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish			
23	**Lingcod[5/]**						
24	North of 42°00' N. lat.	2,000 lb/ 2 months					
25	42°00' N. lat. - 40°10' N. lat.	1,400 lb/2 months					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Other Fish[6/] & Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Table 2 (South) to part 660, subpart E, is revised to read as follows:

TABLE 2 (SOUTH) TO PART 660, SUBPART E—NON-TRAWL ROCKFISH CONSERVATION AREAS AND TRIP LIMITS FOR LIMITED ENTRY FIXED GEAR SOUTH OF 40°10′ N LAT.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 10/14/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish		40,000 lb/ 2 months, of which no more than 4,000 lb may be blackgill rockfish			
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	1,700 lb/week, not to exceed 5,100 lb/ 2 months					
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12 13 14 15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
18	**Whiting**	10,000 lb/ trip					
19	**Minor Shelf Rockfish[2/], Shortbelly rockfish, Widow rockfish (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.					
21	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	4,000 lb/ 2 months			
22	**Chilipepper**						
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly and widow rockfish limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA					
25	**Canary rockfish**						
26	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months					
27	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			
28	**Yelloweye rockfish**	CLOSED					
29	**Cowcod**	CLOSED					
30	**Bronzespotted rockfish**	CLOSED					
31	**Bocaccio**						
32	40°10' N. lat. - 34°27' N. lat.	1,000 lb/ 2 months			1,500 lb/ 2 months		
33	South of 34°27' N. lat.	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
34	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
35	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	Deeper nearshore[5/]	1,000 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
37	**California Scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
38	**Lingcod[6/]**	200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
39	**Pacific cod**	1,000 lb/ 2 months					
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
41	**Longnose skate**	Unlimited					
42	**Other Fish[7/] & Cabezon in California**	Unlimited					
43	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Table 3 (North) to part 660, subpart F, is revised to read as follows:

TABLE 3 (NORTH) TO PART 660, SUBPART F—NON-TRAWL ROCKFISH CONSERVATION AREAS AND TRIP LIMITS FOR OPEN ACCESS GEARS NORTH OF 40°10′ N LAT.

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/14/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	500 pounds/month					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	300 lb/ day; or one landing per week up to 1,200 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day; or one landing per week up to 1,400 lb, not to exceed 2,800 lb/ 2 months	300 lb/ day; or one landing per week up to 1,500 lb, not to exceed 3,000 lb/ 2 months	
7	**Shortpine thornyheads**	50 lb/ month					
8	**Longspine thornyheads**	50 lb/ month					
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
10							
11		South of 42° N. lat., when fishing for "Other Flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12							
13							
14							
15	**Whiting**	300 lb/ month					
16	**Minor Shelf Rockfish[2/], Shortbelly rockfish, & Widow rockfish**	200 lb/ month					
17	**Yellowtail rockfish**	500 lb/ month					
18	**Canary rockfish**	300 lb/ 2 months					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
21	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish [4/]					
22	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish		7,000 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish			
23	**Lingcod[6/]**						
24	North of 42°00' N. lat.	900 lb/ month					
25	42°00' N. lat. - 40°10' N. lat.	600 lb/ month					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Big skate**	Unlimited					
30	**Other Fish[6/] & Cabezon in California**	Unlimited					
31	**Oregon Cabezon/Kelp Greenling**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued 10/14/2019

TABLE 3 (North) cont'd

32	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*	
33	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 5 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.
34	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*	
35	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. Table 3 (South) to part 660, subpart F, is revised to read as follows:

TABLE 3 (SOUTH) TO PART 660, SUBPART F—NON-TRAWL ROCKFISH CONSERVATION AREAS AND TRIP LIMITS FOR OPEN ACCESS GEARS SOUTH OF 40°10′ N. LAT.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/14/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/](also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish		10,000 lb/ 2 months, of which no more than 800 lb may be blackgill rockfish			
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day; or one landing per week up to 1,200 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day; or one landing per week up to 1,400 lb, not to exceed 2,800 lb/ 2 months	300 lb/ day; or one landing per week up to 1,500 lb, not to exceed 3,000 lb/ 2 months	
7	South of 36°00' N. lat.	300 lb/ day, or one landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months			300 lb/ day, or one landing per week of up to 1,600 lb, not to exceed 4,800 lb/ 2 months		
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
12							
13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14							
15							
16							
17	**Whiting**	300 lb/ month					
18	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	400 lb/ 2 months	CLOSED	400 lb/ 2 months			
20	South of 34°27' N. lat.	1,500 lb/ 2 months		1,500 lb/ 2 months			
21	**Canary rockfish**	300 lb/ 2 months	CLOSED	300 lb/ 2 months			
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**	500 lb/ 2 months	CLOSED	500 lb/ 2 months			
26	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
27	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
28	Deeper nearshore[5/]	1,000 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
29	**California scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
30	**Lingcod[6/]**	300 lb/ month	CLOSED	500 lb/ month			
31	**Pacific cod**	1,000 lb/ 2 months					
32	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
33	**Longnose skate**	Unlimited					
34	**Big skate**	Unlimited					
35	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

TABLE 3 (South) cont'd

Table 3 (South). Continued — 10/14/2019

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
38		*40° 10' N. lat. - 38° 00' N. lat.*	*100 fm line 1/ - 200 fm line 1/*	*100 fm line 1/ - 150 fm line 1/*				*100 fm line 1/ - 200 fm line 1/*
39		*38° 00' N. lat. - 34° 27' N. lat.*	*100 fm line 1/ - 150 fm line 1/*					
40		*South of 34° 27' N. lat.*	*100 fm line 1/ - 150 fm line 1/ along the mainland coast; shoreline - 150 fm line 1/ around islands*					
41			Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
42	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
43		South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2019–22785 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RIN 0648–XY028

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Operating as Catcher Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits, and operating as catcher vessels (CVs) using pot gear, in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2019 Pacific cod sideboard limit established for non-AFA crab vessels that are operating as CVs using pot gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 16, 2019, through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2019 Pacific cod sideboard limit established for non-AFA crab vessels, and that are operating as CVs using pot gear in the Western Regulatory Area of the GOA, is 533 metric tons (mt), as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2019 Pacific cod sideboard limit established for non-AFA crab vessels that are operating as CVs using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is

establishing a sideboard directed fishing allowance of 523 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are operating as CVs using pot gear in the Western Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard limits, and that are operating as CVs using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 15, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–22856 Filed 10–16–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 203

Monday, October 21, 2019

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0994; Product Identifier 2017–SW–002–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–14–05 for Airbus Helicopters Model SA330J helicopters. AD 2017–14–05 requires replacing certain right-hand (RH) hydraulic pumps and is prompted by reports of broken screws that attach the cover of the hydraulic pump. This proposed AD would continue to require the same actions as AD 2017–14–05 but would also require replacing the left-hand (LH) hydraulic pump. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 20, 2019.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments 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 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0994; 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 proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

The FAA issued a final rule; request for comment to AD 2017–14–05, Amendment 39–18949 (82 FR 31899, July 11, 2017) (''AD 2017–14–05'') for Airbus Helicopters Model SA330J helicopters with a LH and RH hydraulic pump part number (P/N) FR65WEO2005–175A with a serial number 4108, 4141, 4177, 4227, 4241, 4284, 4377, 4422, 4570, 4573, 4574, 4641, 4649, 4668, 4766, 4802, 4821, 4831, 4837, 4888, 4896, 4946, 4985, 5023, 5071, 5304, 5366, 5376, 5409, 5442, 5486, 5599, 5630, 94075/01, or 94048/01 installed. AD 2017–14–05 requires replacing the RH hydraulic pump within 15 hours time-in-service.

AD 2017–14–05 was prompted by EASA Emergency AD No. 2016–264–E, dated December 22, 2016 (EASA AD 2016–264–E), issued by EASA, to correct an unsafe condition for Airbus Helicopters Model SA330J helicopters. EASA advises of reports of broken screws that attach the cover of the hydraulic pump. A subsequent investigation revealed that hydrogen was introduced into a batch of screws delivered between July 1, 2015, and November 1, 2016, causing the screws to become brittle and lack sufficient strength. These screws were installed in a batch of hydraulic pumps, P/N FR65WEO2005–175A, identified by certain serial numbers, EASA advises. As a result, the EASA AD requires replacing the hydraulic pumps.

The actions of AD 2017–14–05 were intended to prevent failure of a cover bolt and loss of fluid from the hydraulic pump, resulting in loss of the hydraulic system and subsequent loss of helicopter control.

This NPRM would retain the requirements of AD 2017–14–05 but would also require replacing the LH hydraulic pump within 110 hours TIS. Because this proposed action would have a longer compliance time, the FAA is providing the public an opportunity to comment.

Comments

After AD 2017–14–05 was published, the FAA received two comments from Airbus Helicopters.

Airbus Helicopters requested that the FAA clarify the requirement in AD 2017–14–05 to only replace the RH hydraulic pump, when EASA AD 2016–0264–E requires replacing both the RH and LH hydraulic pumps.

The FAA agrees that the LH hydraulic pump also needs to be replaced. AD 2017–14–05 was issued as a final rule; request for comments and was effective in less than 30 days because it required replacing the RH hydraulic pump within a short time period. When the FAA issued AD 2017–14–05, the FAA explained that the compliance time for replacing the LH hydraulic pump allowed enough time to provide notice and opportunity for prior public comment. This proposed AD would require replacing both the RH and LH hydraulic pumps.

Airbus Helicopters also requested that the FAA clarify whether the pumps listed in the Applicability of AD 2017–14–05 by P/N and serial number are serviceable because EASA AD 2016–264–E allows those pumps to be installed if repaired in accordance with Mechanics Alert Service Bulletin No. NM/INGE/16–140, Revision 0, dated December 22, 2016 (Nexter ASB).

Airbus Helicopters is correct that the pumps listed by P/N and serial number in the Applicability section of AD 2017–14–05 are not serviceable. Paragraph (e)(2) of AD 2017–14–05 prohibits installing those pumps on any helicopter. One of the instructions in the Nexter ASB is to re-identify the pump by adding a ''V'' after the serial number. If a pump has been repaired in accordance with the Nexter ASB, this AD will not apply because the pump will have a serial number that is not listed in the Applicability section of this AD.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin No. SA330–29.12, Revision 0, dated December 22, 2016 (Airbus EASB), for Model SA330J helicopters and military model SA330L, SA330Jm, SA330S1, and SA330Sm helicopters. The Airbus EASB specifies removing Nexter Mechanics hydraulic pumps P/N FR65WEO2005–175A with certain serial numbers. If both the RH and LH hydraulic pumps have an affected P/N and serial number, the Airbus EASB specifies replacing the RH hydraulic pump before further flight and the LH hydraulic pump within 110 flying hours or 6 months. If only one hydraulic pump has an affected P/N and serial number, the Airbus EASB specifies replacing it within 110 flying hours or 6 months. The Airbus EASB also specifies that, for 6 months after receipt of the Airbus EASB, before installing an affected hydraulic pump it must be ''returned to conformity'' by complying with Nexter ASB. After 6 months or 110 flying hours, whichever occurs first, the Airbus ASB states the affected hydraulic pumps are unfit for flight.

Proposed AD Requirements

This proposed AD would require replacing the RH hydraulic pump within 15 hours TIS and replacing the LH hydraulic pump within 110 hours TIS. This proposed AD would also prohibit installation of an affected hydraulic pump on any helicopter.

Costs of Compliance

The FAA estimates that this AD would affect 24 helicopters and that labor costs average $85 per work-hour. Based on these estimates, the FAA expects that replacing two hydraulic pumps would require 4 work-hours and parts cost $5,000 for a total cost of $5,340 per helicopter and $128,160 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; 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.

The FAA prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–14–05, Amendment 39-18949 (82 FR 31899, July 11, 2017), and adding the following new AD:

Airbus Helicopters: Docket No. FAA–2018–0994; Product Identifier 2017–SW–002–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model SA330J helicopters, certificated in any category, with a left-hand (LH) and a right-hand (RH) hydraulic pump part number FR65WEO2005–175A with a serial number 4108, 4141, 4177, 4227, 4241, 4284, 4377, 4422, 4570, 4573, 4574, 4641, 4649, 4668, 4766, 4802, 4821, 4831, 4837, 4888, 4896, 4946, 4985, 5023, 5071, 5304, 5366, 5376,

5409, 5442, 5486, 5599, 5630, 94075/01, or 94048/01 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a screw attaching the hydraulic pump cover. This condition could result in failure of a cover bolt and loss of fluid from the hydraulic pump, resulting in loss of the hydraulic system and subsequent loss of helicopter control.

(c) Affected ADs

This AD replaces AD 2017–14–05, Amendment 39–18949 (82 FR 31899, July 11, 2017) (AD 2017–14–05).

(d) Comments Due Date

The FAA must receive comments by December 20, 2019.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 15 hours time-in-service (TIS) from July 26, 2017 (the effective date of AD 2017–14–05), replace the RH hydraulic pump with an airworthy hydraulic pump that is not listed in paragraph (a) of this AD.

(2) Within 110 hours TIS from the effective date of this AD, replace the LH hydraulic pump with an airworthy hydraulic pump that is not listed in paragraph (a) of this AD.

(3) After the effective date of this AD, do not install on any helicopter a hydraulic pump that is listed in paragraph (a) of this AD.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Airbus Helicopters Emergency Alert Service Bulletin No. SA330–29.12, Revision 0, dated December 22, 2016, and Nexter Mechanics Alert Service Bulletin No. NM/INGE/16–140, Revision 0, dated December 22, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) No. 2016–0264–E, dated December 22, 2016. You may view the EASA AD on the internet at *http://www.regulations.gov* in the AD Docket.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 2913, Hydraulic Pump (Electric/Engine) Main.

Issued in Fort Worth, Texas, on September 10, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–22815 Filed 10–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 300

[Docket ID ED–2019–OSERS–0111]

Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed interpretation.

SUMMARY: The Individuals with Disabilities Education Act (IDEA) established the National Instructional Materials Access Center (NIMAC) in 2004 to assist State educational agencies (SEAs) and local educational agencies (LEAs) to produce accessible instructional materials for students with print disabilities. The U.S. Department of Education (Department) issues this notice of proposed interpretation to clarify the definition of ''print instructional materials'' in section 674(e)(3)(C) of IDEA to include digital instructional materials. This means that the NIMAC would accept digital instructional materials.

DATES: We must receive your comments on or before November 20, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov.*''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this proposed interpretation, address them to Tara Courchaine, U.S. Department of Education, 400 Maryland Avenue SW, Room 5054E, Potomac Center Plaza, Washington, DC 20202–5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Tara Courchaine, U.S. Department of Education, 400 Maryland Avenue SW, Room 5054E, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6462. Email: *Tara.Courchaine@ed.gov.*

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

We invite you to submit comments on this notice of proposed interpretation. See **ADDRESSES** for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this proposed interpretation by accessing *Regulations.gov.* You may also inspect the comments in person in Room 3W104, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for this document. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The NIMAC was established under IDEA in 2004 to assist SEAs and LEAs in the production of accessible instructional materials for students with print disabilities. While discussing proposed changes to IDEA in the Senate, Senator Dodd, a co-sponsor of the bill, commented on the reason for establishing NIMAC stating ''. . . these important provisions will greatly aid blind and print disabled students by ensuring they receive their textbooks and other instructional materials in the formats they require, such as Braille, at the same time as their sighted peers.'' 108 Cong. Rec. S11, 656 (April 29, 2003). Similarly, the House report notes that, ''. . . the provision is intended to provide students who are blind or have other print disabilities with more timely access to instructional materials used in elementary and secondary schools.'' H.R. Rep. No. 108–77, at 98 (April 29, 2003). Within the legislation, the scope and duties of the NIMAC as the searchable online national file repository of K–12 print textbooks in the XML-based National Instructional Materials Accessibility Standard (NIMAS) format are clearly defined, as are the key definitions framing its operations.

These duties are:

1. To receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the Secretary, made available to such center by the textbook publishing industry, SEAs, and LEAs.

2. To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe.

3. To develop, adopt, and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided in sections 612(a)(23) and 613(a)(6) of IDEA. (34 CFR 300.172(e)(1)(ii); 20 U.S.C. 1474(e)(2)(A), (B), (C))

Under section 674(e)(3)(C) of IDEA, the term ''print instructional materials'' means ''printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.'' During the 15 years since the NIMAS was created by Federal statute, the use of digital educational materials [1] as a core component of elementary and secondary curriculum has grown significantly. Currently, the majority of States have digital learning plans and digital learning standards. In addition, State leaders have demonstrated a commitment to digital learning and the use of digital materials and to support personalized learning that meets the needs of all students.[2] In fact, in 2014 Florida developed a five-year plan that requires all schools to move to digital classrooms.[3] In a recent United States survey, 75 percent of classroom teachers expected digital content to replace traditional print textbooks by 2026.[4]

Currently, IDEA does not specifically address the inclusion or use of digital instructional materials, which were not as common when the law was originally enacted. At this time NIMAC does not accept digital instructional materials. This exclusion of digital materials unnecessarily and inappropriately limits access to such materials for students who are blind or visually impaired. The exclusion of digital instructional materials from the NIMAC also forces teachers to retrofit materials or provide alternate materials that are not equivalent to those available to peers without disabilities. Additionally, these retrofitted materials may not be provided to students in a timely manner or are of inconsistent quality. Consequently, students who are blind or visually impaired are potentially denied equal educational opportunity, comparable access to materials, and access to information in a timely manner by excluding digital instructional materials from the definition of print instructional materials. This is especially true for students in Pre-K–3, who require embossed braille to ensure a solid foundation in early literacy, as well as for older students who use braille (embossed or digital) to access academic content.

Digitally formatted materials accompanied by technology have the potential to facilitate learning for all students. However, such materials will benefit students who are blind, visually impaired, or have other print disabilities only if they are available in accessible formats.[5]

Proposed Interpretation

Given the purpose of NIMAC, the trend toward digital instructional materials and resources, and the silence of the statute on the acceptance of digital files, the Department proposes to interpret the phrase ''printed textbooks and related printed core materials'' referred to in the definition of ''print instructional materials'' in section 674(e)(3)(C) of IDEA to include digital instructional materials that comply with NIMAS, because that is the primary medium through which many textbooks and core materials are now printed. The Department considers digital materials submitted to NIMAC to be in digital print format, which falls under the larger category of ''print'' and is consistent with the statutory language of section 674(e)(3)(C) of IDEA. The Department believes this interpretation to be aligned with the purpose of the statute, which is to provide timely instructional materials to students who are blind or have other print disabilities. Therefore, under this interpretation, NIMAC would be able to accept digital instructional materials submitted in a valid XML-based NIMAS format.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to

[1] For the purpose of this notice of interpretation, the Department views ''digital educational materials'' as ''digital instructional materials.''

[2] State Educational Technology Directors Association (SETDA). (2019). State K12 Instructional Materials Leadership Trends Snapshot. See *https://www.setda.org/master/wp-content/uploads/2019/03/DMAPS_snapshot_3.26.19.pdf.*

[3] Florida's Digital Classrooms Program. See *http://www.fldoe.org/core/fileparse.php/5658/urlt/0097843-fdoedigitalclassroomsplan.pdf.*

[4] Harpur, Paul. (2017). Discrimination, copyright and equality: Opening the e-book for the print disabled. Retrieved from *https://ssrn.com/abstract=2977629.*

[5] Harpur, Paul. (2017). Discrimination, copyright and equality: Opening the e-book for the print disabled. Retrieved from *https://ssrn.com/abstract=2977629.*

documents published by the Department.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–22888 Filed 10–18–19; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0556; FRL–10001–23–Region 9]

Air Plan Approval; California; San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego Air Pollution Control District (SDAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOC) from Adhesive Material Application Operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 20, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0556 at *https://www.regulations.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4125 or by email at *vineyard.christine@epa.gov*.

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted to the EPA by the California Air Resource Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Amended	Submitted
SDAPCD	67.21	Adhesive Material Application Operations	05/14/08	08/09/17

On February 9, 2018, the submittal for SDAPCD Rule 67.21 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 67.21 in the SIP.

C. What is the purpose of the submitted rule?

Emissions of VOCs help produce ground-level ozone, or smog, and particulate matter, which harm human health and the environment. Sections 110(a) and 182(b)(2) of the CAA require states to submit regulations that control VOC emissions. Rule 67.21 establishes VOC content limits and workplace standards from the application of adhesives, sealants, and adhesive and sealant primers. It also contains related recordkeeping, reporting, and monitoring requirements. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SDAPCD regulates an ozone nonattainment area classified as Moderate for the 2008 8-hour ozone National Ambient Air Quality Standard 40 CFR 81.305. Therefore, this rule must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutant includes the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control Techniques Guidelines for Miscellaneous Industrial Adhesives,'' EPA–453/R–08–005, September 2008. (*http://*

www.epa.gov/ozonepollution/SIPToolkit/ctgs.html)

B. Does the rule meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. The TSD has more information on our evaluation.

C. EPA's Recommendations to Further Improve the Rule

The TSD also includes recommendations for the next time the SDAPCD modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until November 20, 2019. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally-enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SDAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 4, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–22912 Filed 10–18–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2019–002; Docket No. FAR–2019–0004, Sequence No. 1]

RIN 9000–AN85

Federal Acquisition Regulation: Recreational Services on Federal Lands

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a Department of Labor (DOL) rule, which exempts certain contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from an Executive Order minimum wage.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before December 20, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–002 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2019–002''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2019–002''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2019–002'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR Case 2019–002'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,*

approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Funk, Procurement Analyst, at 202–357–5805 or *kevin.funk@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 ''FAR Case 2019–002.''

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement a DOL rule published in the **Federal Register** at 83 FR 48537 on September 26, 2018. The DOL rule implemented Executive Order (E.O.) 13838, Exemption From Executive Order 13658 for Recreational Services on Federal Lands (May 25, 2018, published June 1, 2018, 83 FR 25341), which exempted certain contracts and contract-like instruments from the requirements of E.O. 13658, Establishing a Minimum Wage for Contractors. E.O. 13658 raised the hourly minimum wage paid to workers performing on or in connection with covered Federal contracts to: (i) $10.10 per hour, beginning January 1, 2015; and (ii) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor in accordance with the E.O. As of January 1, 2019, E.O. 13658 raised minimum wage to $10.60 per hour (83 FR 44906).

E.O. 13838 exempts contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from the requirements of E.O. 13658; lodging and food services are not exempted.

The purpose of this rule is to make a conforming change in the FAR. This proposed rule implements E.O. 13838 by amending FAR 22.1903(b)(2) and FAR clause 52.222–55(c)(2) to conform to the DOL rule by adding seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands to the list of exemptions.

II. Discussion and Analysis

This rule proposes to amend the FAR to be consistent with the DOL final rule as follows:

- Adds a definition of ''seasonal recreational services'' at FAR 22.1901 and 52.222–55, Minimum Wages Under Executive Order 13658.
- Adds seasonal recreational services or seasonal equipment rental for the general public on Federal lands to the list of exceptions from the policies and procedures to implement E.O. 13658 and DOL's implementing regulations at FAR 22.1903 and 52.222–55. Lodging and food services are not exempted.
- Makes conforming changes at 52.212–5, 52.213–4, and 52.244–6.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not add any new provisions or clauses. The rule does not change the applicability of existing provisions or clauses to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items. The FAR clause at 52.222–55, Minimum Wages Under Executive Order 13658, is prescribed for use in contracts valued at or below the SAT and for the acquisition of commercial items. Under this rule, acquisitions below the SAT or for commercial items involving seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands would be exempt from FAR clause 52.222–55. Lodging and food services are not exempted.

IV. Executive Orders 12866 and 13563

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 therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13371

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This action is necessary to implement a DOL rule dated September 26, 2018, which implemented E.O. 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (May 25, 2018, published June 1, 2018, 83 FR 25341). E.O. 13658 made contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands exempt from the minimum wage requirements under E.O. 13658, dated February 12, 2014; lodging and food services are not exempted.

The objective of this rule is to make a conforming change in the FAR to conform to the DOL rule to implement E.O. 13838, dated September 26, 2018. This rule simply provides a conforming amendment to FAR 22.1903(b)(2)(iii) and FAR clause 52.222–55(c)(2)(ii) to conform to the DOL rule by adding seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands to the list of exemptions. Lodging and food services are not exempted. This action is limited to implementing E.O. 13838 by inserting into the FAR the language that E.O. 13838 inserted into E.O. 13658. The legal basis for these changes is E.O. 13838.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule only applies to contracts for seasonal recreational services or seasonal recreational equipment rental. Lodging and food services are not exempted. On average for fiscal years 2016–2018, there were 229 awards reported on an annual basis in the Federal Procurement Data System (FPDS) for seasonal recreational services and seasonal recreational equipment rental, of which 153 were awarded to small business entities. The FPDS data could not isolate which of the awards were for services or rentals on Federal lands, so the average number of awards for seasonal recreational services or seasonal recreational equipment rental to the general public on Federal lands could be even lower. Furthermore, this rule is expected to have a beneficial impact on small businesses as it relaxes the burden on small businesses.

There are no reporting, recordkeeping, or other compliance requirements in this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the DOL rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the

Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2019–002), in correspondence.

VII. Paperwork Reduction Act

The 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 Parts 22 and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 2. Amend section 22.1901 by revising the heading and adding in alphabetical order the definition ''Seasonal recreational services'' to read as follows:

22.1901 Definitions.

Seasonal recreational services, as used in this subpart, means services that include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.

* * * * *

■ 3. Amend section 22.1903 by—

■ a. In paragraph (b)(2)(ii)(C), removing the period and adding ''; or'' in its place; and

■ b. Adding paragraph (b)(2)(iii).

The addition reads as follows:

22.1903 Applicability.

* * * * *

(b) * * *

(2) * * *

(iii) Seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, except for lodging and food services associated with seasonal recreational services, in accordance with Executive Order 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (83 FR 25341, June 1, 2018), as implemented by the U.S. Department of Labor regulations at 29 CFR 10.4(g).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (c)(8) ''(DEC 2015)'' and adding ''([DATE])'' in its place;

■ c. Removing from paragraph (e)(1)(xviii) ''(DEC 2015)'' and adding ''([DATE])'' in its place;

■ d. Revising the date of Alternate II; and

■ e. Removing from paragraph (e)(1)(ii)(P) of Alternate II ''(DEC 2015)'' and adding ''([DATE])'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items ([DATE])

* * * * *

Alternate II ([DATE]). * * *

* * * * *

■ 5. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(2)(viii) ''(AUG 2019)'' and adding ''([DATE])'' in its place; and

■ c. Removing from paragraph (b)(1)(ix) ''(DEC 2015)'' and adding ''([DATE])'' in its place;

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) ([DATE])

* * * * *

■ 6. Amend section 52.222–55 by—

■ a. Revising the date of the clause;

■ b. Adding to paragraph (a), in alphabetical order, the definition ''*Seasonal recreational services*'';

■ c. In paragraph (c)(2)(ii)(A), removing the period at the end of the sentence and adding '';'' in its place;

■ d. In paragraph (c)(2)(ii)(B), removing the period at the end of the sentence and adding ''; and'' in its place;

■ e. In paragraph (c)(2)(ii)(C), removing the period at the end of the sentence and adding ''; or'' in its place; and

■ f. Adding paragraph (c)(2)(iii).

The revision and additions read as follows:

52.222–55 Minimum Wages Under Executive Order 13658.

* * * * *

Minimum Wages Under Executive Order 13658 ([DATE])

* * * * *

(a) *Definitions.* * * *

''Seasonal recreational services'', as used in this clause, means services that include: river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.

* * * * *

(c)(2) * * *

* * * * *

(iii) Seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, except for lodging and food services associated with seasonal recreational services, in accordance with Executive Order 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (83 FR 25341, June 1, 2018), as implemented by the U.S. Department of Labor regulations at 29 CFR 10.4(g).

* * * * *

■ 7. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(xv) ''(DEC 2015)'' and adding ''([DATE])'' in its place;

The revision reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items ([DATE])

* * * * *

[FR Doc. 2019–22781 Filed 10–18–19; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 84, No. 203

Monday, October 21, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, November 4–6, 2019, at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, November 4, 2019

10:00 a.m.–10:30 a.m. Planning and Evaluation Committee
10:30 a.m.–Noon Ad Hoc Committee on Frontier Issues
1:30 p.m.–2:00 p.m. Ad Hoc Committee on Design Guidance
2:00 p.m.–3:00 p.m. Technical Programs Committee

Wednesday, November 6, 2019

9:30 a.m.–10:00 a.m. Budget Committee
1:30 p.m.–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW, Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, November 6, the Access Board will consider the following agenda items:

- Approval of September 11, 2019 draft meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues
- Planning and Evaluation Committee
- Technical Programs Committee
- Budget Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, November 6, 2019. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, October 30. Commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they are pre-registered. Due to time constraints, each commenter is limited to two minutes. The Board will listen respectfully to comments; however, they will not engage in dialogue or answer questions. The purpose of the public comments is to hear the public's views. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, November 6, 2019 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast..*

David M. Capozzi,

Executive Director.

[FR Doc. 2019–22825 Filed 10–18–19; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Tuesday, November 5, 2019. The purpose of the meeting is for orientation and concept stage gate planning.

DATES: Tuesday, November 5, 2019, at 12:00 p.m. (EST).

Public Call-In Information: Conference call-in number: 1–800–367–2403 and conference ID: 8416977.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference ID: 8416977. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–367–2403 and conference ID: 8416977.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern

Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzllAAA,* click the ''Meeting Details'' and ''Documents'' links.Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Tuesday, November 5, 2019 at 12:00 p.m. (EST)

I. Roll Call
II. Orientation
III. Concept Stage Gate Planning
III. Other Business
IV. Open Comment
VI. Adjournment

Dated: October 15, 2019.

David Mussatt,

Supervisory Chief, Regional Programs.

[FR Doc. 2019–22810 Filed 10–18–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2019]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Notification of Proposed Production Activity; Ricoh Electronics, Inc. (Thermal Paper and Film); Lawrenceville and Buford, Georgia

Ricoh Electronics, Inc. (Ricoh) submitted a notification of proposed production activity to the FTZ Board for its facilities in Lawrenceville and Buford, Georgia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 7, 2019.

Ricoh already has authority to produce copiers, printers, toner cartridges, related toner products, and thermal paper products within FTZ 26. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Ricoh from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Ricoh would be able to choose the duty rates during customs entry procedures that apply to self-adhesive thermal film master roll, thermal film roll, self-adhesive thermal paper master roll, and thermal paper roll (duty rate ranges from duty-free to 5.8%). Ricoh would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Silicon dioxide; calcium carbonate; aromatic ether; aromatic ether powder; adipic acid dihydrazide; organo-sulfur compound; synthetic organic coloring matter; organic surface-active agent; non-ionic surfactant; silicone defoamer; finishing agent for use as color stabilizer; polycarboxylate type surfactant; styrene butadiene copolymer latex; polyvinyl alcohol resin; polymethyl methacrylate; silicone; silicone powder; pearlized synthetic paper; and, film (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 2, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: October 16, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–22873 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 11–1A001]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by Latin American Multichannel Advertising Council, Inc. (''LAMAC''), Application No. 11–1A001.

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application for an amended Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked

and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 11–1A001.''

A summary of the application follows.

Summary of the Application

Applicant: LAMAC.

Contact: Ronald Oleynik, Outside Counsel (202) 457–7183.

Application No.: 11–1A001.

Date Deemed Submitted: October 3, 2019.

Proposed Amendment: LAMAC seeks to amend its Certificate as follows:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- NBCUniversal Networks International Spanish Latin America, LLC
- MTV Networks Latin America Inc.
- AMC Networks Latin America LLC
- Lifetime Latin America, LLC

2. Delete the following companies as Members of the Certificate:

- E! Entertainment Television Latin America Partners, L.P.

3. Change the name of the following Members of the Certificate:

- From NGC Networks Latin America, LLC to NGC Network Latin America, LLC
- From Turner Broadcasting System Latin America, Inc. to Turner International Latin America, Inc.
- From History Channel Latin America, LLC to The History Channel Latin America, LLC
- From Fox Latin American Channel, Inc. to Fox Latin American Channel LLC

LAMAC's proposed amendment of its Certificate would result in the following Membership list:

1. Discovery Latin America, LLC
2. Fox Latin American Channel LLC
3. NGC Network Latin America, LLC
4. Turner International Latin America, Inc.
5. A&E Mundo, LLC
6. The History Channel Latin America, LLC
7. NBCUniversal Networks International Spanish Latin America, LLC
8. MTV Networks Latin America Inc.
9. AMC Networks Latin America LLC
10. Lifetime Latin America, LLC

Dated: October 15, 2019.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–22827 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–840]

Carbon and Alloy Steel Threaded Rod From Thailand: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that carbon and alloy steel threaded rod (steel threaded rod) from Thailand is being, or is likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI) January 1, 2018 through December 31, 2018. The final estimated dumping margins of sales at LTFV are shown in the ''Final Determination'' section of this notice.

DATES: Applicable October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia or Robert Scully AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878 or (202) 482–0572, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2019, Commerce published the *Preliminary Determination* of this LTFV investigation in which Commerce found that steel threaded rod from Thailand was sold at LTFV.[1] In the *Preliminary Determination,* Commerce also found that critical circumstances exist for imports of steel threaded rod from Thailand.[2] We invited interested parties to comment on the *Preliminary Determination.* We received no comments from interested parties.

Period of Investigation

The POI is January 1, 2018 through December 31, 2018. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was February 2019.[3]

Scope of the Investigation

The product covered by this investigation is steel threaded rod from Thailand. For a complete description of the scope of this investigation, *see* Appendix.

Scope Comments

On July 22, 2019, we issued a Preliminary Scope Memorandum.[4] The scope case briefs were due on August 28, 2019.[5] We received no scope case briefs from interested parties. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Verification

Because the mandatory respondent in this investigation did not provide the information requested, Commerce did not conduct verification.[6]

Analysis of Comments Received

As noted above, we received no comments in response to the *Preliminary Determination.* For the final determination, Commerce has made no changes to the *Preliminary Determination.*

---

[1] *See Carbon and Alloy Steel Threaded Rod from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances,* 84 FR 38597 (August 7, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *Id.*

[3] *See* 19 CFR 351.204(b)(1).

[4] *See* Memorandum, ''Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated July 22, 2019 (Preliminary Scope Memorandum).

[5] The scope case briefs were due 30 days after the publication of *Carbon and Alloy Steel Threaded Rod From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 36570 (July 29, 2019). *See* Preliminary Scope Memorandum at 3. The deadline for scope rebuttal briefs was Monday, September 2, 2019.

[6] *See Preliminary Determination,* 84 FR at 38599.

Methodology

We continue to find, as stated in the *Preliminary Determination,* that the mandatory respondent, Tycoons Worldwide Group (Thailand) Co. Ltd. (Tycoons), withheld requested information, failed to provide information by the specified deadlines, and significantly impeded the proceeding, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act).[7] Further, we continue to find that Tycoons failed to cooperate to the best of its ability to comply with our requests for information, and, accordingly, we continue to apply an adverse inference when selecting from among the facts otherwise available to determine the relevant dumping margin, in accordance with section 776(b) of the Act.[8] We further continue to select the only dumping margin alleged in the Petition as the rate applicable to Tycoons.[9]

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determined that critical circumstances exist for Tycoons, and for all other producers and/or exporters.[10] As stated above, we received no comments with respect to the *Preliminary Determination.* Therefore, for this final determination, we continue to find that, in accordance with section 735(a)(3) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to subject merchandise exported by Tycoons and for all other producers and/or exporters.

All-Others Rate

As discussed in the *Preliminary Determination,* we continue to assign the dumping margin alleged in the Petition and selected as the dumping margin for the sole mandatory respondent, Tycoons, as the all-others rate applicable to all exporters and/or producers not individually examined.[11] adverse facts available (AFA) to the individually examined company, Tycoons, in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, there are no calculations to disclose.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margin (percent)
Tycoons Worldwide Group (Thailand) Co. Ltd	20.83
All Others	20.83

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, because we continue to find that critical circumstances exist with respect to Tycoons and all other producers and/or exporters, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of any entries of shipments of subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after May 9, 2019, which is 90 days prior to publication of the *Preliminary Determination.*

Pursuant to section 735(c)(1) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be 20.83 percent, the all-others estimated weighted-average dumping margin. These suspension of liquidation and cash deposit instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel threaded rod from Thailand no later than 45 days after this final determination. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by the scope of this investigation is carbon and alloy steel

[7] *See Preliminary Determination,* and accompanying PDM at 4–5.

[8] *Id.*

[9] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand,'' dated February 21, 2019 (Petition); *see also Preliminary Determination,* and accompanying PDM at 5–6.

[10] For a full description of the methodology and results of Commerce's critical circumstances analysis, *see Preliminary Determination,* and accompanying PDM at 8–11.

[11] *See Preliminary Determination,* and accompanying PDM at 8.

threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this investigation whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this investigations are: (1) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements.

Excluded from the scope of the antidumping investigation on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on Certain Steel Threaded Rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this investigation is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[FR Doc. 2019–22866 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that sales of aluminum extrusions from the People's Republic of China (China) were made at less than normal value during the period of review (POR), May 1, 2017 through April 30, 2018. We further find that each of the companies for which an administrative review was requested, and not withdrawn, failed to demonstrate eligibility for a separate rate; therefore, each is part of the China-wide entity.

DATES: Applicable October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Heather Lui or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0016 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this review on July 12, 2018.[1] These final results cover 26 companies for which an administrative review was initiated and not rescinded.[2] On April 16, 2019, Commerce published the *Preliminary Results* of this administrative review and invited interested parties to comment on the *Preliminary Results.*[3] On May 16, 2019, we received a case brief from Houztek Architectural Products Co., Ltd. (Houztek) and Columbia Aluminum Products, LLC (Columbia).[4] On May 21, 2019, we received a rebuttal brief from the Aluminum Extrusions Fair Trade Committee (the petitioner).[5] No other party submitted case or rebuttal briefs.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[6] Between August 8 and September 11, 2019, we extended the deadline for the final results of review, until October 11, 2019.[7]

Scope of the Order [8]

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[9]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018) (*Initiation Notice*), corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 39688 (August 10, 2018).

[2] Initially, this administrative review covered 243 companies. *See Initiation Notice,* 83 FR 32270 at 32274. However, Commerce rescinded this administrative review with respect to 217 companies for which all review requests were timely withdrawn. *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018,* 84 FR 15587 (April 16, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[3] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018,* 84 FR 15587 (April 16, 2019) (*Preliminary Results*).

[4] *See* Houztek and Columbia's Letter, ''Aluminum Extrusions from the People's Republic of China: Houztek/Columbia Aluminum Case Brief,'' dated May 16, 2019.

[5] *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Rebuttal Brief,'' dated May 21, 2019.

[6] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[7] *See* Memoranda, ''Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated August 8, 2019 and September 11, 2019.

[8] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (the *Order*).

[9] *See* Preliminary Decision Memorandum for a complete description of the scope of the *Order.*

Schedule of the United States (HTSUS): 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is incorporated herein by reference. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, follows in the Appendix to this notice. 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 *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, and for the reasons explained in the Issues and Decision Memorandum, Commerce made no changes to the *Preliminary Results.*

China-Wide Entity

For the purposes of the final results of this administrative review, we continue to find that the following entities are part of the China-wide entity because they failed to submit both a response to Commerce's quantity and value questionnaire and information to establish eligibility for a separate rate: (1) Activa International Inc.; (2) Belton (Asia) Development Ltd.; (3) Belton (Asia) Development Limited; (4) Changzhou Changzhen Evaporator Co., Ltd.; (5) Changzhou Changzheng Evaporator Co., Ltd.; (6) Changzhou Tenglong Auto Parts Co., Ltd.; (7) Changzhou Tenglong Auto Accessories Manufacturing Co. Ltd; (8) Changzhou Tenglong Auto Parts Co Ltd; (9) China Square; (10) China Square Industrial Co.; (11) China Square Industrial Ltd; (12) Cosco; (13) Cosco (JM) Aluminum Development Co. Ltd; (14) Dynamic Technologies China; (15) ETLA Technology (Wuxi) Co. Ltd; (16) Foshan Shanshui Fenglu Aluminum Co., Ltd.; (17) Global Hi- Tek Precision Co. Ltd; (18) Houztek; (19) Jangho Curtain Wall Hong Kong Ltd.; (20) Kromet International Inc.; (21) Kromet Intl Inc; (22) Kromet International; (23) Kunshan Giant Light Metal Technology Co., Ltd.; (24) Precision Metal Works Ltd.; (25) Sihui Shi Guo Yao Aluminum Co., Ltd.; and (26) Summit Heat Sinks Metal Co, Ltd.[10]

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[11] 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, and Commerce did not self-initiate, a review of the China-wide entity in the instant review, the entity is not under review; therefore, the entity's current rate, *i.e.,* 86.01 percent,[12] is not subject to change.

Adjustments for Countervailable Subsidies

Because no company established eligibility for an adjustment under section 777A(f) of the Tariff Act of 1930, as amended (the Act) for countervailable domestic subsidies, for these final results, Commerce did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for separate-rate recipients. Furthermore, because the China-wide entity is not under review, we made no adjustment for countervailable export subsidies for the China-wide entity pursuant to section 772(c)(1)(C) of the Act.

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days

[10] *See Preliminary Results,* 84 FR at 15587.

[11] *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).

[12] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 52265, 52267 (November 13, 2017).

after the date of publication of the final results of review in the **Federal Register**. Consistent with Commerce's assessment practice in non-market economy cases, if Commerce determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most-recently completed segment of this proceeding in which the exporter was reviewed; (2) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that established for the China-wide entity, which is 86.01 percent; and (3) 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 with the subject merchandise. 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 and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

[13] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing notice of these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and sections 351.213(h) and 351.221(b)(5) of Commerce's regulations.

Dated: October 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment: Houztek's Separate Rate Eligibility
V. Recommendation

[FR Doc. 2019–22871 Filed 10–18–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–819]

Acetone From Spain: Final Determination of Sales at Less Than Fair Value, and Final Determination of No Shipments

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that acetone from Spain is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2018 through December 31, 2018.

DATES: Applicable October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2019, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] The petitioner in this investigation is the Coalition for Acetone Fair Trade. Commerce individually examined CEPSA Quimica, S.A. (CEPSA) in this investigation. We provided interested parties an opportunity to comment on the *Preliminary Determination.* We received no comments. Commerce conducted this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (the Act).

Scope of the Investigation

The merchandise covered by this investigation is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as ß-ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O, with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

The scope also includes acetone that is commingled with acetone from sources not subject to this investigation.

For combined and commingled products, only the acetone component is covered by the scope of this investigation. However, when acetone is combined with acetone components from sources not subject to this

[1] *See Acetone From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Determination of No Shipments,* 84 FR 37990 (August 5, 2019) (*Preliminary Determination*), and accompanying memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Acetone from Spain'' (PDM).

investigation, those third country acetone components may still be subject to other acetone investigations.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (*e.g.,* methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from this investigation.

A combination or mixture is excluded from these investigations if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000, 3814.00.5010, and 3814.00.5090. The list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

Commerce did not receive any additional scope comments and has not updated the scope of the investigation since the *Preliminary Determination.*

Verification

Because the mandatory respondent in this investigation did not provide necessary information requested by Commerce, we did not conduct verification.

Changes Since the Preliminary Determination and Use of Adverse Facts Available

Commerce has made no changes to the *Preliminary Determination* and hereby adopts the determinations therein for purposes of our final determination. We therefore continue to find that the application of facts available with an adverse inference with respect to the examined respondent, *i.e.,* CEPSA, was warranted, in accordance with sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act.[2]

[2] *See Preliminary Determination,* 84 FR at 37991; *see also* PDM at 3–8.

Final Determination of No Shipments

In our *Preliminary Determination,* we found that Industrias Quimicas del Oxido de Etileno, S.A. (IQOXE) had no sales or shipments of subject merchandise during the POI, and, therefore, we determined not to further examine IQOXE as part of this investigation.[3] Commerce received no comments regarding this issue after the *Preliminary Determination.* Thus, for this final determination, we continue to find that IQOXE had no sales of subject merchandise during the POI. As such, any entries of subject merchandise exported by IQOXE will be subject to the all-others rate.

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the selection of the all-others rate on the simple average of the two dumping margins calculated for subject merchandise from Spain alleged in the petition,[4] in accordance with section 735(c)(5)(B) of the Act, and determined a rate of 137.39 percent. No parties commented on this issue and we made no changes to the all-others rate for this final determination.[5]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated dumping margin (percent)
CEPSA Quimica, S.A	171.81
All Others	137.39

Disclosure

The estimated weighted-average dumping margin assigned to CEPSA in this investigation in the *Preliminary Determination* was based on adverse facts available, and Commerce described the method it used to determine the adverse facts available rate in the *Preliminary Determination.* As we have made no changes to this margin and continue to apply adverse facts available in determining the rate for CEPSA, no disclosure of calculations is necessary for this final determination.

[3] *See Preliminary Determination,* 84 FR at 37991; *see also* PDM at 3.

[4] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping on Imports of Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa and Spain,'' dated February 19, 2019 (the Petition) at Volume VII; *see also* Petitioner's Letter, ''Acetone from Spain: Response to Questionnaire on Antidumping Petition,'' dated February 26, 2019; and the Spain Initiation Checklist, dated March 11, 2019.

[5] *See Preliminary Determination,* 84 FR at 37991; *see also* PDM at 8–9.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct U.S. Customs and Border Protection (CBP) to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of acetone from Spain no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce intends to issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with 19 CFR 351.305(a)(3). 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 the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These determinations are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–22879 Filed 10–18–19; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–115]

Certain Glass Containers From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 15, 2019.

FOR FURTHER INFORMATION CONTACT: Maliha Khan or Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0895 or (202) 482–1593, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 25, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of certain glass containers (glass containers) from the People's Republic of China (China) filed in proper form on behalf of the American Glass Packaging Coalition (the petitioner).[1] The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of glass containers from China.

On September 30, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed responses to this request on October 4, 2019.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of glass containers in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing glass containers in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in sections 771(9)(C) and (E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[4]

Period of Investigation

Because the Petition was filed on September 25, 2019, the period of investigation (POI) is January 1, 2018 through December 31, 2018.[5]

Scope of the Investigation

The merchandise covered by this investigation is glass containers from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[6] As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[7] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[8] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on November 4, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 14, 2019, which is 10 calendar days from the initial comment deadline.[9]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10]

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Glass Containers from the People's Republic of China,'' dated September 25, 2019 (the Petition).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Glass Containers from the People's Republic of China: Supplemental Questions,'' dated September 30, 2019); *see also* Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Glass Containers from the People's Republic of China: Supplemental Questions,'' dated September 30, 2019.

[3] *See* Petitioner's Letters, ''Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on General Issues Volume I of the Petition,'' dated October 4, 2019; and ''Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on China CVD Volume III of the Petition,'' dated October 4, 2019.

[4] *See* ''Information Relating to the Degree of Industry Support for the Petition'' section, *infra.*

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* AD Supplement Vol. I, at 1–4 and Exhibits I–Supp–2 through I–Supp–4; *see also* Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated October 8, 2019.

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[9] *See* 19 CFR 351.303(b).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://*

An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.[11] The GOC did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the Petition.[14] Based on our analysis of the information submitted on the record, we have determined that glass containers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 production of the domestic like product, as well as the 2018 production of the company that supports the Petition.[16] The petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC

access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.

[11] *See* Commerce's Letter, ''Countervailing Duty Petition on Certain Glass Containers from China,'' dated October 3, 2019.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Volume I of the Petition, at 15–17 and Exhibit I–15; *see also* General Issues Supplement, at 7.

[15] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Initiation Checklist: Certain Glass Containers from the People's Republic of China (AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Documents filed via ACCESS are also available in the Central Records Unit, Room B8024 of the main Commerce building.

[16] *See* Volume I of the Petition, at 2–3 and Exhibits I–3 and I–4; *see also* General Issues Supplement, at 6 and Exhibit I–Supp–7.

[17] *See* Volume I of the Petition, at 2–3 and Exhibits I–2 through I–4; *see also* General Issues Supplement, at 4–6 and Exhibits I–Supp–5 through I–Supp–7.

[18] *See* Volume I of the Petition, at 2–3 and Exhibits I–2 through I–4; *see also* General Issues Supplement, at 4–6 and Exhibits I–Supp–5 through I–Supp–7. For further discussion, *see* China AD Initiation Checklist, at Attachment II.

[19] *See* Countervailing Duty Initiation Checklist: Certain Glass Containers from the People's Republic of China Initiation Checklist (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People's Republic of China (Attachment II).

[20] *Id.; see also* section 702(c)(4)(D) of the Act.

[21] *See* CVD Initiation Checklist at Attachment II.

[22] *Id.*

must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declining financial performance; a decline in the domestic industry's production, capacity utilization, and U.S. shipments; shuttered manufacturing facilities; and an adverse impact on employment variables.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Initiation of CVD Investigation

Based upon the examination of the Petition on glass containers from China, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of glass containers from China benefit from countervailable subsidies conferred by the Government of China. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on each of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 75 companies in China as producers/exporters of glass containers.[26] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of glass containers from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix.

On October 8, 2019, Commerce released CBP data on imports of glass containers from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[27] We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of glass containers from China are materially injuring or threatening material injury to a U.S. industry.[28] A negative ITC determination will result in the investigation being terminated.[29] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[30] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[31] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from

[23] *See* Volume I of the Petition at 17–19 and Exhibits I–13 and I–36.

[24] *Id.* at 13, 17–34 and Exhibits I–13 and I–17 through I–33.

[25] *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People's Republic of China.

[26] *See* Petition Volume I at Exhibit I–12.

[27] *See* Memorandum, ''Certain Glass Containers from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated October 8, 2019.

[28] *See* section 733(a) of the Act.

[29] *Id.*

[30] *See* 19 CFR 351.301(b).

[31] *See* 19 CFR 351.301(b)(2).

multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely, if the submissions are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[32] Parties must use the certification formats provided in 19 CFR 351.303(g).[33] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

[32] *See* section 782(b) of the Act.

[33] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The merchandise covered by this investigation are certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without, design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) Glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without 'mold seams', 'joint marks', or 'parting lines'; and (3) glass containers without a 'finish' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5009, 7010.90.5019, 7010.90.5029, 7010.90.5039, 7010.90.5049, 7010.90.5055, 7010.90.5005, 7010.90.5015, 7010.90.5025, 7010.90.5035, and 7010.90.5045. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

[FR Doc. 2019–22868 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–559–808]

Acetone From Singapore: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that acetone from Singapore is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2018 through December 31, 2018.

DATES: Applicable October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3362.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2019, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] The petitioner in this investigation is the Coalition for Acetone Fair Trade. The mandatory respondent in this investigation is Mitsui Phenols Singapore Pte. Ltd. (Mitsui). We provided interested parties an opportunity to comment on the *Preliminary Determination.* We received no comments. Commerce conducted this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (the Act).

Scope of the Investigation

The merchandise covered by this investigation is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as ß-ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O, with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

The scope also includes acetone that is commingled with acetone from sources not subject to this investigation.

For combined and commingled products, only the acetone component is covered by the scope of this investigation. However, when acetone is combined with acetone components

[1] *See Acetone From Singapore: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Determination of No Shipments,* 84 FR 38005 (August 5, 2019) (*Preliminary Determination*), and accompanying memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Acetone from Singapore'' (PDM).

from sources not subject to this investigation, those third country acetone components may still be subject to other acetone investigations.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (*e.g.,* methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from this investigation.

A combination or mixture is excluded from these investigations if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000, 3814.00.5010, and 3814.00.5090. The list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

Commerce did not receive any additional scope comments and has not updated the scope of the investigation since the *Preliminary Determination.*

Verification

Because the mandatory respondent in this investigation did not provide necessary information requested by Commerce, we did not conduct verification.

Changes Since the Preliminary Determination and Use of Adverse Facts Available

Commerce has made no changes to the *Preliminary Determination* and hereby adopts the determinations therein for purposes of our final determination. We therefore continue to find that the application of facts available with an adverse inference with respect to the examined respondent, *i.e.,* Mitsui, was warranted, in accordance with sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act.[2]

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the selection of the all-others rate on the simple average of the two dumping margins calculated for subject merchandise from Singapore alleged in the petition,[3] in accordance with section 735(c)(5)(B) of the Act, and determined a rate of 66.42 percent. No parties commented on this issue and we made no changes to the all-others rate for this final determination.[4]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated dumping margin (percent)
Mitsui Phenols Singapore Pte. Ltd	131.75
All Others	66.42

Disclosure

The estimated weighted-average dumping margin assigned to Mitsui in this investigation in the *Preliminary Determination* was based on adverse facts available, and Commerce described the method it used to determine the adverse facts available rate in the *Preliminary Determination.* As we have made no changes to this margin and continue to apply adverse facts available in determining the rate for Mitsui, no disclosure of calculations is necessary for this final determination.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct U.S. Customs and Border Protection (CBP) to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of acetone from Singapore no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce intends to issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These determinations are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

[2] *See Preliminary Determination,* 84 FR at 38006; *see also* PDM at 3–6.

[3] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping on Imports of Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa and Spain,'' dated February 19, 2019 (the Petition) at Volume V; *see also* Petitioner's Letter, ''Acetone from Singapore: Response to Questionnaire on Antidumping Petition,'' dated February 26, 2019; and the Singapore Initiation Checklist, dated March 11, 2019.

[4] *See Preliminary Determination,* 84 FR at 38006; *see also* PDM at 8.

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–22872 Filed 10–18–19; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to Borusan Holding A.S. (Borusan Holding), Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively the Borusan Companies) and Tosçelik Profil ve Sac Endüstrisi A.Ş. (Tosçelik Profil), Tosyali Dis Ticaret A.S. (TDT), Tosyali Holding, Tosçelik Toyo Celik (Tosçelik Toyo), Tosyali Filmasin ve Insaat Demir (Tosyali Filmasin), Tosçelik Spiral Boru (Tosçelik Spiral), Tosyali Demir Celik San A.S. (TDC), Tosçelik Granul San A.S. (Toselik Granul), and Tosyali Celik Ticaret A.S. (TCT) (collectively, the Tosçelik Companies), producers/exporters of circular welded carbon steel pipes and tubes (pipes and tubes) from Turkey for the period of review (POR) January 1, 2017, through December 31, 2017.

DATES: Applicable October 21, 2019.

FOR FURTHER INFORMATION CONTACT: John Conniff (the Tosçelik Companies) at 202–482–1009, or Jolanta Lawska (the Borusan Companies) at 202–482–8362, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2019, Commerce published the preliminary results of this administrative review.[1] On August 29, 2019, Commerce extended the deadline for the final results to October 11, 2019.[2] For a summary of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The merchandise covered by the countervailing duty order is circular welded carbon steel pipes and tubes from Turkey. For a complete description of the scope of the order, *see* the accompanying Issues and Decision Memorandum.

Rescission of the 2017 Administrative Review, in Part

On May 14, 2018, Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) timely filed a no shipments certification.[4] Additionally, on June 1, 2018, Borusan submitted a letter to Commerce timely certifying that Borusan Istikbal, Borusan Birlesik Boru Fabrikalair San ve Tic. (Borusan Birlesik), Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik), Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat), Borusan Ihacat Ithalat ve Dagitim A.S. (Borusan Ithalat), and Tubeco Pipe and Steel Corporation (Borusan Tubeco) had no entries, exports, or sales of subject merchandise during the POR.[5] With the exception of Borusan Istikbal, a company that Commerce has found to be cross-owned with Borusan during the POR, Commerce transmitted no-shipment inquiries to CBP regarding whether subject merchandise produced and/or exported by these companies entered the United States during the POR.

Commerce did not receive any information from interested parties or U.S. Customs and Border Protection (CBP) that was contrary to the claims of Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ithicat, Borusan Ithalat, and Borusan Tubeco. Accordingly, based on record evidence, we determine that Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ithicat, Borusan Ithalat, and Borusan Tubeco did not ship subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,[6] we are rescinding the review for Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ithicat, Borusan Ithalat, and Borusan Tubeco. Because we have found Borusan Istikbal to be cross-owned with Borusan during the POR, we are not rescinding the review with respect to Borusan Istikbal and are assigning it Borusan's rate.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum, which is hereby adopted with this notice. The issues are identified in the Appendix to this notice. 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 *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable during the POR, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that confers a benefit to the recipient, and that the subsidy is specific.[7] For a complete description of the methodology underlying all of

[1] *See Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; Calendar Year 2017,* 84 FR 21327 (May 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated August 29, 2019.

[3] *See* Memorandum, ''Issues and Decision memorandum for the Final Results of Countervailing Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; 2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Erbosan's Letter, ''No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) in the 2017 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey,'' dated May 14, 2018.

[5] *See* Borusan's Letter, ''Circular Welded Carbon Steel Pines and Tubes from Turkey. Case No. C–489–502: No Shipment Letter,'' dated June 1, 2018.

[6] *See, e.g., Aluminum Extrusions from the People's Republic of China: Notice of Partial Rescission of Countervailing Duty Administrative Review,* 79 FR 2635 (January 15, 2014).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Commerce's conclusions, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Results

Based on the comments received, we made changes to the net subsidy rates calculated for the Borusan Companies. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual subsidy rates for the Borusan Companies and the Tosçelik Companies. For the period January 1, 2017, through December 31, 2017, we determine that the following net subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate ad valorem (percent)
Borusan Holding A.S., Borusan Mannesmann Yatirim Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies)	0.82
Tosçelik Profil ve Sac Endustrisi A.S. (Tosçelik Profil), Tosyali Dis Ticaret A.S. (TDT), Tosyali Holding, Tosçelik Toyo Celik (Tosçelik Toyo), Tosyali Filmasin ve Insaat Demir (Tosyali Filmasin), Tosçelik Spiral Boru (Tosçelik Spiral), Tosyali Demir Celik San A.S. (TDC), Tosçelik Granul San A.S. (Toselik Granul), and Tosyali Celik Ticaret A.S. (TCT) (collectively, the Tosçelik Companies)	1.53
Cagil Makina Sanayi ve Ticaret A.S	1.18
Cayirova Boru Sanayi ve Ticaret A.S	1.18
Cimtas Boru Imalatlari ve Ticaret Sirketi	1.18
Eksen Makina	1.18
Guner Eksport	1.18
Guven Steel Pipe (also known as Guven Celik Born San. Ve Tic. Ltd.)	1.18
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	1.18
Net Boru Sanayi ve Dis Ticaret Koll. Sti	1.18
Tosçelik Metal Ticaret A.S	1.18
Umran Celik Born Sanayii A.S., also known as Umran Steel Pipe Inc	1.18
Yucel Boru ve Profil Endustrisi A.S	1.18
Yucelboru Ihracat Ithalat ve Pazarlama A.S	1.18

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2017, through December 31, 2017.

For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2017, through December 31, 2017, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, upon issuance of the final results, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties for each of the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[8]

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(4), and 19 CFR 351.221(b)(5).

Dated: October 11, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

I. Summary
II. Background
III. Scope of the Order
IV. Period of Review
V. Subsidies Valuation Information
VI. Non-Selected Rate
VII. Analysis of Programs
VIII. Analysis of Comments
IX. Recommendation

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[8] *See* 19 CFR 351.224(b).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–114]

Certain Glass Containers From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 15, 2019.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Karine Gziryan, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 25, 2019, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition (Petition) concerning imports of certain glass containers (glass containers) from the People's Republic of China (China), filed in proper form on behalf of the American Glass Packaging Coalition (the petitioner).[1] The AD Petition was accompanied by a countervailing duty (CVD) Petition concerning imports of glass containers from China.

On September 30, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed responses to these requests on October 4, 2019.[3] On October 8, 2019 and October 9, 2019, Commerce had phone conversations with the petitioner requesting that it address certain issues.[4] The petitioner filed responses to these requests on October 10, 2019.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of glass containers from China are being, or are likely to be, sold in the United States at less-than-fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing glass containers in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in sections 771(9)(C) and (E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[6]

Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), and because the Petition was filed on September 25, 2019, the period of investigation (POI) is January 1, 2019 through June 30, 2019.

Scope of the Investigation

The merchandise covered by this investigation is glass containers from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation in the Appendix to this notice reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on November 4, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 14, 2019, which is 10 calendar days from the initial comment deadline.[10]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of glass containers to be reported in response to Commerce's AD questionnaire. This information will be

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Glass Containers from the People's Republic of China,'' dated September 25, 2019 (the Petition).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Glass Containers from the People's Republic of China: Supplemental Questions,'' dated September 30, 2019; *see also* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Glass Containers from the People's Republic of China: Supplemental Questions,'' dated September 30, 2019.

[3] *See* Petitioner's Letter, ''Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on General Issues Volume I of the Petition,'' dated October 4, 2019; *see also* Petitioner's Letter, ''Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on China AD Volume II of the Petition,'' dated October 4, 2019 (AD Supplement).

[4] *See* Memoranda, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Glass Containers from the People's Republic of China: Phone call with Counsel to the Petitioner,'' dated October 8, 2019 and October 9, 2019.

[5] *See* Petitioner's Letters, ''Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on General Issues Volume I of the Petition,'' dated October 10, 2019 and ''Certain Glass Containers from the People's Republic of China: Responses to Second Supplemental Questions on China AD Volume II of the Petition,'' dated October 10, 2019 (Second AD Supplement).

[6] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[7] *See* AD Supplement Vol. I, at 1–4 and Exhibits I-Supp-2 through I-Supp-4; *see also* Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Glass Containers from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated October 8, 2019.

[8] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. Eastern Time (ET) on November 4, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 14, 2019, which is 10 calendar days from the initial comment deadline.[12] All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of this AD investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the Petition.[15] Based on our analysis of the information submitted on the record, we have determined that glass containers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided data on its own 2018 production of the domestic like product, as well as data on the 2018 production of the company that supports the Petition.[17] The petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[18] We relied on data provided by the petitioner for purposes of measuring industry support.[19]

Our review of the data provided in the Petition, the AD Supplement Vol. I, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[20] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[23] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject

[12] *See* 19 CFR 351.303(b).

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] *See* Volume I of the Petition, at 15–17 and Exhibit I–15; *see also* AD Supplement Vol. I, at 7.

[16] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Initiation Checklist: Certain Glass Containers from the People's Republic of China (AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Documents filed via ACCESS are also available in the Central Records Unit, Room B8024 of the main Commerce building.

[17] *See* Volume I of the Petition, at 2–3 and Exhibits I–3 and I–4; *see also* AD Supplement Vol. I, at 6 and Exhibit I-Supp-7.

[18] *See* Volume I of the Petition, at 2–3 and Exhibits I–2 through I–4; *see also* AD Supplement Vol. I, at 4–6 and Exhibits I-Supp-5 through I-Supp-7.

[19] *See* Volume I of the Petition, at 2–3 and Exhibits I–2 through I–4; *see also* AD Supplement Vol. I, at 4–6 and Exhibits I-Supp-5 through I-Supp-7. For further discussion, *see* AD Initiation Checklist, at Attachment II.

[20] *See* AD Initiation Checklist, at Attachment II.

[21] *See* section 732(c)(4)(D) of the Act; *see also* AD Initiation Checklist, at Attachment II.

[22] *See* AD Initiation Checklist, at Attachment II.

[23] *Id.*

imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declining financial performance; a decline in the domestic industry's production, capacity utilization, and U.S. shipments; shuttered manufacturing facilities; and an adverse impact on employment variables.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[26]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of glass containers from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

Export Price

The petitioner based export price (EP) on sales offers to customers in the United States for the sale of glass containers produced in and exported from China.[27] In order to calculate ex-factory U.S. prices, where appropriate, the petitioner made deductions from U.S. prices for foreign inland freight, foreign brokerage and handling, ocean freight, unrebated value-added tax, wharfage, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight.[28]

Normal Value

Commerce considers China to be a non-market economy (NME) country.[29] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[30]

The petitioner claims that Mexico is an appropriate surrogate country for China, because it is a market economy country that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise.[31] The petitioner provided publicly available information from Mexico to value all FOPs except limestone, for which it used Trade Monitor Import Data for Turkey. Based on the information provided by the petitioner, we determine that it is appropriate to use Mexico as a surrogate country, but rely on the import data from Turkey for the limestone input, for initiation purposes.[32]

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by the Chinese producer/exporter was not reasonably available, the petitioner used the product-specific consumption rates of a U.S. glass container producer as a surrogate to estimate the Chinese manufacturer's FOPs.[33] The petitioner valued the estimated FOPs using surrogate values from Mexico, except for one input as noted above.[34] The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Mexican producer of glass containers.[35]

Fair Value Comparisons

Based on the data provided in the Petition, there is reason to believe that imports of glass containers from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for glass containers from China range from 40.45 percent to 255.68 percent.[36]

Initiation of LTFV Investigation

Based upon the examination of the Petition on glass containers from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of glass containers from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioner named 75 companies in China as producers/exporters of glass containers.[37] In AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. After considering the large number of producers and exporters identified in the Petition, and considering the resources that must be used by Commerce to send Q&V questionnaires to all of these companies, Commerce has determined that it does not have sufficient administrative resources to send Q&V questionnaires to all 75 identified producers and exporters. Therefore, Commerce has determined to limit the number of Q&V questionnaires that it will send out to exporters and producers based on U.S. Customs and

[24] *See* Volume I of the Petition, at 19 and Exhibit I–13.

[25] *Id.* at 13, 17–34 and Exhibits I–13 and I–17 through I–33.

[26] *See* AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People's Republic of China (Attachment III).

[27] *See* Volume II of the Petition, at 2–6 and Exhibits II–1 and II–3; *see also* AD Supplement, at 1–2 and Exhibits II–Supp–1 through II–Supp–3.

[28] *See* Volume II of the Petition, at 7–12 and Exhibits II–6, II–7A, II–7B, II–8A, II–9, II–10, II–11, and II–12B; *see also* AD Supplement, at 1–3 and Exhibits II–Supp–3, II–Supp–4, II–Supp–5A, and II–Supp–5B.

[29] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy,* unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[30] *See* AD Initiation Checklist.

[31] *See* Volume II of the Petition, at 14–15 and Exhibits II–13 and II–14.

[32] *See* AD Initiation Checklist.

[33] *Id.* at 20–21 and Exhibits II–1, II–5, and II–17.

[34] *Id.* at 22 and Exhibits II–21A and II–21B; *see also* Second AD Supplement, at Exhibits II–Supp–l through II–Supp–6, *see also* Second AD Supplement at Exhibit II–Supp. 2–2A.

[35] *See* Volume II of the Petition, at 26–27 and Exhibit II–18 and Exhibit II–26; *see also* AD Supplement, at 5–8 and Exhibits II–Supp–11 through II–Supp–12.

[36] *See* AD Initiation Checklist.

[37] *See* Volume I of the Petition, at Exhibit I–14.

Border Protection (CBP) data for U.S. imports of glass containers during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is address information on the record.

On October 10, 2019, Commerce released CBP data on imports of glass containers from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[38] We further stated that we will not accept rebuttal comments.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Enforcement and Compliance's website at *http://www.trade.gov/enforcement/news.asp.* In accordance with the standard practice for respondent selection in AD cases involving NME countries, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Producers/exporters of glass containers from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website. The Q&V questionnaire response must be submitted by the relevant China exporters/producers no later than October 30, 2019. All Q&V questionnaire responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[39] The specific requirements for submitting a separate-rate application in a China investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[40] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[41]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of glass containers from China are materially injuring or threatening material injury to a U.S. industry.[42] A negative ITC determination will result in the investigation being terminated.[43] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[44] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[45] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension

[38] *See* Memorandum, ''Antidumping Duty Investigation of Certain Glass Containers From the People's Republic of China: AD Petition: Release of U.S. Customs and Border Protection Data;'' dated October 10, 2019.

[39] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[40] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[41] *See* Policy Bulletin 05.1, at 6 (emphasis added).

[42] *See* section 733(a) of the Act.

[43] *Id.*

[44] *See* 19 CFR 351.301(b).

[45] *See* 19 CFR 351.301(b)(2).

request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) Glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without ''mold seams,'' ''joint marks,'' or ''parting lines;'' and (3) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2019–22869 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–DS–P

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Administrative Review of the Antidumping Duty Order; 2017–2018.

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has determined that certain producers/exporters of stainless steel bar (SS Bar) from India made sales of subject merchandise at less than normal value (NV) during the period of review (POR) February 1, 2017 through January 31, 2018.

DATES: Applicable October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, 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) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 2019, Commerce published the preliminary results of this administrative review.[1] This review covers four producers/exporters of the subject merchandise, Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd. (collectively, the Venus Group), Jindal Stainless Hisar Ltd. (JSHL), Jindal Stainless Limited, and Laxcon Steels Limited (Laxcon). We invited parties to comment on the *Preliminary Results.*

On May 31, 2019, we received case briefs from the Venus Group, JSHL and Laxcon.[2] On June 14, 2019, we received rebuttal briefs from the petitioners,[3] and from Laxcon.[4] On July 15, 2019, Commerce held a public hearing at the request of JSHL and the Venus Group.[5]

Commerce conducted this administrative review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

[1] *See Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 15582 (April 16, 2019) (*Preliminary Results*).

[2] *See* Venus Group's Letter, ''Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group Case Brief,'' dated May 31, 2019; *see also* JSHL's Letter, ''Stainless Steel Bar from India: Jindal Stainless (Hisar) Limited's Case Brief,'' dated May 31, 2019; and ''Stainless Steel Bar from India: Laxcon Case Brief,'' dated May 31, 2019.

[3] The petitioners are: Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Outokumpu Stainless Bar, LLC, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless.

[4] *See* Petitioners' Letters, ''Petitioners' Rebuttal Brief Concerning the Venus Group,'' dated June 14, 2019; ''Petitioners' Rebuttal Brief Concerning Jindal Stainless (Hisar) Limited,'' dated June 14, 2019; and ''Petitioners' Rebuttal Brief Concerning Laxcon Steels Limited,'' dated June 14, 2019; *see also* Laxcon's Letter, ''Stainless Steel Bar from India: Laxcon Rebuttal Brief,'' dated June 14, 2019 (Laxcon's Rebuttal Brief).

[5] *See* JSHL's Letter, ''Stainless Steel Bar From India; Jindal Stainless (Hisar) Limited's Request for a Hearing,'' dated May 15, 2019; and Venus Group's Letter, ''Stainless Steel Bar from India: Request for Hearing,'' dated May 16, 2019; *see also* Hearing Transcript, dated July 15, 2019, Bar Code 3866774–01.

Scope of the Order

The merchandise subject to the order is SS bar. SS bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SS bar includes cold-finished SS bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.,* cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

Imports of these products are currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

The issues raised by interested parties in their case and rebuttal briefs have been addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance website at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content. A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the margin calculations with regard to the Venus Group. These changes affect the margins assigned to the mandatory respondent and to the non-selected respondent. For a discussion of these changes, *see* the Issues and Decision Memorandum.[6]

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period February 1, 2017 through January 31, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
The Venus Group	5.35
Jindal Stainless (Hisar) Limited	52.84
Laxcon Steels Limited	5.35

Disclosure

With respect to the Venus Group, we intend to disclose the calculations performed for these final results to the parties within five days after public announcement of the final results in accordance with 19 CFR 351.224(b). Because we determined an antidumping duty margin for Jindal in these final results based on the application of adverse facts available, in accordance with section 776 of the Act, there are no calculations to disclose.

Assessment Rates

Upon issuance of the final results in this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this POR. If the preliminary results are unchanged for the final results, we will instruct CBP to apply the *ad valorem* assessment rates listed above to all entries of subject merchandise during the POR which were exported by the companies named above.

For entries of subject merchandise during the POR produced by the Venus Group for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Consistent with Commerce practice, for Jindal Stainless Limited, which had no reviewable entries of subject merchandise to the United States, we will instruct CBP to liquidate any applicable entries of subject merchandise at the all-others rate.[7]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this review for all shipments of SS Bar from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.45 percent, the all-others rate established in the less-than-fair-value investigation.[8] These cash 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 and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Stainless Steel Bar from India,'' dated concurrently with this notice; *see also* Memorandum, ''Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Final Analysis Memorandum for the Venus Group,'' dated concurrently with this notice.

[7] For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*May 2003 Clarification*).

[8] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, 66921 (December 28, 1994).

Secretary's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notifications to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or 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.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Use of AFA
VI. Discussion of the Issues
VII. Recommendation

[FR Doc. 2019–22867 Filed 10–18–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX017]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an application submitted by the Cape Cod Commercial Fishermen's Alliance for an exempted fishing permit contains all of the required information and warrants further consideration. This exempted fishing permit would allow two commercial fishing vessels participating in an electronic monitoring program to fish in the Southern New England Regulated Mesh Area with a 6-inch (15.24 cm) diamond mesh codend. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before November 5, 2019.

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''6–INCH MESH CODEND EM EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''6–INCH MESH CODEND EM EFP.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION: On May 1, 2019, NMFS granted an exempted fishing permit (EFP) to the Cape Cod Commercial Fishermen's Alliance, in partnership with The Nature Conservancy, the Maine Coast Fishermen's Association, the Gulf of Maine Research Institute, and fishermen to participate in an audit-model EM program for the groundfish fishery. Fifteen vessels using a variety of gear types (*e.g.,* hook, benthic longline, sink gillnet, bottom trawl) are participating in the project.

Vessels participating in this EFP are required to use EM on 100 percent of groundfish trips. Camera systems are used in lieu of human at-sea monitors, and in addition to Northeast Fishery Observer Program (NEFOP) observers. Vessels must adhere to a vessel-specific monitoring plan detailing at-sea catch handling protocols. Vessels also submit haul-level electronic vessel trip reports (eVTR) with count and weight estimates for all groundfish discards.

The Alliance subsequently requested an exemption from the 6.5-inch (15.24 cm) minimum mesh size. This exemption request was treated as a separate EFP application, rather than an amendment to the audit model EM EFP. The requested EFP would allow two trawl vessels participating in the EM program to outfit their commercial otter trawl nets with 6-inch diamond mesh codends, in order to facilitate catch of haddock, reduce bycatch of flatfish species, and test the feasibility of EM programs as a data collection tool for research. There would be no other modifications to the trawl gear. This EFP would exempt vessels from the codend minimum mesh size restriction in the Southern New England Regulated Mesh Area found at 50 CFR 648.80(b)(2)(i). While fishing on this EFP the participating vessels would also be participating in the audit-model EM EFP. They would continue to be required to use EM systems on 100 percent of groundfish trips and adhere to vessel-specific monitoring plans. Existing catch accounting, video review, and other EM protocols would remain in effect for these operations.

Participating vessels would conduct commercial fishing with the small mesh codend in Southern New England (SNE), specifically statistical areas 537, 539, 611, and 613. The application estimates that each of the two vessels participating with the exemption from minimum codend mesh size would take 35 day-trips during the project. The EFP would be active from January to April 2019. Of the 35 trips that each vessel plans to take during that time period, the number of trips taken with a 6-inch mesh codend under the proposed EFP would vary, based on the presence of haddock, the target species for the project. On EFP trips, four to five hauls would be made per day, with each tow length averaging 2 to 3 hours. While on these trips, vessels may switch back to a standard 6.5-inch mesh codend to retain operational flexibility.

The applicant states that a switch from a 6.5-inch square mesh codend to the 6-inch diamond mesh codend would improve catch of haddock, a healthy stock, while reducing catch of several flounder species. Based on a codend mesh selectivity study which compared retention length and size selection range for 6.5- and 6-inch square and diamond mesh, the applicant additionally states that 6-inch diamond mesh is unlikely to retain undersized haddock.

Additionally, the Alliance would compare the discard data collected from trips taken by vessels fishing with a 6-inch diamond mesh codend to trips with the standard 6.5-inch mesh codend. The Alliance states that this comparison would also demonstrate the usefulness of EM systems as tools for research.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the

initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–22854 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of membership of the NOAA Performance Review Board.

SUMMARY: NOAA announces the appointment of members who will serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses, and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of members to the NOAA PRB will be for a period of two (2) years.

DATES: The ten appointees to the NOAA Performance Review Board were applicable October 15, 2019.

FOR FURTHER INFORMATION CONTACT: James Triem, Director, Executive Resources Division, Office of Human Capital Services, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 628–1882.

SUPPLEMENTARY INFORMATION: The names and positions of the members for the 2019 NOAA PRB are set forth below:

- *Irene Parker, Chair:* Assistant Chief Information Officer, National Environmental Satellite, Data, and Information Service, NOAA
- *Deborah H. Lee, Vice-Chair:* Director, Office of Great Lakes Environmental Research Laboratory, Office of Oceanic and Atmospheric Research, NOAA
- *Kevin Kimball:* Chief of Staff, National Institute of Standards and Technology
- *Kevin Wheeler:* Deputy Chief of Staff for Policy, National Oceanic and Atmospheric Administration
- *James A. St. Pierre:* Deputy Director, Information Technology Laboratory, National Institute of Standards and Technology
- *Albert B. Spencer:* Chief Engineer, National Weather Service, NOAA
- *Mary S. Wohlgemuth:* Director, National Centers for Environmental Information, National Environmental Satellite Data, and Information Service, NOAA
- *David Holst:* Chief Financial Officer, Office of Oceanic and Atmospheric Research, NOAA
- *John S. Luce, Jr.:* General Counsel, NOAA
- *Steve Thur:* Director, National Center for Coastal Ocean Services, National Ocean Service, NOAA
- *David Michaud:* Director, Office of Central Processing, National Weather Service, NOAA
- *Deidre Jones:* Chief Administrative Officer, Office of the Chief Administrative Officer, NOAA

Dated: October 10, 2019.

Neil A. Jacobs,

Assistant Secretary of Commerce for Environmental Observation and Prediction, Performing the Duties of Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 2019–22629 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by WesternGeco

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of appeal.

SUMMARY: This announcement provides notice that the Department of Commerce (Department) has received a ''Notice of Appeal'' filed by WesternGeco (Appellant) requesting that the Secretary override an objection by the South Carolina Department of Health and Environmental Control to a consistency certification for a proposed project to conduct a marine Geological and Geophysical seismic survey in the Atlantic Ocean.

ADDRESSES: NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following website: *http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2019-0118.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact Jonelle Dilley, NOAA Office of General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–7383, *jonelle.dilley@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On September 20, 2019, the Secretary of Commerce (Secretary) received a ''Notice of Appeal'' filed by WesternGeco pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The ''Notice of Appeal'' is taken from an objection by the South Carolina Department of Health and Environmental Control to a consistency certification for a proposed project to conduct a marine Geological and Geophysical seismic survey in the Atlantic Ocean. This matter constitutes an appeal of an ''energy project'' within the meaning of the CZMA regulations, *see* 15 CFR 930.123(c).

Under the CZMA, the Secretary may override South Carolina's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

II. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related

documents comprising the appeal record on the following website: *http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2019-0118.*

(Authority Citation: 15 CFR 930.128(a))

Adam Dilts,

Chief, Oceans and Coasts Section, NOAA Office of General Counsel.

[FR Doc. 2019–22641 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by WesternGeco

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of appeal.

SUMMARY: This announcement provides notice that the Department of Commerce (Department) has received a ''Notice of Appeal'' filed by WesternGeco (Appellant) requesting that the Secretary override an objection by the North Carolina Division of Coastal Management to a consistency certification for a proposed project to conduct a marine Geological and Geophysical seismic survey in the Atlantic Ocean.

ADDRESSES: NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following website: *http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2019-0089.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact Martha McCoy, NOAA Office of General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–7391, *martha.mccoy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On September 20, 2019, the Secretary of Commerce (Secretary) received a ''Notice of Appeal'' filed by WesternGeco pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The ''Notice of Appeal'' is taken from an objection by the North Carolina Division of Coastal Management to a consistency certification for a proposed project to conduct a marine Geological and Geophysical seismic survey in the Atlantic Ocean. This matter constitutes an appeal of an ''energy project'' within the meaning of the CZMA regulations, *see* 15 CFR 930.123(c).

Under the CZMA, the Secretary may override the North Carolina Division of Coastal Management's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

II. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following website: *http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2019-0089.*

(Authority Citation: 15 CFR 930.128(a))

Adam Dilts,

Chief, Oceans and Coasts Section, NOAA Office of General Counsel.

[FR Doc. 2019–22642 Filed 10–18–19; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 7, 2019; 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, telephone: (740) 897–3737, email: *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Approval of June 2019 Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and telephone number listed

above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on October 16, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–22858 Filed 10–18–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG]

Venture Global Calcasieu Pass, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Notification Regarding Equity Ownership Change in Accordance with Procedures for Change in Control (Notice) filed September 6, 2019, by Venture Global Calcasieu Pass, LLC (Calcasieu Pass) in the above-referenced dockets. The Notice describes a change in control of Stonepeak Partners LP (Stonepeak), as well as an internal reorganization implemented in connection with the debt and equity financing of the Calcasieu Pass liquefied natural gas (LNG) export project (Project). The Notice was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, November 5, 2019.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627.

Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–6978.

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

As noted above, Calcasieu Pass filed a Notice in the above-referenced dockets.[1] In the Notice, Calcasieu Pass states Calcasieu Pass now is a wholly-owned subsidiary of Calcasieu Pass Pledgor, LLC, which is in turn a wholly-owned subsidiary of Calcasieu Pass Holdings, LLC. Stonepeak has made equity investments totaling $1.3 billion, in Calcasieu Pass Holdings, LLC and Calcasieu Pass Funding, LLC, effective August 19, 2019.

Calcasieu Pass Holdings, LLC has two members: One member, Calcasieu Pass Funding, LLC, owns all the common units of the company. The other member, Stonepeak Bayou Holdings LP, a Delaware limited partnership affiliated with Stonepeak, owns all the preferred units of the company. The preferred units will convert into common units upon the commercial operation date of the Project and will constitute a minority of the total common units of the company at that time (but more than ten percent).

Calcasieu Pass Holdings, LLC is managed and directed by a board of three managers: Two designated by Calcasieu Pass Funding, LLC and one designated by Stonepeak Bayou Holdings, LP. Under certain extraordinary circumstances such as events of default and material breaches or termination of key Project contracts, Stonepeak Bayou Holdings LP would obtain the right to appoint a majority of the board of managers of Calcasieu Pass Holdings, LLC for a limited period of time lasting until thirty days after such circumstances are no longer continuing, at which time Calcasieu Pass Funding, LLC will once again have the right to appoint a majority of the board of managers. In addition, the manager designated by Stonepeak Bayou Holdings LP generally has the right to direct Calcasieu Pass Holdings, LLC and its subsidiaries with respect to certain uncured material breaches or defaults by Venture Global LNG, the ultimate parent company of Calcasieu Pass, or its affiliates under contracts to which Venture Global LNG and its affiliates are party that have an adverse impact on the Project.

Calcasieu Pass Funding, LLC, in turn, also has two members. All of its common units are owned by Venture Global Calcasieu Pass Holding, LLC, which is a direct, wholly-owned subsidiary of Venture Global LNG. All of the company's preferred units, which are redeemable over time, are owned by Stonepeak Bayou Holdings II LP, another Delaware limited partnership affiliated with Stonepeak. All of the company's business and affairs, however, are generally managed by the holder of its common units.

Additional details can be found in Calcasieu Pass' Notice, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2019/09/f66/Calcasieu_Pass_CIC_Notice_9619.pdf* (Sept. 6, 2019).

DOE/FE Evaluation

DOE/FE will review Calcasieu Pass' Notice in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Revised Procedures).[2] Consistent with the CIC Revised Procedures, this notice addresses only the authorizations granted to Calcasieu Pass to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries in DOE/FE Order No. 4346 (FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG, respectively). If no interested person protests the change in control and DOE takes no action on its own motion, the change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer Calcasieu Pass' Notice. Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in Calcasieu Pass' Notice, and only with

[1] Venture Global Calcasieu Pass, LLC, FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG, Notice of Change in Control (Sept. 6, 2019) [hereinafter Calcasieu Pass Notice].

[2] 79 FR 65541 (Nov. 5, 2014).

respect to Calcasieu Pass' non-FTA authorization in DOE/FE Order No. 4346.[3] All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: emailing the filing to *fergas@hq.doe.gov,* with the individual FE Docket Number(s) in the title line, or Venture Global Calcasieu Pass Change in Control in the title line to include all applicable dockets in this notice; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Venture Global Calcasieu Pass Change in Control in the title line to include all applicable dockets in this notice. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

Calcasieu Pass' Notice and any filed protests, motions to intervene, notices of intervention, and comments are available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The Notice and any filed protests, motions to intervene, notices of intervention, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

[3] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

Issued in Washington, DC, on October 15, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2019–22855 Filed 10–18–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–502–000]

Commonwealth LNG, LLC; Notice of Schedule for Environmental Review of the Commonwealth LNG Project

On August 20, 2019, Commonwealth LNG, LLC (Commonwealth) filed an application in Docket No. CP19–502–000 requesting an authorization pursuant to Section 3 of the Natural Gas Act (NGA), and Parts 153 and 380 of the Federal Energy Regulatory Commission's (FERC or Commission) regulations to site, construct, and operate a natural gas liquefaction and export facility and an associated natural gas pipeline in Cameron Parish, Louisiana. The proposed project is known as the Commonwealth LNG Project and would produce up to 8.4 million tonnes per annum (MTPA) of liquefied natural gas (LNG) for export.

On September 3, 2019, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Commonwealth LNG Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Commonwealth LNG Project, which is based on an issuance of the draft EIS in May 2020.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS October 2, 2020

90-day Federal Authorization Decision Deadline December 31, 2020

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Commonwealth proposes to construct and operate the new LNG export facility and accompanying natural gas pipeline on the west side of the Calcasieu Ship Channel at its entrance to the Gulf of Mexico. The LNG export facility would consist of six natural gas liquefaction trains (with nominal liquefaction and production capacities of 1.4 MTPA each), six LNG storage tanks (with storage capacities of 40,000 cubic meters each), and one marine berth capable of accommodating LNG carriers with capacities up to 216,000 cubic meters. Commonwealth would construct a 30-inch-diameter natural gas pipeline from the LNG export facility, extending 3.04 miles north to interconnect with existing natural gas pipelines within Cameron Parish. The Commonwealth LNG Project would require about 165 acres to construct and would occupy about 130 acres during operation.

Background

On August 15, 2017, the Commission staff granted Commonwealth's request to use the FERC's pre-filing environmental review process and assigned the Commonwealth LNG Project Docket No. PF17–8. On February 22, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Commonwealth LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session* (NOI).

The NOI was issued during the pre-filing review of the Commonwealth LNG Project and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commenters and other interested parties; and local libraries and newspapers. Major issues raised during scoping include impacts on wetlands, migratory birds, and migratory bird habitat; impacts on the ecological habitat of surrounding properties; impacts of rerouted storm-surge on surrounding properties; and impacts on recreational boating and fishing. All substantive comments will be addressed in the EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration's National Marine Fisheries Service are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Commonwealth LNG Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP19–502), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–22887 Filed 10–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited: NONE. *Exempt:* P–2428–007. P–10254–026. P–10253–032.	10/7/2019	FERC Staff.[1]

[1] Memo forwarding email dated October 7, 2019 with Enel Green Power North America, Inc.

Dated: October 15, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22885 Filed 10–18–19; 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: EC20–8–000.
Applicants: Rosewater Wind Farm LLC, RoseWater Wind Generation LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Rosewater Wind Farm LLC, et al.
Filed Date: 10/11/19.
Accession Number: 20191011–5213.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: EC20–9–000.
Applicants: GenOn Mid-Atlantic, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of GenOn Mid-Atlantic, LLC.
Filed Date: 10/11/19.
Accession Number: 20191011–5215.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: EC20–10–000.
Applicants: Prairie Wind Transmission, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Prairie Wind Transmission, LLC.
Filed Date: 10/15/19.
Accession Number: 20191015–5289.
Comments Due: 5 p.m. ET 11/5/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–9–000.
Applicants: Reading Wind Energy, LLC.
Description: Notice of Self-Certification of Reading Wind Energy, LLC.
Filed Date: 10/11/19.
Accession Number: 20191011–5250.
Comments Due: 5 p.m. ET 11/1/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2345–001; ER10–2821–006; ER10–2834–006; ER11–2904–005; ER11–2905–005; ER12–1329–006; ER12–2145–006; ER17–1438–001; ER17–987–002.
Applicants: EC&R Energy Marketing, LLC, EC&R O&M, LLC, Iron Horse Battery Storage, LLC, Munnsville Wind Farm, LLC, Pioneer Trail Wind Farm, LLC, Radford's Run Wind Farm, LLC, Settlers Trail Wind Farm, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.

Description: Notice of Non-Material Change in Status of RWE MBR Entities.
Filed Date: 10/11/19.
Accession Number: 20191011–5197.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER19–2081–001.
Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC, Consumers Energy Company.
Description: Compliance filing: 2019–10–15_SA 1926 & SA 3315 Compliance Filing for METC–CE DTIA and TSA to be effective 9/30/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5260.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER19–2508–002.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3215R6 People's Electric Cooperative NITSA NOA-Amended to be effective 7/1/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5174.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–91–000.
Applicants: Duke Energy Kentucky, Inc.
Description: Petition for Limited Waiver, et al. of Duke Energy Kentucky, Inc.
Filed Date: 10/11/19.
Accession Number: 20191011–5074.
Comments Due: 5 p.m. ET 10/25/19.

Docket Numbers: ER20–95–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–10–11 EIM Implementation Agreement with BANC Phase 2 to be effective 12/11/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5184.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–96–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Notice of Succession, Cost-Based Full Requirements Agreements to be effective 12/10/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5186.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–97–000.
Applicants: New England Power Company.
Description: § 205(d) Rate Filing: Revisions to Appendices to Large Generator IA with Great River Hydro, LLC to be effective 10/15/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5188.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–98–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Notice of Succession, Cost-Based Vol. No. 20 Tariff to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5006.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–99–000.
Applicants: Evergy Kansas Central, Inc.
Description: Compliance filing: Notice of Succession & Refile Baseline, OATT to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5007.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–100–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Balancing Accounts Update 2020 (TRBAA, RSBAA, ECRBAA) to be effective 1/1/2020.
Filed Date: 10/15/19.
Accession Number: 20191015–5008.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–101–000.
Applicants: Wisconsin Electric Power Company.
Description: Tariff Cancellation: Notice of Cancellation to be effective 9/1/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5010.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–102–000.
Applicants: Evergy Kansas Central, Inc.
Description: Tariff Cancellation: Request for Cancellation, Westar Energy's OATT Tariff Title Database to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5012.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–103–000.
Applicants: Evergy Kansas South, Inc.
Description: Baseline eTariff Filing: Baseline eTariff, Notice of Succession & Request for Extension of Time to be effective 10/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5013.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–104–000.
Applicants: Pacific Gas and Electric Company.
Description: Request for Waiver of Pacific Gas and Electric Company.
Filed Date: 10/11/19.
Accession Number: 20191011–5190.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–105–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo–Nereo–GI–2016–15–E&P–556–0.0.0 Filing to be effective 10/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5026.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–106–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: ISO–NE 2020 Capital Budget and Recovery of 2020 Administrative Costs to be effective 1/1/2020.
Filed Date: 10/15/19.
Accession Number: 20191015–5120.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–107–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Third Quarter 2019 Capital Budget Report.
Filed Date: 10/15/19.
Accession Number: 20191015–5176.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–108–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3127R1 Montana-Dakota Utilities Co. NITSA and NOA to be effective 12/1/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5185.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–109–000
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA and CSA Nos. 4538 and 4539, Queue No. AA2–085 to be effective 9/8/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5197.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–110–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Atkinson County S1 (Atkinson Solar) LGIA Filing to be effective 9/30/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5207.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–111–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: ISO–NE; Revised Tariff Sheets for Recovery of Costs for 2020 Operation of NESCOE to be effective 1/1/2020.
Filed Date: 10/15/19.
Accession Number: 20191015–5209.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–112–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: BPA NITSA (SE Idaho Area) Rev 4 to be effective 10/1/2019.
Filed Date: 10/15/19.

Accession Number: 20191015–5212.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–113–000.
Applicants: Evergy Missouri West, Inc.
Description: § 205(d) Rate Filing: Notice of Succesion, Rate Schedules and Agreements to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5242.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–114–000.
Applicants: Nevada Power Company.
Description: Tariff Cancellation: Cancellation of Service Agreement and Coordination Tariff (Volume No. 4) to be effective 12/15/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5275.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–115–000.
Applicants: Southwestern Electric Power Company.
Description: Informational Filing regarding postemployment benefits other than pensions and post-employment benefits of Southwestern Electric Power Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5276.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–116–000.
Applicants: Evergy Metro, Inc.
Description: § 205(d) Rate Filing: Notice of Succession, Vol. No. 4, Rate Schedules Agreements & Other Tariffs to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5279.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–117–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5490; Queue No. AC1–071 to be effective 9/12/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5281.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–118–000.
Applicants: San Diego Gas & Electric Company.
Description: TO5 Formula Depreciation Rate Change For Common Plant and Electric General Plant of San Diego Gas & Electric Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5284.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–119–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: § 205(d) Rate Filing: Second Amended IA Between Southern Companies and DESC to be effective 6/15/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5283.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–120–000.
Applicants: San Diego Gas & Electric Company.
Description: Annual Filing of Revised Costs and Accruals for Post-Employment Benefits Other than Pensions of San Diego Gas & Electric Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5286.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–121–000.
Applicants: Evergy Metro, Inc.
Description: Tariff Cancellation: Request for Cancellation, KCP&L Co. Vol 4 MBR Tariff Title Database to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5287.
Comments Due: 5 p.m. ET 11/5/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–2–000.
Applicants: Baltimore Gas and Electric Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Baltimore Gas and Electric Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5204.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ES20–3–000.
Applicants: PECO Energy Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of PECO Energy Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5253.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ES20–4–000.
Applicants: Delmarva Power & Light Company, Potomac Electric Power Company.
Description: Joint Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Delmarva Power & Light Company and Potomac Electric Power Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5278.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ES20–5–000.
Applicants: Commonwealth Edison Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Commonwealth Edison Company.
Filed Date: 10/15/19.
Accession Number: 20191015–5291.
Comments Due: 5 p.m. ET 11/5/19.

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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22886 Filed 10–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–517–000]

Gulf South Pipeline Company, LP; Notice of Application

Take notice that on September 30, 2019, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed an application in Docket No. CP19–517–000, pursuant to section 7(c) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations seeking authorization to construct, operate, and maintain (i) an approximately 3.4 mile 20-inch diameter natural gas delivery lateral, (ii) a new delivery meter station, and (iii) a new compressor station with approximately 5,000 horsepower and other associated auxiliary appurtenant buildings and facilities, all located in Lamar and Forrest counties, Mississippi, (Lamar County Expansion Project), all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, the proposed Lamar County Expansion Project will allow

Gulf South to provide up to 200,000 dekatherm per day of firm transportation service to Cooperative Entergy Texas, Inc.'s proposed 550 megawatt combined cycle gas turbine generation facility to be located in Lamar County, near Purvis, Mississippi. Gulf South also requests as part of its Application that the Commission approve the refunctionalization of its Hattiesburg 20-inch pipeline from storage to transmission in order to provide supplemental transportation service.

Any questions regarding this application may be directed to Juan Eligio Jr., Supervisor of Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046; by telephone at (713) 479–3480 or by email at *juan.eligio@bwpipelines.com* or Payton Barrientos, Senior Regulatory Analyst, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046; by telephone at (713) 479–8157 or by email at *payton.barrientos@bwpipelines.com.*

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 final environmental impact statement (FEIS) or 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 FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

Comment Date: 5:00 p.m. Eastern Time on November 5, 2019.

Dated: October 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–22883 Filed 10–18–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2019–0075; FRL–10001–29–OAR]

Clean Air Act Advisory Committee (CAAAC); Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces an upcoming meeting for the Clean Air Act Advisory Committee (CAAAC). The EPA established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises EPA on economic, environmental, technical, scientific and enforcement policy issues.

DATES: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the CAAAC will hold its next face-to-face meeting on Thursday, November 7th, 2019 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Crystal Gateway Marriott, located at 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Larry Weinstock, Designated Federal Official, Clean Air Act Advisory Committee (6103A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–9226; email address: *weinstock.larry@epa.gov.* Additional information about this meeting, the CAAAC, and its subcommittees and workgroups can be found on the CAAAC website: *http://www.epa.gov/oar/caaac/.*

SUPPLEMENTARY INFORMATION: The committee agenda and any documents prepared for the meeting will be publicly available on the CAAAC website at *http://www.epa.gov/oar/caaac/* prior to the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available on the CAAAC website or by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2019–0075. The docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

For information on access or services for individuals with disabilities, please contact Lorraine Reddick at *reddick.lorraine@epa.gov,* preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 7, 2019.

John Shoaff,

Director, Office of Air Policy and Program Support.

[FR Doc. 2019–22906 Filed 10–18–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1028]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 20, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1028.

Title: International Signaling Point Code (ISPC).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 3 responses.

Estimated Time per Response: .333 hours (20 minutes).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 214, 219–220, 303(r), and 403.

Total Annual Burden: 1 hour.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

An International Signaling Point Code (ISPC) is a unique, seven-digit code synonymously used to identify the signaling network of each international carrier. The ISPC has a unique format that is used at the international level for signaling message routing and identification of signaling points. The Commission receives ISPC applications from international carriers on the electronic, internet-based International Bureau Filing System (IBFS). After receipt of the ISPC application, the Commission assigns the ISPC code to each applicant (international carrier) free of charge on a first-come, first-served basis. The collection of this information is required to assign a unique identification code to each international carrier and to facilitate communication among international carriers by their use of the ISPC code on the shared signaling network. The Commission informs the International Telecommunications Union (ITU) of its assignment of ISPCs to international carriers on an ongoing basis.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22899 Filed 10–18–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1087]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 20, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

Title: Section 15.615, General Administrative Requirements (Broadband Over Power Line (BPL).

OMB Control Number: 3060–1087.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents and Responses: 100 respondents; 100 responses.

Estimated Time per Response: 26 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 2,600 hours.

Annual Cost Burden: $60,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The FCC does not require any confidentiality in the information provided to the database. There are no proprietary or trade/technological standards to which these BPL entities wish to restrict access.

Needs and Uses: The Commission will submit this expiring information collection after this 60 day comment period to the Office of Management and Budget (OMB) to obtain the full three year clearance.

Section 15.615 requires entities operating Access BPL systems shall supply to an industry-recognized entity, information on all existing Access BPL systems and all proposed Access BPL systems for inclusion into a publicly available database, within 30 days prior to installation of service. Such information should include the name of the Access BPL provider; the frequencies of the Access BPL operation; the postal ZIP codes served by the specific Access BPL operation; the manufacturer and type of Access BPL equipment and its associated FCC ID number, contact information; and proposed/or actual date of operation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22897 Filed 10–18–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0960]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 20, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0960.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules and 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,428 respondents and 9,806 responses.

Estimated Time per Response: 0.5–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 9,352 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 4(j), 303(r), 339 and 340 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 76.122, 76.123 and 76.124 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network syndicated in the broadcasters' recognized market areas. Rule sections 76.122 and 76.123 implement statutory requirements to provide rights for in-market stations to assert non-duplication and exclusivity rights.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22900 Filed 10–18–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, October 24, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: The October 24, 2019 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–22974 Filed 10–17–19; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095; Docket No. 2019–0003; Sequence No. 31]

Information Collection; Commerce Patent Regulations

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning Department of Commerce patent regulations. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the 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 the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by December 20, 2019.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0095, Commerce Patent Regulations.

Instructions: All items submitted must cite Information Collection 9000–0095, Commerce Patent Regulations. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0095, Commerce Patent Regulations.

B. Need and Uses

The Federal Acquisition Regulation (FAR) subpart 27.3, Patents Rights under Government Contracts, implements the Department of Commerce regulation (37 CFR 401) based on chapter 18 of title 35 U.S.C., Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology, dated April 10, 1987. Under the subpart, a contracting officer may insert the clause at FAR 52.227–11, Patent Rights-Ownership by the Contractor, or 52.227–13, Patent Rights-Ownership by the Government, in solicitations and contracts pertaining to inventions made in the performance of experimental, developmental, or research work.

In accordance with the clauses, a Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, sale, or public use of the invention (FAR 52.227–11(c), 52.227–13(e)(1)). The contracting officer may modify FAR 52.227–11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (FAR 27.303(b)(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (FAR 52.227–11, Alternate IV; 52.227–

13(e)(1)). In addition, the contractor must require its employees, by written agreements, to disclose subject inventions (FAR 52.227–11(e)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (FAR 52.227–11(f); 52.227–13(c)(1)(iii)).

C. Annual Burden

Respondents: 3,379.
Total Annual Responses: 13,200.
Total Burden Hours: 52,800.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: October 16, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–22853 Filed 10–18–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3392–N]

Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This notice announces the request for nominations for membership on the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). Among other duties, the MEDCAC provides advice and guidance to the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning the adequacy of scientific evidence available to CMS in making coverage determinations under the Medicare program.

The MEDCACs fundamental purpose is to support the principles of an evidence-based determination process for Medicare's coverage policies. MEDCAC panels provide advice to CMS on the strength of the evidence available for specific medical treatments and technologies through a public, participatory, and accountable process.

DATES: Nominations must be received by Monday, November 18, 2019.

ADDRESSES: You may mail nominations for membership to the following address: Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Attention: Leah Cromwell, 7500 Security Boulevard, Mail Stop: S3–02–01, Baltimore, MD 21244 or send via email to *MEDCACnomination@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Leah Cromwell, MEDCAC Coordinator, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Cromwell by phone (410) 786–2243 or via email at *Leah.Cromwell@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary signed the initial charter for the Medicare Coverage Advisory Committee (MCAC) on November 24, 1998. A notice in the **Federal Register** (63 FR 68780) announcing establishment of the MCAC was published on December 14, 1998. The MCAC name was updated to more accurately reflect the purpose of the committee and on January 26, 2007, the Secretary published a notice in the **Federal Register** (72 FR 3853), announcing that the Committee's name changed to the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). The current Secretary's Charter for the MEDCAC is available on the CMS website at: *http://www.cms.hhs.gov/FACA/Downloads/medcaccharter.pdf,* or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION** section of this notice.

The MEDCAC is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and is authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

We are requesting nominations for candidates to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not solely as representatives of professional associations or societies. We wish to ensure adequate representation of the interests of both women and men, members of all ethnic groups, and physically challenged individuals. Therefore, we encourage nominations of qualified candidates who can represent these interests.

The MEDCAC consists of a pool of 100 appointed members including: 90 at-large standing members (10 of whom are patient advocates), and 10 representatives of industry interests. Members generally are recognized authorities in clinical medicine including subspecialties, administrative medicine, public health, biological and physical sciences, epidemiology and biostatistics, clinical trial design, health care data management and analysis, patient advocacy, health care economics, medical ethics or other relevant professions.

The MEDCAC works from an agenda provided by the Designated Federal Official. The MEDCAC reviews and evaluates medical literature and technology assessments, and hears public testimony on the evidence available to address the impact of medical items and services on health outcomes of Medicare beneficiaries. The MEDCAC may also advise the Centers for Medicare & Medicaid Services (CMS) as part of Medicare's ''coverage with evidence development'' initiative.

II. Provisions of the Notice

As of June 2020, there will be 25 membership terms expiring. Of the 25 memberships expiring, 2 are industry representatives, 5 are patient advocates and the remaining 18 membership openings are for the at-large standing MEDCAC membership.

All nominations must be accompanied by curricula vitae. Nomination packages should be sent to Leah Cromwell at the address listed in the **ADDRESSES** section of this notice. Nominees are selected based upon their individual qualifications. Nominees for membership must have expertise and experience in one or more of the following fields:

- Clinical medicine including subspecialties
- Administrative medicine
- Public health
- Biological and physical sciences
- Epidemiology and biostatistics
- Clinical trial design
- Health care data management and analysis
- Patient advocacy
- Health care economics
- Medical ethics
- Other relevant professions

We are looking particularly for experts in a number of fields. These include cancer screening, genetic testing, clinical epidemiology, psychopharmacology, screening and diagnostic testing analysis, and vascular surgery. We also need experts in biostatistics in clinical settings, dementia treatment, minority health, observational research design, stroke epidemiology, and women's health.

The nomination letter must include a statement that the nominee is willing to serve as a member of the MEDCAC and appears to have no conflict of interest that would preclude membership. We are requesting that all curricula vitae include the following:

- Date of birth
- Place of birth
- Social security number
- Title and current position
- Professional affiliation
- Home and business address
- Telephone and fax numbers
- Email address
- List of areas of expertise

In the nomination letter, we are requesting that nominees specify whether they are applying for a patient advocate position, for an at-large standing position, or as an industry representative. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of financial conflict of interest. Department policy prohibits multiple committee memberships. A federal advisory committee member may not serve on more than one committee within an agency at the same time.

Members are invited to serve for overlapping 2-year terms. A member may continue to serve after the expiration of the member's term until a successor is named. Any interested person may nominate one or more qualified persons. Self-nominations are also accepted. Individuals interested in the representative positions must include a letter of support from the organization or interest group they would represent.

III. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: October 3, 2019.

Kate Goodrich,

Director, Center for Clinical Standards and Quality, Chief Medical Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–22947 Filed 10–18–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3989]

Drug Master Files; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Drug Master Files.'' Once finalized, this guidance will provide FDA's current thinking on drug master files (DMFs), which are submissions to FDA that may be used to provide confidential, detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of human drug products. DMFs are submitted solely at the discretion of their holders and are not required by statute or regulation. This draft guidance, when finalized, will revise the guidance for industry ''Drug Master Files: Guidelines'' that published in September 1989.

DATES: Submit either electronic or written comments on the draft guidance by December 20, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3989 for ''Drug Master Files.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20

and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Rick Ensor, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6652, Silver Spring, MD 20993–0002, 240–402–2733, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Drug Master Files.'' Once finalized, this guidance will provide FDA's current thinking on DMFs, which are submissions to FDA that may be used to provide confidential, detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of human drug products. DMFs are submitted solely at the discretion of their holders and are not required by statute or regulation. After submission, information in DMFs can be incorporated by reference into applications [1] or other DMFs submitted to FDA.

This draft guidance, when finalized, will revise the guidance for industry ''Drug Master Files: Guidelines'' that published in September 1989. This update includes a change in FDA's contact person for the guidance, new procedures for DMFs referenced in abbreviated new drug applications that reflect commitments under the Generic Drug User Fee Amendments of 2012 (Pub. L. No. 112–144, Title III; reauthorized in 2017, Pub. L. 115–52), more detailed instructions regarding the submission of original DMFs versus amendments, reference to the electronic submission requirements under section 745A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379k–1) that apply to certain DMFs, removal of Type I as a DMF category, and clarification and reorganization of material associated with Type III and Type IV DMFs.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Drug Master Files.'' 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.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 314 has been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: October 15, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22821 Filed 10–18–19; 8:45 am]

BILLING CODE 4164–01–P

[1] This guidance focuses on DMFs under 21 CFR 314.420 that are used to support new drug applications, abbreviated new drug applications, and investigational new drug applications under the FD&C Act and DMFs and other master files under 21 CFR 601.51(a) that are used to support biologics license applications under the Public Health Service Act. Additionally, information contained in DMFs can generally be referenced in premarket submissions for devices (*e.g.,* premarket approvals) and animal drugs (*e.g.,* new animal drug applications).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0111]

Agency Information Collection Activities: Arrival and Departure Record (Forms I–94, I–94W) and Electronic System for Travel and Authorization (ESTA)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 20, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP

programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 41727) on August 15, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization (ESTA).

OMB Number: 1651–0111.

Form Numbers: CBP Forms I–94 and I–94W.

Current Actions: This submission is being made to extend the expiration date of this information collection with no changes to the burden hours or to the information collected.

Type of Review: Extension (with no change).

Affected Public: Individuals.

Abstract: Forms I–94 (Arrival/Departure Record) and I–94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, passport, and contact information. The data elements collected on these forms enable the Department of Homeland Security (DHS) to perform its mission related to the screening of alien visitors for potential risks to national security and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens seeking to travel to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States without a visa. Travelers who are entering the United States under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I–94W. I–94 is provided for by 8 CFR 235.1(h), ESTA is provided for by 8 CFR 217.5.

Recent Changes

On November 27, 2017, the Secretary of State designated DPRK, as a State Sponsor of Terrorism, or SST. Countries determined by the Secretary of State ''to have repeatedly provided support for acts of international terrorism'' are considered to have been designated as ''state sponsors of terrorism.''

Section 217(a)(12)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. 1187(a)(12)(A)(i) bars from travel under the Visa Waiver Program (VWP) nationals of VWP program countries who have ''been present, at any time on or after March 1, 2011,'' . . . ''in a country that is designated by the Secretary of State'' as a SST.

To meet the requirements and intent of the law and to keep ESTA and Form I–94W aligned, DHS is strengthening the security of the United States through enhancements to the ESTA application, and Form I–94W. Existing questions that request information from applicants/enrollees about countries to which they have traveled on or after March 1, 2011; countries of which they are citizens/nationals; and countries for which they hold passports are being revised to include, the DPRK.

Under the Emergency Clearance request process DHS has recently added DPRK to the following question to ESTA and Form I–94W (no change has been made to Form I–94): ''Have you traveled to, or been present in Iran, Iraq, Syria, Sudan, Libya, Somalia, Yemen, or the Democratic People's Republic of Korea (North Korea) on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel.''

Form I–94 (Arrival and Departure Record)

Estimated Number of Respondents: 4,387,550.

Estimated Time per Response: 8 minutes.

Estimated Burden Hours: 583,544.

Estimated Annual Cost to Public: $26,325,300.

I–94 Website

Estimated Number of Respondents: 3,858,782.

Estimated Time per Response: 4 minutes.

Estimated Annual Burden Hours: 254,679.

Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure)

Estimated Number of Respondents: 941,291.

Estimated Time per Response: 16 minutes.

Estimated Annual Burden Hours: 251,325.

Estimated Annual Cost to the Public: $5,647,746.

Electronic System for Travel Authorization (ESTA)

Estimated Number of Respondents: 23,010,000.

Estimated Time per Response: 23 minutes.

Estimated Total Annual Burden Hours: 8,812,830.

Estimated Annual Cost to the Public: $265,020,000.

Dated: October 16, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–22861 Filed 10–18–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0008]

Agency Information Collection Activities: Application for Identification Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border

Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than November 20, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 41728) on August 15, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: CBP Form 3078.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3078.

Type of Review: Extension (without change).

Abstract: CBP Form 3078, *Application for Identification Card,* is filled out in order to obtain an Identification Card which is used to gain access to CBP security areas. This form collects biographical information and is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form is submitted to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section. Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.41, 112.42, 118, and 122.182. This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply.*

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: October 16, 2019.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–22864 Filed 10–18–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0139]

Agency Information Collection Activities: Electronic Visa Update System

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 20, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information

collection was previously published in the **Federal Register** (84 FR 41729) on August 15, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Electronic Visa Update System.
OMB Number: 1651–0139.
Form Number: N/A.
Current Actions: This submission is being made to extend the expiration date of this information collection with no changes to the burden hours or the information collected.
Type of Review: Extension (with no change).
Affected Public: Individuals.
Abstract: The Electronic Visa Update System (EVUS) allows for the collection of biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to this requirement must periodically enroll in EVUS and obtain a notification of compliance with EVUS prior to travel to the United States. The EVUS requirement is currently limited to nonimmigrant aliens holding unrestricted, maximum validity B–1 (business visitor), B–2 (visitor for pleasure), or combination B–1/B–2 visas contained in a passport issued by the People's Republic of China.

EVUS provides for greater efficiencies in the screening of international travelers by allowing DHS to identify nonimmigrant aliens who may be inadmissible before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS aids DHS in facilitating legitimate travel while also enhancing public safety and national security.

Recent Changes

On November 27, 2017, the Secretary of State designated DPRK, as a State Sponsor of Terrorism, or SST. Countries determined by the Secretary of State ''to have repeatedly provided support for acts of international terrorism'' are considered to have been designated as ''state sponsors of terrorism.''

To meet the requirements and intent of the law and in light of the designation of DPRK as a SST, DHS is strengthening the security of the United States through enhancements to the EVUS enrollment.

Under the Emergency Clearance request process DHS has recently added DPRK to the following question to EVUS ''Have you traveled to, or been present in Iran, Iraq, Syria, Sudan, Libya, Somalia, Yemen, or the Democratic People's Republic of Korea (North Korea) on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel.''

Estimated Number of Respondents: 3,595,904.
Estimated Number of Responses per Respondent: 1.
Estimated Total Annual Responses: 3,595,904.
Estimated Time per Response: 25 minutes.
Estimated Total Annual Burden Hours: 1,499,492.

Seth D. Renkema,
Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–22863 Filed 10–18–19; 8:45 am]
BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

IP Gateway User Registration

AGENCY: Infrastructure Security Division (ISD), Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; revision, 1670–0009.

SUMMARY: DHS CISA ISD will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this ICR for a 60-day public comment period. No comments were received by CISA. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are due by November 20, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to the OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1670–0009.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Ricky Morgan, 866–844–8163, *IPGatewayHelpDesk@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Homeland Security Presidential Directive-7, Presidential Policy Directive-21, and the National Infrastructure Protection Plan highlight the need for a centrally managed repository of infrastructure attributes capable of assessing risks and facilitating data sharing. To support this mission need, the DHS CISA IDS has developed the IP Gateway. The IP Gateway contains several capabilities which support the homeland security mission in the area of critical infrastructure (CI) protection.

The purpose of this collection is to gather the details pertaining to the users of the IP Gateway for the purpose of creating accounts to access the IP Gateway. This information is also used to verify a need to know to access the IP Gateway. After being vetted and granted access, users are prompted and required to take an online training

course upon first logging into the system. After completing the training, users are permitted full access to the system. In addition, this collection will gather feedback from the users of the IP Gateway to determine any future system improvements.

The information gathered will be used by the CISA IP Gateway Program Management Team to vet users for a need to know and grant access to the system. As part of the registration process, users are required to take a one-time online training course. When logging into the system for the first time, the system prompts users to take the training courses. Users cannot opt out of the training and are required to take the course in order to gain and maintain access to the system. When users complete the training, the system automatically logs that the training is complete and allows full access to the system.

Additionally, CISA uses a Utilization Survey to assess the current functionality of the IP Gateway as well as identify any further capabilities to be developed. Through this process, the IP Gateway will remain a viable solution for the stakeholders. This survey is available to users as an ideal way to consolidate end user satisfaction feedback and gather undeveloped capabilities that would aid in the expansion and functionality of the IP Gateway.

The collection of information uses automated electronic forms. During the online registration process, there is an electronic form used to create a user account and an online training course required to grant access.

The survey is electronic and includes questions that measure the satisfaction of the user as well as a section to capture any improvements that the user would like to see added and/or corrected. This voluntary survey is available by clicking a link labeled ''User Survey'' on the IP Gateway landing page. By clicking on this link, the user is then provided the electronic form for them to complete and submit.

The changes to the collection since the previous OMB approval include: Updating the title of the collection, decrease in burden estimates and decrease in costs. The total annual burden cost for the collection has decreased by $31,909, from $37,230 to $5,321 due to a decrease in registrations, as registration is a one-time burden. The total number of responses has decreased by 1,150 from 1,500 to 350 since most users are already registered for the system as well as making updates for the number of survey responses received. The annual government cost for the collection has decreased by $95,188 from $107,857 to $12,668, due to removing the costs associated with designing the survey.

This is a revision and renewal of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: IP Gateway User Registration.

OMB Control Number: 1670–0009.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector Individuals.

Number of Annualized Respondents: 250.

Estimated Time Per Respondent: 0.17 hours, 0.5 hours.

Total Annualized Burden Hours: 92 hours.

Total Annualized Respondent Opportunity Cost: $5,321.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $12,668.

Scott Libby,

Deputy Chief Information Officer.

[FR Doc. 2019–22818 Filed 10–18–19; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–44]

30-Day Notice of Proposed Information Collection: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions) (OMB# 2503–0033)

AGENCY: Office of the Chief Information Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* November 20, 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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 19, 2019.

A. Overview of Information Collection

Title of Information Collection: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Approval Number: 2503–0033.

Type of Request: Extension of currently approved collection.

Form Number: Listed below.

Description of the Need for the Information and Proposed Use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs (''Ginnie Mae I and Ginnie Mae II''). Under the Ginnie Mae I program, securities are backed by single-family or multifamily loans. Under the

Ginnie Mae II program securities are only backed by single-family loans. Both the Ginnie Mae I and II MBS are modified pass-through securities. The Ginnie Mae II multiple Issuer MBS is structured so that small issuers, who do not meet the minimum number of loans and dollar amount requirements of the Ginnie Mae I MBS, can participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permits the securitization of adjustable rate mortgages (''ARMs'').

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours	Hourly cost per response	Estimated annual cost to respondents (issuers)
11700	II–1	Letter of Transmittal for Commitment Authority and/or Pool Numbers.	368.00	4.00	1,472.00	0.03	44.16	29.00	$1,280.64
11701	I–1	Application for Approval Ginnie Mae Mortgage-Backed Securities Issuer.	15.00	1.00	15.00	3.00	45.00	29.00	1,305.00
11702	I–2	Resolution of Board of Directors and Certificate of Authorized Signatures.	423.00	1.00	423.00	0.08	33.84	29.00	981.36
11703–II	I–7	Master Agreement for Participation Accounting.	17.00	1.00	17.00	0.08	1.36	29.00	39.44
11704	II–2	Commitment to Guaranty Mortgage-Backed Securities.	368.00	4.00	1,472.00	0.03	44.16	29.00	1,280.64
11707	III–1	Master Servicing Agreement.	423.00	1.00	423.00	0.02	8.46	29.00	245.34
11709	III–2	Master Agreement for Servicer's Principal and Interest Custodial Account.	423.00	1.00	423.00	0.03	12.69	29.00	368.01
11715	III–4	Master Custodial Agreement.	423.00	1.00	423.00	0.03	12.69	29.00	368.01
11720	III–3	Master Agreement for Servicer's Escrow Custodial Account.	3,428.00	1.00	3,428.00	0.02	68.56	29.00	1,988.24
11732	III–22	Custodian's Certification for Construction Securities.	55.00	1.00	55.00	0.02	1.10	29.00	31.90
	VI–20	Electronic Submission of Issuers' Insurance and Annual Audited Financial Documents.	423.00	1.00	423.00	1.00	423.00	29.00	12,267.00
11750		Mortgage Bankers Financial Reporting Form.	368.00	4.00	1,472.00	0.17	250.24	29.00	7,256.96
11709–A	I–6	ACH Debit Authorization.	423.00	1.00	423.00	0.03	12.69	29.00	368.01
11710 D	VI–5	Issuer's Monthly Summary Reports.	368.00	12.00	4,416.00	0.13	574.08	29.00	16,648.32
	VI–21	HMBS issuer's Monthly Summary Report.	16.00	12.00	192.00	0.08	14.40	29.00	417.60
	III–13	Electronic Data Interchage System Agreement.	15.00	1.00	15.00	0.03	0.45	29.00	13.05
	I–4	Cross Default Agreement.	10.00	1.00	10.00	0.05	0.50	29.00	14.50
	VI–18	WHFIT Reporting	368.00	4.00	1,472.00	0.13	191.36	29.00	5,549.44
	III–29	System Access Forms	277.00	1.00	277.00	2.00	554.00	29.00	16,066.00
	VIII–1	Ginnie Mae Acknowledgement Agreement and Accompanying Documents Pledge of Servicing.	10.00	1.00	10.00	1.00	10.00	29.00	290.00
	VI–14	Multifamily Prepayment Penalty Record File Layout.	40.00	12.00	480.00	0.05	24.00	29.00	696.00
	VI–16	Quarterly Custodial Account Verification Record File Layout.	368.00	4.00	1,472.00	0.17	250.24	29.00	7,256.96
	VI–17	HMBS Issuer Pooling & Reporting Specification for Mortgage-Backed Securities Administration Agent.	16.00	12.00	192.00	0.13	24.96	29.00	723.84
	VI–19	Monthly Pool and Loan Level Report (RFS).	368.00	12.00	4,416.00	4.00	17,664.00	29.00	512,256.00

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours	Hourly cost per response	Estimated annual cost to respondents (issuers)
The burden for the items listed below is based on volume and/or number of requests									
11705	III–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	5,591.00	12.00	67,092.00	0.05	3,354.60	29.00	97,283.40
11706	III–7	Schedule of Pooled Mortgages.	5,591.00	12.00	67,092.00	0.08	5,367.36	29.00	155,653.44
11705 H, 11706 H.	III–28	Schedule of Subscribers and Ginnie Mae Guaranty Agreement—HMBS Pooling Import File Layout.	74.00	12.00	888.00	0.10	88.80	29.00	2,575.20
	V–5	Document Release Request.	3,181.00	1.00	3,181.00	0.05	159.05	29.00	4,612.45
	XI–6, XI–8, XI–9	SSCRA Loan Eligibility Information Solders' and Sailors' Quarterly Reimbursement Request SSCRA Eligibility and Reimbursement Files.	1,350.00	4.00	5,400.00	0.10	540.00	29.00	15,660.00
11711A and 11711B.	III–5	Release of Security Interest and Certification and Agreement.	5,591.00	12.00	67,092.00	0.10	6,709.20	29.00	194,566.80
11714, 11714SN.	VI–10, VI–11	Issuer's Monthly Remittance Advice Issuer's Monthly Serial Note Remittance Advice.	3,975.00	12.00	56,400.00	0.03	1,692.00	29.00	49,068.00
	VI–2	Letter for Loan Repurchase.	50.00	12.00	600.00	0.03	18.00	29.00	522.00
	III–21	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	322.00	1.00	322.00	0.03	9.66	29.00	280.14
	VI–9	Request for Reimbursement of Mortgage Insurance Claim Costs for Multifamily Loans.	3.00	12.00	36.00	0.08	2.88	29.00	83.52
	VIII–3	Assignment Agreements.	220.00	1.00	220.00	0.13	28.60	29.00	829.40
Total ...			.....	Varies	291,744.000	Varies	38,236.09	.....	$ 1,108,846.61

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 16, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–22918 Filed 10–18–19; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1044]

Certain Graphics Systems, Components Thereof, and Consumer Products Containing the Same; Commission Determination To Institute a Modification Proceeding; Modification of the Limited Exclusion Order; and Termination of the Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding. The Commission has further determined to grant a joint petition to modify in part a limited exclusion order (''LEO'') as to

respondents MediaTek Inc. of Hsinchu City, Taiwan and Media Tek USA Inc. of San Jose, California (collectively, ''MediaTek'') based on a settlement agreement. The Commission has issued a modified LEO. The modification proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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: The Commission instituted Investigation No. 337–TA–1044 on March 22, 2017, based on a complaint filed by Complainants Advanced Micro Devices, Inc. of Sunnyvale, California and ATI Technologies ULC of Canada (collectively, ''AMD'' or ''Complainants''). *See* 82 FR 14748 (Mar. 22, 2017). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics systems, components thereof, and consumer products containing the same, by reason of infringement of certain claims of U.S. Patent Nos. 7,633,506 (''the '506 patent); 7,796,133; 8,760,454; and 9,582,846. *Id.* In addition to MediaTek, the notice of investigation identifies the following respondents: LG Electronics, Inc. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics MobileComm U.S.A. Inc. of San Diego, California (collectively, ''LG''); VIZIO, Inc. of Irvine, California (''VIZIO''); and Sigma Designs, Inc. (''SDI'') of Fremont, California. *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. The Commission later terminated the investigation as to LG based on settlement. *See* Order No. 48 (Oct. 20, 2017), *unreviewed,* Comm'n Notice (Nov. 13, 2017).

On April 13, 2018, the Administrative Law Judge (''ALJ'') issued a final initial determination (''FID'') finding a violation of section 337 with respect to the '506 patent. On August 22, 2018, the Commission affirmed with modification the FID's findings. *See* 83 FR 43899 (Aug. 28, 2018). The Commission issued an LEO against respondents' infringing products and cease and desist orders (''CDOs'') against VIZIO and SDI. *See id.*

On September 11, 2018, Complainants and VIZIO filed a joint petition to modify in part the LEO as to VIZIO and to rescind the CDO against VIZIO, based on a settlement agreement. On October 5, 2018, the Commission granted the joint petition and issued a modified LEO. *See* 83 FR 51500 (Oct. 11, 2018).

On September 19, 2019, Complainants and MediaTek filed a joint petition (''Petition'') to modify in part the LEO as to MediaTek based on a settlement agreement. The Petition states that ''[p]ursuant to this settlement, all MediaTek articles currently covered by the Commission's Modified Limited Exclusion Order are now licensed.'' *See* Petition at 2. On September 30, 2019, OUII filed a response in support of the Petition.

In view of the settlement agreement between Complainants and MediaTek, the Commission finds that the conditions justifying the exclusion order against MediaTek no longer exist, and therefore, granting the joint petition is warranted under 19 U.S.C. 1337(k) and 19 CFR 210.76(a). Accordingly, the Commission has determined to institute a modification proceeding and to grant the joint petition to modify in part the LEO as to MediaTek. The Commission has issued a modified LEO. The modification proceeding is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 15, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22824 Filed 10–18–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

DATES: The APB will meet in open session from 9:00 a.m. until 5:30 p.m. on December 4, 2019 and 9:00 a.m. until 2:00 p.m. on December 5, 2019.

ADDRESSES: The meeting will take place at the Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, Georgia 30303, telephone 404–521–0000.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Melissa Abel; Management and Program Analyst; CJIS Training and Advisory Process Unit, Resources Management Section; FBI CJIS Division, Module C2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone 304–625–5670, facsimile 304–625–5090.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Next Generation Identification, Interstate Identification Index, Law Enforcement Enterprise Portal, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, National Data Exchange, and Uniform Crime Reporting.

This meeting is open to the public. All attendees will be required to check-in at the meeting registration desk. Registrations will be accepted on a space available basis. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO). Any member of the public may file a

written statement with the Board. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to the APB for their consideration prior to the meeting.

Anyone requiring special accommodations should notify Mr. Megna at least seven (7) days in advance of the meeting.

Dated: October 15, 2019.

Nicky J. Megna,

CJIS Designated Federal Officer, Criminal Justice Information, Services Division, Federal Bureau of Investigation.

[FR Doc. 2019–22891 Filed 10–18–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Labor Standards for the Registration of Apprenticeship Programs

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, ''Title 29 CFR part 29—Labor Standards for the Registration of Apprenticeship Programs.'' 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 20, 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 Tiffany Ramos by telephone at 202–693–3563 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *OA-ICRs@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 Apprenticeship, Room C–5321, 200 Constitution Avenue NW, Washington, DC 20210; by email: *OA-ICRs@dol.gov;* or by Fax: 202–693–3799.

FOR FURTHER INFORMATION CONTACT: Contact Tiffany Ramos by telephone at 202–693–3563 (this is not a toll-free number) or by email at *OA-ICRs@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

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.

ETA is requesting the regular three-year approval on a revision to a currently approved ICR pursuant to the Paperwork Reduction Act. If approved, this request will enable ETA to continue to collect essential data concerning the labor standards of apprenticeship. Under the National Apprenticeship Act of 1937 (NAA) (29 U.S.C. 50), the Secretary of Labor is charged with the establishment of labor standards designed to safeguard the welfare of apprentices and promote apprenticeship opportunity. The NAA authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship.'' This proposed information collection request seeks a revision of approved ETA Form 671: Program Registration (Section I), Apprentice Registration (Section II), and a separate tear-off sheet for Apprentice Registration (Section II), titled ''Voluntary Disability Disclosure,'' (OMB Control No. 1205–0223), which is set to expire on January 31, 2020. Sections I and II of ETA Form 671 are available electronically to facilitate the registration of programs and apprentices.

The proposed revisions to ETA Form 671 consist of (1) minor edits for clarity in Sections I and II; (2) an update to the Office of Apprenticeship's room number in Section I; (3) a modification to the education level categories in Part A, 6 in Section II to align with the educational categories that the U.S. Census uses to obtain information; (4) an update to the field in Part B, 10a from ''pre-apprenticeship hourly wage'' to ''prior hourly wage'' to ensure that the earnings of a participant prior to beginning their apprenticeship is captured regardless if he or she participated in a pre-apprenticeship program; (5) deletion of the designation of a name and address of the Sponsor designee to receive complaints as optional; (6) and an update to the citation in Section II (Voluntary Disability Disclosure) to reflect the requirement that sponsors must invite apprentices and applicants to voluntarily self-identify whether or not they have a disability as required under Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship. The National Apprenticeship Act of 1937 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 OMB Control Number 1205–0223.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

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: Title 29 CFR part 29—Labor Standards for the Registration of Apprenticeship Programs.

Form: ETA Form 671.

OMB Control Number: 1205–0223.

Affected Public: Individuals/households, state/local/tribal governments, Federal government, private sector (businesses or other for-profits, and, not-for-profit institutions).

Estimated Number of Respondents: 314,891.

Frequency: One-time basis.

Total Estimated Annual Responses: 314,891.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 29,838 hours.

Total Estimated Annual Other Cost Burden: $0.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–22874 Filed 10–18–19; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Work Opportunity Tax Credit

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Work Opportunity Tax Credit.'' 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 20, 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 David Jones by telephone at 202–693–3397 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Jones.David.M@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—Division of National Program Tools and Technical Assistance, 200 Constitution Avenue NW, C4526, Washington, DC 20210, by email: *Jones.David.M@dol.gov* or by fax (202) 693–3981.

FOR FURTHER INFORMATION CONTACT: Contact David Jones by telephone at 202–693–3397 (this is not a toll-free number) or by email at *Jones.David.M@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

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.

On December 8, 2015, the Work Opportunity Tax Credit (WOTC) program was extended and amended by the Protecting Americans from Tax Hikes Act of 2015, (Pub. L. 114–113), div. Q (PATH Act). The WOTC is a Federal tax credit available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment. The PATH Act retroactively reauthorized the WOTC program and all its current target groups for a five-year period, from January 1, 2015 to December 31, 2019. Additionally the PATH Act introduced a new target group, Qualified Long-term Unemployment Recipients, for new hires that begin to work for an employer on or after January 1, 2016 through December 31, 2019. Section 51 and 3111(e) of the Internal Revenue Code (Code) and the Small Business Job Protection Act of 1996, (Pub. L. 104–188), including Title 26 U.S.C. 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 OMB control number 1205–0371.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

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: Extension without changes.

Title of Collection: Work Opportunity Tax Credit.

Form: (1) ETA Form 9058, Report 1—Certification Workload and Characteristics of Certified Individuals;

(2) ETA Form 9061, Individual Characteristics Form; (3) ETA Form 9061, Spanish version; (4) ETA Form 9062, Conditional Certification; (5) ETA Form 9063, Employer Certification, (6) ETA Form 9065, Agency Declaration of Verification Results Worksheet; and (7) ETA Form 9175, Long-term Unemployment Recipient Self-Attestation Form.

OMB Control Number: 1205–0371.

Affected Public: State Workforce Agencies (SWAs), Private Sector, Individuals or Households and 501(c) Tax-Exempt organizations hiring certain Veterans.

Estimated Number of Respondents: 5,693,537.

Frequency: Varies.

Total Estimated Annual Responses: 13,527,080.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 4,455,141 hours.

Total Estimated Annual Other Cost Burden: $0.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–22875 Filed 10–18–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Form CC–4, Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor; Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This program helps to ensure that 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 on respondents can be properly assessed. The Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to renew the Office of Management and Budget (OMB) approval of the information collection: ''Form CC–4, Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor.'' The current OMB approval for Form CC–4 expires on May 31, 2020. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 20, 2019.

ADDRESSES: You may submit comments, identified by Control Number 1250–0002, by one of the following methods:

Electronic comments: Through the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Address comments to Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Commenters are strongly encouraged to submit their comments electronically via the *www.regulations.gov* website or to mail their comments early to ensure that they are timely received. Comments, including any personal information provided, become a matter of public record and will be posted to the *www.regulations.gov* website. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. *Background:* OFCCP administers and enforces the three equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA)

These authorities prohibit employment discrimination by Federal contractors and subcontractors and require them to take affirmative action to ensure that equal employment opportunities are available regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, Federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. Federal contractors and subcontractors are further prohibited from harassing, intimidating, threatening, coercing, or discriminating against individuals who file a complaint, assist or participate in any OFCCP investigation, oppose any discriminatory act or practice, or otherwise exercise their rights protected by OFCCP's laws.

No private right of action exists under the authorities that are enforced by OFCCP, *i.e.,* a private individual may not bring a lawsuit against an employer (or prospective employer) for noncompliance with its contractual obligations enforced by OFCCP. However, any employee of, or applicant for employment with, a federal contractor or subcontractor may file a complaint with OFCCP alleging discrimination or failure to comply with affirmative action obligations. OFCCP encourages such employees and applicants to file their complaints by completing its complaint form (''Form CC–4''). OFCCP investigates the complaint but retains the discretion whether to pursue administrative or judicial enforcement. If a complaint is filed under E.O. 11246 or Section 503, OFCCP may refer it to the U.S. Equal Employment Opportunity Commission (EEOC).[1] OFCCP investigates all complaints filed under VEVRAA.

Under E.O. 11246, the authority for collection of complaint information is Section 206(b). The implementing regulations which specify the content of this information collection are found at 41 CFR 60–1.23. Under VEVRAA, the authority for collecting complaints information is at 38 U.S.C. 4212(b) and

[1] *See,* 41 CFR 60–1.24(a) and 41 CFR 60–741.5.

the implementing regulations which specify the content of VEVRAA complaints are found at 41 CFR 60–300.61(b). The statutory authority for collecting complaint information under Section 503 is at 29 U.S.C. 793(b), and the implementing regulations which specify the content of Section 503 complaints are found at 41 CFR 60–741.61(c). This information collection request covers the recordkeeping and reporting requirements for Form CC–4.

II. *Review Focus:* DOL is particularly interested in comments which:

- 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 submissions of responses.

III. *Current Actions:* DOL seeks the approval of the extension of this information collection instrument in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of the three authorities that it administers. DOL made a clarifying edit on its complaint form. Now, when a complainant indicates that they filed a complaint containing the same allegations with another federal or local agency, DOL asks what date they filed the other complaint. Requesting this information is intended to improve the efficiency of processing complaints and eliminate duplicative agency efforts.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: Complaint Form CC–4, Complaint Involving Employment Discrimination by Federal Government Contractors or Subcontractors.

OMB Number: 1250–0002.

Agency Number: None.

Affected Public: Business or other for profit, Not-for-profit institutions.

Total Respondents: 897.

Total Annual Responses: 897.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 897.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $169.00.

Dated: October 10, 2019.

Harvey D. Fort,

Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2019–22894 Filed 10–18–19; 8:45 am]

BILLING CODE 4510–CM–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, October 24, 2019.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA Rules and Regulations, Public Unit and Nonmember Shares.
2. NCUA's Rules and Regulations, Chartering and Field of Membership.
3. Board Briefing, Cyber Security.

RECESS: 11:00 a.m.

TIME AND DATE: 11:15 a.m., Thursday, October 24, 2019.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Supervisory Action. Closed pursuant to Exemption (8).
2. Board Appeal. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Authority: 5 U.S.C. 552b.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2019–23008 Filed 10–17–19; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 21, 28, November 4, 11, 18, 25, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 21, 2019

There are no meetings scheduled for the week of October 21, 2019.

Week of October 28, 2019—Tentative

Tuesday, October 29, 2019

10:00 a.m. Transformation at the NRC—Becoming a Modern, Risk-Informed Regulator (Public Meeting); (Contact: Alysia Bone: 301–415–1034).

Week of November 4, 2019—Tentative

There are no meetings scheduled for the week of November 4, 2019.

Week of November 11, 2019—Tentative

There are no meetings scheduled for the week of November 11, 2019.

Week of November 18, 2019—Tentative

There are no meetings scheduled for the week of November 18, 2019.

Week of November 25, 2019—Tentative

There are no meetings scheduled for the week of November 25, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 17th day of October 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–23032 Filed 10–17–19; 4:15 pm]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before November 20, 2019.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Returned Volunteer Impact Survey.

OMB Control Number: 0420-****.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation To Reply: Voluntary.

Burden to the Public:

Estimated Burden (Hours) of the Collection of Information:

a. *Number of respondents:* 997.

b. *Frequency of response:* 1 time.

c. *Completion time:* 15 minutes.

d. *Annual burden hours:* 249 hours.

General Description of Collection: Information will be collected from Returned Peace Corps Volunteers (RPCVs) through an online survey that will be administered by the Peace Corps. As mandated by the Sam Farr and Nick Castle Peace Corps Reform Act of 2018 (22 U.S.C. 2501; Pub. L. 115–256, 1(a), Oct. 9, 2018, 132 Stat. 3650), the Peace Corps will conduct the survey to assess the impact of the Peace Corps on the RPCV, including the RPCV's well-being, career, civic engagement, and commitment to public service. By measuring and documenting such impact, the agency will have data that allows it to assess the continuing impact of the Peace Corps on American society, through the lives and careers that Peace Corps Volunteers build after they return to the United States from Peace Corps service.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity 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 automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on October 16, 2019.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2019–22860 Filed 10–18–19; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–10 and CP2020–9]

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 23, 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:

Table of Contents

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).:* MC2020–10 and CP2020–9; *Filing Title:* USPS Request to Add First-Class Package Service Contract 105 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 15, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:*

[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).

Kenneth R. Moeller; *Comments Due:* October 23, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–22904 Filed 10–18–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Changes to Priority Mail Express International and Part D Country Price Lists of the Mail Classification Schedule

AGENCY: Postal Service™.

ACTION: Notice of changes to Priority Mail Express International and Part D Country Price Lists of the Mail Classification Schedule.

SUMMARY: This notice sets forth changes to Priority Mail Express International and Part D Country Price Lists of the Mail Classification Schedule.

DATES: *Effective date:* January 26, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: On October 3, 2019, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established changes in classifications to Priority Mail Express International relating to the list of destination countries offered at a discount at retail, as provided in section 2305.6 of the Mail Classification Schedule, and also authorized management to make changes to the country price list for international mail that appears in Part D of the Mail Classification Schedule to conform to official sources.

Christopher C. Meyerson,

Attorney, Corporate and Postal Business Law.

Decision of the Governors of the United States Postal Service on Changes to Priority Mail Express International and Part D Country Price Lists of the Mail Classification Schedule (Governors' Decision No. 19–4)

October 3, 2019

Statement of Explanation and Justification

Pursuant to authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish changes in classifications to Priority Mail Express International relating to the list of destination countries offered at a discount at retail, as provided in section 2305.6 of the Mail Classification Schedule, and also authorize management to make changes to the country price list for international mail that appears in Part D of the Mail Classification Schedule to conform to official sources.

Order

The changes in classes set forth herein shall be effective at 12:01 a.m. on January 26, 2020. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2), and direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

/s/

Robert M. Duncan,

Chairman, Board of Governors.

United States Postal Service Office of the Board of Governors

Certification of Governors' Vote on Governors' Decision No. 19–4

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on October 3, 2019, the Governors voted on adopting Governors' Decision No. 19–4, and that a majority of the Governors then holding office voted in favor of that Decision.

/s/

Date: October 7, 2019

Michael J. Elston,

Acting Secretary of the Board of Governors.

Part B

Competitive Products

* * *

2305 Outbound International Expedited Services

2305.1 Description

* * *

2305.6 Prices

* * *

Priority Mail Express International Offered at a Discount at Retail

If a customer requests PMI at a Postal Service retail counter for an item for which postage has not been previously paid, weight-rated PMEI may be offered to certain destinations, for certain weight steps, at a discounted price equivalent to the corresponding weight-based rate in the PMI Parcels Retail price table (2315.6), if all PMEI eligibility requirements are met and the Postal Service determines that service can be improved and/or the PMEI destination country delivery costs are lower than PMI destination country delivery costs.

Countries and Weight Steps for Which Priority Mail Express International Offered at a Discount at Retail Is Available

Country	Weight Steps (lbs.)
~~Australia~~	~~8-66~~
Brazil	5-66
Chile	8-44
~~China~~	~~1-10~~
~~France~~	~~2-66~~
~~Germany~~	~~1-4~~
~~India~~	~~19-44~~
~~Israel~~	~~1-5~~
~~Mexico~~	~~50-70~~
New Zealand	8-66
~~Philippines~~	~~19-44~~
Russia	4-44
~~Spain~~	~~1-10~~
United Kingdom of Great Britain and Northern Ireland	2-66

[FR Doc. 2019–22865 Filed 10–18–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87300; File No. SR–CboeBZX–2019–023]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 14.11(c) (Index Fund Shares) To Adopt Generic Listing Standards for Index Fund Shares Based on an Index of Municipal Securities

October 15, 2019.

On April 3, 2019, Cboe BZX Exchange, Inc. (''Cboe BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Cboe BZX Rule 14.11(c) to adopt generic listing standards for Index Fund Shares based on an index or portfolio of municipal securities. The proposed rule change was published for comment in the **Federal Register** on April 22, 2019.[3] On May 30, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On July 18, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was April 22, 2019. October 19, 2019, is 180 days from that date, and December 18, 2019, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates December 18, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2019–023).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22832 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85656 (April 16, 2019), 84 FR 16753.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85966, 84 FR 26172 (June 5, 2019). The Commission designated July 21, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 86410, 84 FR 35698 (July 24, 2019). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 35700 (citing 15 U.S.C. 78f(b)(5)).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87305; File No. SR–CboeBYX–2019–015]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

October 15, 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 October 1, 2019, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. The text of the proposed changes to the fee schedule are enclosed as Exhibit 5. [sic]

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products. The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no commenter letters on the proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Suspension Order'').[4] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5]

Current Fees

Today, the Exchange offers two top of book data feeds that provide real-time U.S. equity quote and trade information to investors. First, the Exchange offers the BYX Top Feed, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System. The fee for external distribution of BYX Top data is $1,000 per month, and external distributors are also liable for a fee of $1 per month for each Professional User, and $0.025 per month for each Non-Professional User.

Second, the Exchange offers the Cboe One Summary Feed, which offers similar information based on equity orders submitted to the Exchange and its affiliated equities exchanges—*i.e.,* Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe EDGA Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is $5,000 per month, and external distributors are also liable for a Data Consolidation Fee of $1,000 per month, and User fees equal to $10 per month for each Professional User, and $0.25 per month for each Non-Professional User.[6]

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide either the BYX Top Feed or Cboe One Summary Feed (''BYX Equities Exchange Data'') to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that they meet the following criteria: (1) Distributor is a broker-dealer distributing BYX Equities Exchange Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) More than 50% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving BYX Equities Exchange Data; and (3) Distributor distributes BYX Equities Exchange Data to no more than 5,000 Non-Professional Data Users.[7]

[3] *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

[4] *See* Securities Exchange Act Release No. 87166 (September 30, 2019) (SR–CboeBYX–2019–012) (**Federal Register** publication pending).

[5] *Id.*

[6] The Exchange also offers an Enterprise license for the BYX Top and Cboe One Summary Feeds. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers. An Enterprise license is $10,000 per month for the BYX Top Feed, and $50,000 per month for the Cboe One Summary Feed.

[7] Distributors would have to meet these requirements for whichever product they would like to distribute pursuant to the Program. For example, a distributor that distributes Cboe One Summary Feed data pursuant to the Program, would be limited to distributing the Cboe One Summary Feed to no more than 5,000 Non-Professional Data Users.

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide BYX Equities Exchange Data to a limited number of subscribers. As explained later in this filing, distributors that provide BYX Exchange Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Exchange's top of book products with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The Program would be exclusive to the Exchange's top of book offerings as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution fees for access to the BYX Top Feed, and lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.[8] First, the distribution fee charged for BYX Top would be lowered by 75% from the current $1,000 per month to $250 per month for distributors that meet the requirements of the Program. Second, the distribution fee charged to these distributors for the Cboe One Summary Feed would be lowered by 30% from the current $5,000 per month to $3,500 per month. Finally, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current $1,000 per month to $350 per month. User fees for any Professional or Non-Professional Users that access BYX Top or Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.[9]

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.[10] The BYX Top Feed and Cboe One Summary Feed therefore compete with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.[11]

The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option for small retail brokers. Although that filing was ultimately suspended by the Commission, the Exchange believes that its experience in offering the Program while it was in effect reflect the competitive nature of the market for the creation and distribution of top of book data. Specifically, after the Exchange initially reduced the fees charged to small retail brokers under the Initial Proposal, it successfully onboarded one new customer due to the attractive pricing, and is currently in the process of onboarding another customer.[12] These customers are now able to offer high quality and cost effective data to their retail investor clients. The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in providing top of book data to retail investors. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead purchase such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available

[8] New external distributors of the BYX Top Feed or Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

[9] By comparison, The Nasdaq Stock Market LLC (''Nasdaq'') charges a subscriber fee for Nasdaq Basic that adds up to $26 per month for Professional Subscribers and $1 per month for Non-Professional Subscribers (Tapes A, B, and C). *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

[10] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[11] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

[12] *See e.g.,* Cboe Innovation Spotlight, ''dough—The commission-free online broker with premium content and insights,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight/.*

pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[15] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[16] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[17] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to two top of book data products: The BYX Top Feed and the Cboe One Summary Feed. The BYX Top Feed provides top of book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 4% of U.S. equity market volume today.[18] The Cboe One Summary Feed is a competitively-priced alternative to top of book data disseminated by SIPs, or similar data disseminated by other national securities exchanges.[19] It provides subscribers with consolidated top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.[20] Together, these products are purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the BYX Top and Cboe One Summary Feeds benefit a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe One Summary Feed is within 1% of the national best bid and offer approximately 98% of the time,[21] and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

Indeed, the Exchange has already successfully onboarded one new Distributor that has decided to purchase Cboe One Summary Data from the Exchange rather than purchasing top of book data from a competitor exchange,

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78k–1.

[16] *See* 17 CFR 242.603.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[18] *See https://markets.cboe.com/us/equities/market_share/.*

[19] *See e.g.,* supra note 9 (discussing Nasdaq Basic).

[20] *Id.*

[21] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

and is in the process of onboarding another new Distributor. In addition, the Exchange is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges. Making the Exchange's top of book data available at a lower cost, ultimately serves the interests of retail investors that rely on the public markets. The Exchange understands that the Commission is interested in ensuring that retail investors are appropriately served in the U.S. equities market. The Exchange agrees that it is important to ensure that our markets continue to serve the needs of ordinary investors, and the Program is consistent with this goal.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from BYX and its affiliated equities exchanges to their retail investor clients. The market for top of book data is intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [22]

Today, the Exchange's top of book market data products are among the most competitively priced in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange's data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange's lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up the majority of the distributor's total subscriber population. While there is no ''exact science'' to choosing one eligibility threshold compared to another, the Exchange believes that having more Non-Professional Data Users than Professional Data User across a firm's entire business, *i.e.,* not limited exclusively to Data Users that are provided access to the Exchange's data products, is indicative of a broker-dealer that is primarily and actively engaged in the business of serving retail investors. This understanding is confirmed by the current customers that participate in or are soon to participate in the Program, each of which are focused on providing trading services to ordinary investors. As such, the Program would be broadly available to a wide range of retail brokers that either purchase the Cboe One Summary Feed today, or that may choose to switch from competing products due to the potential cost savings. In addition to the subscribers that are participating and are soon to participate in the Program, dozens of distributors that currently purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.[23] The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Non-Professional Data Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide BYX Equities Exchange Data to more than 5,000 Non-Professional Data Users already enjoy cost savings compared to competitor products. The Program would therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

The table below illustrates the impact of the proposed pricing on firms that qualify for the Program, both compared to the Exchange's current pricing, and compared to the fees charged for a competitor product, *i.e.,* Nasdaq Basic. As shown, Cboe One Summary Feed Data provided pursuant to the Program would be cheaper than Nasdaq Basic for

[22] *See* Regulation NMS Adopting Release, supra note 17, at 37503.

[23] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18–FY22_FINAL_0.pdf.*

firms with more than 1,200 Non-Professional Users, and the benefits of the pricing structure would continue to scale up to firms with 5,000 Non-Professional Users. Further, BYX Top Data, which is already subject to a lower distribution fee than Nasdaq Basic, would become even more cost effective. After 5,000 Non-Professional Users the firm would no longer be eligible for the Small Retail Broker Distribution Program but would already enjoy significant cost savings compared to Nasdaq Basic under the current pricing structure. The Exchange therefore believes that the Program would allow the Exchange to better compete with competitors for smaller firms that currently pay a lower fee under, for example, the Nasdaq Basic pricing model, while also ensuring that larger firms continue to receive attractive pricing that is already cheaper than top of book data offered by the main competitor product. The Exchange believes this supplemental information further validates its assessment that the proposed fee reduction is reasonable, equitable, and not unfairly discriminatory. Without the proposed fee reduction, small retail brokers that would otherwise qualify for the reduced fees proposed would be subject to either higher fees for accessing Exchange top of book data, or may switch to competitor offerings that are also less cost effective, but at current fees levels, cheaper than the current Cboe One Summary fee.

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	1,200			**Nasdaq Basic**	**Difference vs. Nasdaq Basic**
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	1,200	$ 6,000.00	$ 3,850.00	$3,850	0.00
BYX Top	1,200	$ 1,000.00	$ 250.00	$3,850	3600.00

	3,350			**Nasdaq Basic**	**Difference vs. Nasdaq Basic**
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	3,350	$ 6,000.00	$ 3,850.00	$6,000	2150.00
BYX Top	3,350	$ 1,000.00	$ 250.00	$6,000	5750.00

	7,500			**Nasdaq Basic**	**Difference vs. Nasdaq Basic**
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	7,500	$ 6,000.00	$ 3,850.00	$10,150	4150.00
BYX Top	7,500	$ 1,000.00	$ 250.00	$10,150	9900.00

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B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are

free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and paragraph (f) of Rule 19b–4 [25] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2019–015 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–CboeBYX–2019–015. 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–CboeBYX–2019–015 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22831 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87308; File No. SR–PEARL–2019–31]

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 15, 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 October 1, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to remove the application of, and definitions for, non-transaction fee waivers and waiver periods.

The Exchange previously filed this proposal on June 28, 2019 (SR–PEARL–2019–22).[3] That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR–PEARL–2019–31).

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 remove the text and application of the three-month New Member Non-Transaction Fee Waiver[4] and Waiver Period.[5] MIAX PEARL commenced operations as a national securities exchange registered under Section 6 of the Act[6] on February 6, 2017.[7] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–PEARL–2017–10.[8] In that filing, the Exchange expressly adopted the definition and application of the Waiver Period pertaining to fees for the Application for MIAX PEARL Membership, Monthly Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members[9] and non-Members, Port fees, MIAX PEARL Member Participant Identifier (''MPID'')[10] fees, and MIAX PEARL Top of Market (''ToM'') and MIAX PEARL Liquidity Feed (''PLF'') market data fees.[11] The Exchange also stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period for such fees.[12] The Exchange adopted the three-month New Member Non-Transaction Fee Waiver in the filing SR–PEARL–2018–07,[13] which applied to the Monthly Trading Permit fee, Port fees, and ToM and PLF market data fees.

On March 14, 2019, the Exchange issued a Regulatory Circular that the Exchange would be removing the text and application of the New Member Non-Transaction Fee Waiver as it applied to all relevant non-transaction fees, including the Monthly Trading Permit fee, Port fees, ToM and PLF market data fees, and establishing other non-transaction fees, beginning April 1, 2019.[14] The Exchange initially filed the proposal on March 27, 2019, designating the proposed fees effective April 1, 2019.[15] The First Proposed Rule Change was published for comment in the **Federal Register** on April 12, 2019.[16] The proposed fees remained in effect until the Exchange withdrew the First Proposed Rule Change on May 20, 2019.[17]

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.[18] The Second Proposed Rule Change was published for comment in the **Federal Register** on July 18, 2019.[19] The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.[20]

On September 20, 2019, the Exchange filed separate proposals to establish API Testing and Certification fees[21] and fees for the one-time Application for MIAX PEARL Membership.[22] On October 1, 2019, the Exchange also filed to separately establish MPID fees.[23]

The Exchange is now refiling the proposal to remove the text and application of the New Member Non-Transaction Fee Waiver and Waiver Period for all remaining non-transaction fees in the Fee Schedule. In particular, the Exchange proposes to remove the New Member Non-Transaction Fee Waiver as it currently applies to the Monthly Trading Permit fee; Port fees; and ToM and PLF market data fees. The Exchange also proposes to amend the Definitions section of the Fee Schedule to delete the definitions of ''New Member Non-Transaction Fee Waiver'' and ''Waiver Period'' as those definitions would no longer be applicable in accordance with this proposal, and the Exchange's previous filings to establish API Testing and Certification fees,[24] fees for the one-time

[3] *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'').

[4] ''New Member Non-Transaction Fee Waiver'' means the waiver of certain non-transaction fees, as explicitly set forth in specific sections of the Fee Schedule, for a new Member of the Exchange, for the waiver period. For purposes of this definition, the waiver period consists of the calendar month the new Member is credentialed to use the System in the production environment following approval as a new Member of the Exchange and the two (2) subsequent calendar months thereafter. For purposes of this definition, a new Member shall mean any Member who has not previously been approved as a Member of the Exchange. *See* the Definitions Section of the Fee Schedule.

[5] ''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.

[6] 15 U.S.C. 78f.

[7] *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).

[8] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[9] ''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.

[10] An MPID is a code used in the MIAX PEARL system to identify the participant to MIAX PEARL and to the participant's Clearing Member respecting trades executed on MIAX PEARL. Participants may use more than one MPID.

[11] *See supra* note 8.

[12] *See id.*

[13] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[14] *See* MIAX PEARL Regulatory Circular 2019–09 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.*

[15] *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'').

[16] *See id.*

[17] *See* Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

[18] *See supra* note 3.

[19] *See id.*

[20] *See* Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

[21] *See* SR–PEARL–2019–26.

[22] *See* SR–PEARL–2019–27.

[23] *See* SR–PEARL–2019–30.

[24] *See supra* note 21.

Application for MIAX PEARL Membership,[25] and MPID fees.[26]

First, the Exchange proposes to remove the New Member Non-Transaction Fee Waiver from the Fee Schedule. Currently, the New Member Non-Transaction Fee Waiver waives the assessment of a fee for a Trading Permit, Port, ToM or PLF market data feed for a new Member of the Exchange for the first calendar month during which the new Member was approved as a Member and was credentialed to use the System [27] in the production environment, and for the two (2) subsequent calendar months thereafter.

The Exchange initially waived certain non-transaction fees for new Members in order to attract new business and encourage Members to use the Exchange. The Exchange now believes that the New Member Non-Transaction Fee Waiver is no longer necessary since the MIAX PEARL market is established and the Exchange no longer needs to rely on such waivers to attract market participants to a new venue.

The Exchange notes that any Member who began receiving the benefit of the New Member Non-Transaction Fee Waiver prior to the filing of this proposal, will continue to receive that benefit for the first calendar month during which they were approved as a Member and were credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.

The Exchange also proposes to delete the definition for ''Waiver Period'' from the Fee Schedule as such term is no longer applicable since the Exchange recently filed to establish API Testing and Certification fees,[28] fees for the one-time Application for MIAX PEARL Membership,[29] and MPID fees.[30] Accordingly, the Exchange is no longer waiving non-transaction fees in light of MIAX PEARL's market being more established and the Exchange no longer believes it necessary to waive these non-transaction fees to attract market participants to a new venue.

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.'' [31]

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.[32] 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.[33] 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 and services, terminate an existing membership or determine to not become a new member, and/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).[34] 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 Exchange believes that market participants have the choice to become members of a particular exchange and because it is a choice, MIAX PEARL must set reasonable prices for its services and products, otherwise prospective members would not join and existing members would discontinue using the Exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to a non-transaction fee change, a participant of the BOX Exchange LLC (''BOX'') disconnected from BOX following a recent proposal to increase BOX's connectivity fees. In response to BOX's proposed fee increase, R2G Services LLC (''R2G'') filed a comment letter which stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' [35] Accordingly, this example shows that if an exchange sets too high of a non-transaction fee, market participants can choose to no longer conduct business on that particular exchange.

The proposal to remove the text and application of the New Member Non-Transaction Fee Waiver and Waiver Period would be applied uniformly to all market participants. The Exchange is not aware of any market participant that is currently planning to become a Member and thus would be subject to the proposed fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [36] in general, and furthers the objectives of Section 6(b)(4) of the Act [37] 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

[25] *See supra* note 22.

[26] *See supra* note 23.

[27] The term ''System'' means the automated trading system used by the exchange for the trading of securities. *See* Exchange Rule 100.

[28] *See supra* note 21.

[29] *See supra* note 22.

[30] *See supra* note 23.

[31] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[32] 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.*

[33] *See id.*

[34] *See* Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR–PEARL–2018–21).

[35] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(4) and (5).

permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal to remove the text and application of the New Member Non-Transaction Fee Waiver and Waiver Period 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.'' [38]

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.[39] 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.[40]

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 and services, terminate an existing membership or determine to not become a new member, and/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).[41] 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. Another example to show that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to a non-transaction fee change, is that a participant of the BOX disconnected from BOX following a recent proposal to increase BOX's connectivity fees. In response to BOX's proposed fee increase, R2G filed a comment letter which stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' [42] Accordingly, this example shows that if an exchange sets too high of a non-transaction fee, market participants can choose to no longer conduct business on that particular exchange. 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 to a new venue.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the elimination of the New Member Non-Transaction Fee Waiver and Waiver Period will uniformly apply to all market participants of the Exchange. The Exchange initially waived certain non-transaction fees for market participants in order to attract new business and encourage prospective market participants to join the Exchange. The Exchange believes that the New Member Non-Transaction Fee Waiver is no longer necessary since the MIAX PEARL market is established and MIAX PEARL no longer relies on such waivers to attract market participants to a new venue. Further, the proposed rule change will not apply to any new Member who began receiving the New Member Non-Transaction Fee Waiver prior to the filing of this proposal and will continue to receive that benefit for the first calendar month during which they were approved as a Member and were credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.

Further, the Exchange believes its proposal to delete the definition for the Waiver Period in the Fee Schedule is reasonable, equitable, and not unfairly discriminatory because this definition is no longer applicable to any fees in the Fee Schedule in light of the Exchange's previous filings to establish API Testing and Certification fees,[43] fees for the one-time Application for MIAX PEARL Membership,[44] and MPID fees.[45] 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 to a new venue. Accordingly, the definition for ''Waiver Period'' is no longer necessary to include in the Fee Schedule and this proposal will provide market participants with greater clarity regarding the Exchange's non-transaction and transaction fees.

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.

[38] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[39] 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.*

[40] *See id.*

[41] *See* Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR–PEARL–2018–21).

[42] *See supra* note 35.

[43] *See supra* note 21.

[44] *See supra* note 22.

[45] *See supra* note 23.

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 certain non-transaction fees for services provided to its Members and others using its facilities 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.

Inter-Market Competition

The Exchange believes the proposed non-transaction 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. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share.[46] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share[47] 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,[48] and Rule 19b–4(f)(2)[49] 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–2019–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–31 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22830 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87301; File No. SR–NYSEArca–2019–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E

October 15, 2019.

On June 12, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 8.201–E and to list and trade shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201–E. The proposed rule change was

[46] *See supra* note 39.

[47] *Id.*

[48] 15 U.S.C. 78s(b)(3)(A)(ii).

[49] 17 CFR 240.19b–4(f)(2).

[50] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

published for comment in the **Federal Register** on July 1, 2019.[3]

On August 12, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 24, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On October 4, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[8] As of October 10, 2019, the Commission has received nine comment letters on the proposal.[9]

The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as modified by Amendment No. 1, and as described in Items I and II below, which Items have been prepared by the Exchange.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) to amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade the shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201–E, as proposed to be amended. This Amendment No. 1 to SR–NYSEArca–2019–39 replaces SR–NYSEArca–2019–39 as originally filed and supersedes such filing in its entirety. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes (1) amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade shares (''Shares'') of the United States Bitcoin and Treasury Investment Trust (the ''Trust'') under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares.

Proposed Amendment to NYSE Arca Rule 8.201–E

Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.''[10] Rule 8.201–E(c)(1) currently states that such securities are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and may be redeemed in the same specified minimum number by a holder for the quantity of the underlying commodity. The Exchange proposes to amend Rule 8.201–E(c)(1) to provide that Commodity-Based Trust Shares may be issued and redeemed for the underlying commodity and/or cash.

The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or part.[11] The Exchange believes the proposed change will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than the underlying commodity upon requesting the issuance or redemption of shares. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.[12]

[3] *See* Securities Exchange Act Release No. 86195 (June 25, 2019), 84 FR 31373 (July 1, 2019).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86631 (Aug. 12, 2019), 84 FR 42028 (Aug. 16, 2019). The Commission designated September 29, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 87071 (Sept. 24, 2019), 84 FR 51646 (Sept. 30, 2019) (''Order Instituting Proceedings'').

[8] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939-6255643-192909.pdf.*

[9] Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939.htm.*

[10] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Rule 8.201–E (c)(1) defines the term ''Commodity-Based Trust Shares'' as follows: ''The term ''Commodity-Based Trust Shares'' means a security (a) that is issued by a trust (''Trust'') that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.''

[11] *See, e.g.,* Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113) (approving listing on the Exchange of Sprott Physical Gold Trust); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR–NYSEArca–2010–84) (approving listing on the Exchange of the Sprott Physical Silver Trust); 68430 (December 13, 2012) (SR–NYSEArca–2012–111) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201; 82448 (January 5, 2018) (SR–NYSEArca–2017–131) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201–E); 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18) (order approving listing and trading shares of the APMEX Physical–1 oz. Gold Redeemable Trust); 50603 October 28, 2004 (SR–NYSE–2004–22) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares).

[12] The Commodity Futures Trading Commission (''CFTC'') has stated that bitcoin and other virtual currencies are encompassed in the definition of commodities under the Commodity Exchange Act (''CEA'') (17 U.S.C. 1). *See* ''In the Matter of Coinflip, Inc.'' (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions) (''Coinflip''), in which the CFTC stated the following:

''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g.,* Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other

The Exchange further proposes to amend Rule 8.201–E (c)(2) to state that the term ''commodity'' is defined in Section 1(a)(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently stated in Rule 8.201–E(c)(2)) to reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[13]

United States Bitcoin and Treasury Investment Trust (the ''Trust'')

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the ''Trust Agreement'') between Wilshire Phoenix Funds, LLC (the ''Sponsor'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee'').[14] UMB Bank N.A. will act as custodian for the Trust's cash and U.S. treasury assets (the ''Cash and Treasury Custodian'') and UMB Fund Services, Inc. will act as the administrator of the Trust (the ''Administrator'') to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. Broadridge Corporate Issuer Solutions, Inc., will act as the transfer agent for the Trust's Shares. Coinbase Custody Trust Company, LLC will act as the Bitcoin custodian for the Trust (the ''Bitcoin Custodian'') to maintain custody of the Trust's Bitcoin assets in cold storage.

According to the Registration Statement, the investment objective of the Trust is for the Shares to closely reflect the Bitcoin Treasury Index (the ''BTI'' or ''Index''), less the Trust's liabilities and expenses. The Shares will provide investors with exposure to Bitcoin in a manner that is efficient and convenient while also reducing the volatility typically associated with Bitcoin without the use of derivatives or leverage methods.

The Trust will have no assets other than (a) Bitcoin and (b) short-term U.S. Treasury securities with a maturity of less than one year (''T-Bills''). The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Calculated on a daily basis, the ''Bitcoin Price'' (as defined below) is used to determine the Index's monthly weighting between the ''Bitcoin Component'' and the ''Treasury Component'' (as described below). The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. On a monthly basis, following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

Upon the maturity of any T-Bill, the Trust will receive U.S. dollars representing principal and interest. The portion of the cash that represents interest on the T-Bills will be used to pay, in full or in part, the sponsor's fee, redemptions and any additional fees and expenses of the Trust.

Assets of the Trust

According to the Registration Statement, Bitcoin will be held by the Bitcoin Custodian on behalf of the Trust, and T-Bills and U.S. dollars will be held by the Cash and Treasury Custodian on behalf of the Trust. The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. The Trust's assets, other than Bitcoin, will consist of T-Bills to be purchased by the Cash and Treasury Custodian. The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Custody of the Trust's Bitcoin

The Bitcoin Custodian is a New York-state chartered trust company operating under the direct supervision of the New York State Department of Financial Services and is subject to the anti-money laundering requirements of the Financial Crimes Enforcement Network (''FinCEN''). In addition, the Bitcoin Custodian is a qualified custodian under the Investment Advisers Act of 1940. The Bitcoin Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Bitcoin Custodian (the ''Bitcoin Custodian Agreement''). Under the Bitcoin Custodian Agreement, the Bitcoin Custodian will be responsible for the safety and security of the Trust's Bitcoin as well as overseeing the process of deposit, withdrawal, sale and purchase of the Trust's Bitcoin. The Sponsor expects that the Bitcoin Custodian's custodial operations will maintain custody and access of the private keys associated with the Trust's Bitcoin.[15] The Bitcoin Custodian will custody the Bitcoin in accordance with the terms of the Bitcoin Custodian Agreement. The Bitcoin Custodian will maintain a secured and segregated custody account in the name of the Trust (the ''Bitcoin Custody Account''). The Trust's auditor will have daily read-only access to the Bitcoin Custody Account, and the Bitcoin Custodian will, within five (5) Business Days after the Trust's monthly rebalancing of its assets, provide the Sponsor and the Administrator with an attestation, executed by an executive officer of the Bitcoin Custodian, verifying the amount of Bitcoin that the Bitcoin Custodian is holding in the Bitcoin Custody Account on behalf of the Trust. The Trust's Bitcoin will be stored in the Bitcoin Custody Account on behalf of the Trust. The Bitcoin Custodian will utilize certain ''Security Procedures'' when the Trust is required to deposit or withdraw Bitcoin to or from the Bitcoin Custody Account. This deposit and withdrawal process provides additional levels of security including, but not limited to, passwords, encryption of private keys, multi-factor authentication process, multi-signature wallets and telephone call-backs during the administration and operation of the Bitcoin Custody Account.

According to the Registration Statement, the Trust has obtained insurance for the Bitcoin held by the Trust, through the Bitcoin Custodian. Currently, the Bitcoin Custodian, either directly or through an affiliate, procures fidelity (also known as crime) insurance to protect the organization from risks such as theft of funds. Specifically, the fidelity insurance coverage program provides coverage for the theft of funds held in hot or cold storage and provides a limit in excess of $200,000,000. The Bitcoin Custodian's insurance coverage program is provided by a syndicate of industry-leading insurers that are highly

virtual currencies are encompassed in the definition and properly defined as commodities.''

In Coinflip, the CFTC further concluded that Bitcoin is a virtual currency that is a commodity, ''distinct from 'real' currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance.'' *See* CFTC No. 15–29 (2015), 2015 CFTC LEXIS 20, at *1 n.2.

[13] Public Law 111–203, 124 Stat. 1900 (2010).

[14] On May 21, 2019, the Trust filed Amendment 3 to Form S–1 under the Securities Act of 1933 (File No. 333–229187) (the ''Registration Statement''). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

[15] According to the Registration Statement, the term ''cold storage'' refers to a safeguarding method by which the private keys corresponding to Bitcoin stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

rated by AM Best.[16] To the extent the value of the Trust's Bitcoin holdings exceeds the total insurance coverage provided by the Bitcoin Custodian's insurance coverage program, the Sponsor will use commercially reasonable efforts to procure additional insurance coverage with the goal of maintaining insurance coverage at a one-to-one ratio with the Trust's Bitcoin holdings such that for every dollar of Bitcoin held by the Trust there is an equal amount of insurance coverage.

Custody of U.S. Dollars and T-Bills

The Cash and Treasury Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Cash and Treasury Custodian (the ''Cash and Treasury Custodian Agreement'').

According to the Registration Statement, under the Cash and Treasury Custodian Agreement, the Cash and Treasury Custodian will be responsible for maintaining an account that holds T-Bills and U.S. dollars (the ''Cash Account''). Pursuant to a request from the Trust, the Cash and Treasury Custodian will establish and maintain the Cash Account in the name of the Trust that will hold U.S. dollars and T-Bills. The Cash and Treasury Custodian deposits and withdraws U.S. dollars to and from the Trust's Cash Account at the instruction of the Trust's Administrator or Sponsor, as applicable. The Cash and Treasury Custodian is responsible for administering the Cash Account.

The Bitcoin Treasury Index

The Index is based on a pairing of notional components and is not an investment product. The Index is calculated and published by Solactive AG (the ''Index Calculation Agent'').[17] The level of the Index is published on each Business Day at approximately 5:00 p.m. Eastern time and will be available through various market data vendors, and is currently available on Bloomberg L.P. and Thompson Reuters Company under the ticker ''UBTX''. ''Business Day'' means any day other than a Saturday or Sunday on which the New York Stock Exchange is scheduled to be open for business. The Index has two components: (1) A notional component representing Bitcoin (the ''Bitcoin Component'') and (2) a notional component representing T-Bills (the ''Treasury Component'').

On a monthly basis, the Index rebalances its weighting of the Bitcoin Component and the Treasury Component utilizing a mathematically derived passive rules-based methodology that is based on the daily volatility of the Bitcoin Price (as defined below). The price of Bitcoin used to determine the weighting of the Bitcoin Component and the Treasury Component of the Index, as well as the value of Bitcoin held by the Trust, will be based on the Chicago Mercantile Exchange (''CME'') CF Bitcoin Reference Rate (''CME CF BRR'') (the ''Bitcoin Reference Rate,'' and the price of Bitcoin based on the Bitcoin Reference Rate (the ''Bitcoin Price'')).

Following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

Bitcoin Component of the Index

According to the Registration Statement, Bitcoin is a digital asset that is decentralized and issued by, and transmitted using cryptographic security through, an open source digital protocol platform known as the ''Bitcoin Network.'' The Bitcoin Network is an online end-user to end-user network that hosts the public transaction ledger, known as the ''Bitcoin Blockchain,'' and the source coding comprising the basis for the cryptographic and algorithmic protocols governing the Bitcoin Network. No single entity owns or operates the Bitcoin Network, and its infrastructure is collectively maintained by a decentralized user base. Bitcoin may be converted into U.S. dollars, other fiat currencies, or other crypto assets, at rates determined in individual end-user-to-end-user transactions under a barter system, or on Bitcoin exchanges. They can also be used to pay for certain goods and services. The Bitcoin Network does not rely on either governmental authorities or financial institutions to create, transmit or determine the value of Bitcoin. Rather, Bitcoin is created and allocated by the Bitcoin Network protocol through a ''mining'' process subject to a strict issuance schedule. The value of Bitcoin is determined by the supply of and demand for Bitcoin on Bitcoin exchanges (and in private end-user-to-end-user transactions), as well as the number of merchants that accept them. Third-party service providers such as Bitcoin exchanges and third-party payment processing services may charge significant fees for processing transactions and for converting, or facilitating the conversion of, Bitcoin to or from fiat currency.

The Bitcoin Blockchain is the digital transaction ledger on which Bitcoin is ''stored'' and reflected. The Bitcoin Blockchain is a decentralized digital file stored on the computers of each user of the Bitcoin Network. It records the transaction history of all Bitcoin in existence and allows the Bitcoin Network to verify the association of each Bitcoin with the ''digital wallet'' that owns them through transparent transaction reporting. The Bitcoin Network and Bitcoin software programs can interpret the Bitcoin Blockchain to determine the exact Bitcoin balance of any digital wallet listed in the Bitcoin Blockchain as having taken part in a transaction on the Bitcoin Network.

Additionally, the Bitcoin Blockchain is made up of a digital file that is downloaded and stored, in whole or in part, on the software programs of all Bitcoin users. The file includes all blocks that have been solved by validators and it is updated to include new blocks as they are solved. As each newly solved block refers back to and ''connects'' with the solved block immediately prior to it, the addition of a new block adds to the Bitcoin Blockchain in a manner akin to a new link being added to a chain. The Bitcoin Blockchain represents a complete, transparent and unbroken history of all transactions on the Bitcoin Network.

According to the Registration Statement, generally, every Bitcoin transaction is broadcast to the Bitcoin Network and recorded in the Bitcoin Blockchain. However, there are certain ''Off-Blockchain transactions.'' These transactions involve the transfer of control or ownership of a specific digital wallet holding Bitcoin, or of the reallocation of ownership of certain Bitcoin in a pooled-ownership digital wallet. Generally, information and data regarding Off-Blockchain transactions is not publicly available. This is unlike true Bitcoin transactions, which are publicly recorded and available on the Bitcoin Blockchain. Thus, according to the Registration Statement, Off-Blockchain transactions are not truly Bitcoin transactions, as they do not involve the transfer of transaction data on the Bitcoin Network and do not reflect a movement of Bitcoin between addresses recorded in the Bitcoin Blockchain. Off-Blockchain transactions may include transactions on centralized exchanges.

[16] AM Best is a global credit rating agency with a unique focus on the insurance industry. Credit ratings issued by AM Best are a recognized indicator of insurer financial strength and creditworthiness.

[17] The Index is a passive rules-based index and the Index Calculation Agent provides calculation services only. The Index Calculation Agent is not affiliated with the Sponsor and has represented that it and its employees are subject to market abuse laws and the Index Calculation Agent has established and maintains processes and procedures to prevent the use and dissemination of material non-public information regarding the Index.

Bitcoin Exchange Market

According to the Registration Statement, online Bitcoin exchanges represent a substantial percentage of Bitcoin transactional activity and thus offer the most data with respect to prevailing Bitcoin valuations. There are currently several Bitcoin exchanges operating globally. These include established trading platforms such as itBit, Coinbase Pro, Bitstamp, Kraken and Gemini. These Bitcoin trading platforms provide various options for buying and selling Bitcoin. In parallel to the open Bitcoin exchanges, informal ''over-the-counter'' or ''OTC markets'' for Bitcoin trading also exist as a result of the peer-to-peer nature of the Bitcoin Network, which allows direct transactions between any seller and buyer.

Bitcoin futures contracts are traded on the CME and ICE Futures US. However, the Trust will not hold or trade in commodity futures contracts or other derivative contracts regulated by the Commodities Exchange Act,[18] as administered by the Commodity Futures Trading Commission.

The Bitcoin Price (*i.e.,* the Bitcoin Reference Rate)

The CME CF BRR was created to facilitate financial products based on Bitcoin.[19] It serves as a once-a-day reference rate of the U.S. dollar price of Bitcoin (USD/BTC). The CME CF BRR is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME[20] and serves as a reference rate in the settlement of financial derivatives based on the price of Bitcoin. The CME CF BRR may also serve as a reference rate in the net asset value (''NAV'') calculation of exchange traded products (''ETPs'').[21] According to the Registration Statement, the Administrator of the Trust will utilize the CME CF BRR when valuing the Bitcoin held by the Trust.

The CME CF BRR, which has been calculated and published since November 2016, aggregates the trade flow of several Bitcoin spot exchanges (the ''Constituent Platforms''), during a calculation window into the U.S. dollar price of one Bitcoin as of 4:00 p.m. London time. Specifically, the CME CF BRR is calculated based on the ''Relevant Transactions'' (as defined below) of all Constituent Platforms, as follows:[22]

1. All Relevant Transactions are added to a joint list, recording the trade price and size for each transaction.
2. The list is partitioned into a number of equally-sized time intervals.
3. For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.[23]
4. The CME CF BRR is then determined by the equally-weighted average of the volume-weighted medians of all partitions.

The CME CF BRR does not include any futures prices in its methodology. A ''Relevant Transaction'' is any ''cryptocurrency versus legal tender spot trade that occurs during the ''Time Weighted Average Price (''TWAP'') Period'' on a Constituent Platform in the BTC/USD pair that is reported and disseminated by the calculation agent for the CME CF BRR (the ''BRR Calculation Agent''). The CME CF BRR is administered by the administrator for the CME CF BRR (the ''BRR Administrator''). The mathematical representation of the CME CF BRR Methodology is attached as Exhibit 3A.

Calculation of Net Asset Value

The Trust's NAV will be determined daily by the Administrator at 4:00 p.m., E.T. on any Business Day or as soon thereafter as practicable. The NAV of the Trust will equal the value of the total assets of the Trust, including Bitcoin, T-Bills and U.S. dollars, less the liabilities and expenses of the Trust. The NAV per Share will be equal to the Trust's NAV divided by the number of outstanding Shares. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time.

In accordance with the Trust's valuation policy and procedures, the Administrator will determine the price of the Trust's Bitcoin by reference to the Bitcoin Reference Rate (as described below), which is published between 4:00 p.m. and 4:30 p.m., London time, on every day of the year, including weekends. Similarly, the Administrator will determine the fair value of T-Bills based on the price of each T-Bill held by the Trust plus any cash, which will be held in U.S. dollars, as of 4:00 p.m., E.T., on any Business Day. The Trust's NAV will be determined by the Administrator on a GAAP basis. Because the Trust rebalances monthly, in the periods between such monthly rebalancing, as a result of changes in the value of Bitcoin, among other factors, the value of Bitcoin relative to the value of the other assets of the Trust may diverge from the Index. Accordingly, the Trust's NAV and NAV per Share are tracked, in part, by reference to the Bitcoin Reference Rate.

Indicative Fund Value

In order to provide updated information relating to the Trust for use by investors and market professionals, an updated ''Indicative Fund Value'' (''IFV'') will be calculated by using the prior day's closing net assets of the Trust as a base and updating throughout the Exchange's Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the assets of the Trust.

For purposes of IFV, the value of the Bitcoin assets of the Trust will be based on the CME CF Bitcoin Real Time Index (the ''CME CF BRTI''). The CME CF BRTI is calculated in real time based on the Relevant Order Books of all Constituent Platforms.[24] A ''Relevant Order Book'' is the universe of the currently unmatched limit orders to buy or sell in the BTC/USD pair that is reported and disseminated by the BRR Calculation Agent. Like the CME CF BRR, the CME CF BRTI is administered by the BRR Administrator.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.[25]

Creation of Shares

The Shares shall represent beneficial interests in, and ownership of, the

[18] 7 U.S.C. 1.

[19] Andrew Paine and William J. Knottenbelt, *Analysis of the CME CF Bitcoin Reference Rate and Real Time Index,* Oct. 2016, available at *https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf,* Section 2 (''Paine & Knottenbelt'').

[20] While the Trust uses the CME CF BRR to calculate the value of its bitcoin assets, in no event will the Trust be trading in Bitcoin futures contracts.

[21] *See https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf.*

[22] For a description of the CME CF BRR methodology, *see https://www.cmegroup.com/education/bitcoin/cme-cf-cryptocurrency-reference-rate-methodology.html#2-overview* (''BRR Methodology'').

[23] See Paine & Knottenbelt, Section 2.2.2 (''Volume-weighting of medians filters out high numbers of small trades that may otherwise dominate a non-volume-weighted median.''). This assists in mitigating any series of small, frequent trades placed on any of the Constituent Platforms that could be used to manipulate the price of Bitcoin. *See* BRR Methodology, Section 7.

[24] For a description of the CME CF BRTI methodology, *see https://www.cryptofacilities.com/cms/storage/resources/cme-cf-real-time-index-methodology.pdf.*

[25] Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

Trust. The Sponsor shall have the power and authority, in its sole discretion, without action or approval by the Shareholders, to cause the Trust to issue Shares from time to time. The Trust shall issue Shares solely in exchange for cash in U.S. Dollars.

The Trust may offer and sell Shares of the Trust from time to time through underwriters, placement agents or distributors (each, a ''Share Placement'') or such other means as the Sponsor may determine. The Sponsor also reserves the right to issue Shares of the Trust from time to time through direct placements. The Trust may not issue additional Shares unless the net proceeds per Share to be received by the Trust are not less than 100% of the most recently calculated NAV per Share immediately prior to, or upon, the determination of the pricing of such issuance.

Any net proceeds received in connection with the offer and sale of Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the allocation of the Bitcoin Holdings and the Treasury and Cash Holdings of the Trust, as of the applicable date of sale. For this purpose, ''Bitcoin Holdings'' shall mean the sum of the value of the Bitcoin held by the Trust, and ''Treasury and Cash Holdings'' shall mean the value of the T-Bills and U.S. dollars held by the Trust. In the event that the Trust has no assets at the time of the sale of the initial Shares under the Registration Statement, then any net proceeds received in connection with the offer and sale of such initial Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the weighting of the Bitcoin Component and the Treasury Component of the Index as of the date of such sale.

Redemption of Shares

According to the Registration Statement, upon at least five (5) Business Days' prior written notice, a shareholder may redeem all or a portion of its Shares on the last Business Day of each calendar month. All redemptions will be based on the NAV of Shares submitted for redemption, determined as of the last Business Day of the applicable calendar month.

In general, redemptions will be deemed to occur on a ''first-in first-out'' basis among Shares held by a particular shareholder. A redemption notice is irrevocable unless otherwise agreed by the Sponsor in writing.

In general, the final redemption of Shares will be paid in cash within five (5) Business Days after the applicable redemption date. Shareholders will be entitled to receive their applicable redemption amount in cash, which is the NAV of the Shares, determined as of the applicable redemption date. The Administrator shall calculate the applicable redemption amount and instruct the Cash and Treasury Custodian to pay from the Cash Account the applicable redemption amount to each redeeming Shareholder.

Potential Manipulation in the Bitcoin Market

In prior orders relating to the listing of certain ETPs on U.S. exchanges, the Commission Staff expressed its concern that the world-wide market for Bitcoin may be subject to potential manipulation.[26]

The Sponsor acknowledges that, numerous markets, commodity or otherwise, have historically been subject to manipulation.[27] According to the Registration Statement, the Trust's structure, together with the use of the CME CF BRR will provide investors with exposure to the Bitcoin market without a number of the risks from which other Bitcoin related products previously submitted for registration have suffered, and particularly mitigate the effects of potential manipulation of the Bitcoin market.

In order for this proposed rule change to be approved, the Commission must determine that the proposal is consistent with the requirements of Section 6(b)(5) of the Act and that the Exchange's rules are designed to prevent fraudulent and manipulative acts and practices.[28] The Commission has previously stated that such a proposed rule change must offer evidence to demonstrate that either (i) the Bitcoin market is inherently resistant to fraud and manipulation, or (ii) the Exchange must have surveillance-sharing agreements with significant markets for trading the underlying commodity or derivatives on that commodity and those markets must be regulated.[29]

As discussed in more detail below, the Sponsor believes that the CME CF BRR is inherently resistant to manipulation. In addition, as discussed below, significant regulated markets for trading Bitcoin derivatives are members of the Intermarket Surveillance Group (''ISG'') and the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, may communicate with such markets as necessary in conducting market surveillance.

As the Commission has previously acknowledged, trading in a Bitcoin-based ETP on a national securities exchange may provide additional protection to investors,[30] as opposed to

[26] *See* Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (SR–BatsBZX–2016–30) (Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Shares Issued by the Winklevoss Bitcoin Trust) (''*Winklevoss I*''); and Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust) (''*Winklevoss II*''); *see also* Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR–NYSEArca–2018–02) (Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E).

[27] Spot and futures markets for other well-established commodities have previously been subject to manipulation concerns. *See* CFTC v. Amaranth Advisors, LLC, et al., 07-cv-6682 (S.D.N.Y. 2007); *see also* CFTC Press Release 5692–09, August 12, 2009 (available at: *www.cftc.gov/PressRoom/PressReleases/pr5692-09*) (Amaranth Advisors, LLC, and Amaranth Advisors (Calgary) ULC, entered into a consent order settling charges for attempting to manipulate the price of natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on February 24, and April 26, 2006); *see* CFTC Press Release 7000–14, September 15, 2014 (available at: *www.cftc.gov/PressRoom/PressReleases/pr7000-14*) (Consent order settling charges for attempting to manipulate the price of natural gas futures contracts traded on the NYMEX on February 24, and April 26, 2006); *see* Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017) (explaining that ''[t]he subject of market manipulation has bedeviled commodity markets since the dawn of futures trading'') (''Pirrong'').

[28] 15 U.S.C.S. 78f (LEXIS through Pub. L. No. 116–8); 17 CFR 240.6a–1.

[29] *See Winklevoss II,* at 37580 and 37581 (noting that ''. . . if BZX had demonstrated that Bitcoin and Bitcoin markets are inherently resistant to fraud and manipulation, comprehensive surveillance-sharing agreements with significant, regulated markets would not be required, as the function of such agreements is to detect and deter fraud and manipulation.''). *See* Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017), generally, for a discussion of the economics of commodity market manipulation. For a discussion of commodity market manipulation in the U.S. historical context, *see* Philip M. Johnson, Commodity Market Manipulation, 38 Wash. & Lee L. Rev. 725 (1981).

[30] *See* Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–001) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF). *See also,* Hester M. Pierce, U.S. Sec. Exch. Comm'n, Dissent of Commissioner Hester M. Pierce to Release No. 34–83723 (July 26, 2018), *https://www.sec.gov/news/public-statement/peirce-dissent-34-83723* (''An ETP based on bitcoin would offer investors indirect exposure to bitcoin through a product that trades on a regulated securities market and in a manner that eliminates some of the frictions and worries of buying and holding bitcoin directly. If we were to approve the ETP at issue here, investors could choose whether to buy it or avoid it.'').

trading in an unregulated Bitcoin spot market. The Sponsor also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to Bitcoin within a regulated environment.

The Resistance of the CME CF BRR to Market Manipulation

As noted above, one of the ways that the requirements of Section 6(b)(5) of the Exchange Act can be met is by demonstrating that the applicable market is inherently resistant to fraud and manipulation.[31]

The Sponsor notes that, in connection with the Commission's analysis of whether a market is inherently resistant to manipulation, the Commission has in certain circumstances focused not on the market as a whole but instead on the significant subset of the market that has a meaningful impact on the particular ETP. For instance, orders approving listing applications of ETPs that invest in gold bullion focused on the spot and futures market,[32] even though gold is traded on a number of different market segments. Focusing on the spot market is appropriate because the spot market is the market to which the particular ETP would look to determine its NAV. Using the example of gold, it would not be proper to use the price of gold in the jewelry market or gold coin market to value the NAV of a gold bullion ETP, even though by volume gold bought in such markets equals or surpasses gold purchased in all other segments of the market, including investment and ''Central Banks,'' which are more likely to purchase gold at the spot market.[33]

The Trust utilizes the CME CF BRR to determine the NAV of the Bitcoin held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Since (i) the Trust uses the CME CF BRR to determine its NAV, (ii) the CME CF BRR is what determines the ratio of Bitcoin to Treasuries held by the Trust, and (iii) the CME CF BRR is determined based on the price of Bitcoin on the Constituent Platform and no other exchanges, the Sponsor maintains that the proper ''market'' that one should evaluate to determine whether the ''market'' is inherently resistant to manipulation is the segment of the market formed by the Constituent Platforms.

The Sponsor found that price discovery is substantially similar among each of the Constituent Platforms.[34] As shown in the chart included as Exhibit 3B to this proposed rule change, none of the Constituent Platforms exhibit a statistically significant average difference from the CME CF BRR. During the 3:00 p.m. to 4:00 p.m. London time CME CF BRR observation window, volume of Bitcoin trading among the five Constituent Platforms was split as follows: 10.7% was on Gemini, 11.9% of was on itBit, 18.9% was on Kraken, 25.4% was on Bitstamp and 33.1% was on Coinbase.[35] The Constituent Platforms also show a substantially similar degree of price volatility, with the standard deviation of the difference of 4:00 p.m. London time exchange prices from the CME CF BRR being 1.12–1.13%.[36] When the 4:00 p.m. London time snapshot prices do deviate from the CME CF BRR, they are generally in the same direction (occurring 86.5% of the time).[37] The Sponsor maintains that the foregoing data also supports the conclusion that robust arbitrage trading and liquidity provision occurs among the Constituent Platforms.

An independent examination of the methodology (Paine & Knottenbelt) of the CME CF BRR, supports the Sponsor's assertion that the CME CF BRR is not susceptible to manipulation.[38] The use of a volume-weighted average median price determined over twelve five-minute windows in a specific 60-minute period over any Constituent Platform makes any attempt to manipulate the CME CF BRR unlikely. Further, the capital necessary to maintain a significant presence on any Constituent Platform makes manipulation of the CME CF BRR unlikely. The linkage between the Bitcoin markets and the presence of arbitrageurs (as evidenced in the data set forth above) in those markets means that the manipulation of the price of Bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.

The Presence of Surveillance Sharing Agreements

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its concerns that the Bitcoin market could be subject to manipulation.[39] In these orders, the Commission cited numerous precedents [40] in which 19b–4 listing applications were approved based on findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a market of significant size.[41] The Commission noted that, for commodity-trust ETPs ''there has been in every case at least one significant, regulated market for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group

[31] *See Winklevoss II,* at 37580.

[32] *See, e.g.,* Securities Exchange Act Release No. 51058 (January 19, 2005) 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (iShares COMEX Gold Trust I).

[33] *See* World Gold Council, Goldhub, Gold supply and demand statistics, available at *https://www.gold.org/goldhub/data/gold-supply-and-demand-statistics.*

[34] All statistical analysis provided herein was performed solely by the Sponsor. The Sponsor did not engage any third-parties in connection with such statistical analysis in an effort to insure quality and integrity. Any data utilized for any statistical analysis provided in this proposal will be made available to the Commission upon request.

[35] Analysis performed by the Sponsor using data provided by Kaiko/Challenger Deep.

[36] Analysis performed by the Sponsor using data provided by Kaiko/Challenger Deep.

[37] Analysis performed by the Sponsor using data provided by Kaiko/Challenger Deep.

[38] ''The chosen specification makes the BRR highly resistant against manipulation. The use of medians likely reduces the effect of outlier prices on one or more exchanges. Volume-weighting of medians filters [out high numbers of small trades] that may otherwise dominate a non-volume-weighted median. The use of 12 non-weighted partitions assures that price information is sourced equally over the entire observation period. Influencing the BRR would therefore require price manipulation . . . over an extended period of time.'' Paine & Knottenbelt, Section 2.2.2.

[39] *See Winklevoss I* and *Winklevoss II, supra* note 20. The Sponsor represents that some of the concerns raised are that a significant portion of Bitcoin trading occurs on unregulated platforms and that there is a concentration of a significant number of Bitcoin in the hands of a small number of holders. However, these aspects are not unique to Bitcoin and are present in a number of commodity and other markets. For instance, some gold bullion trading takes place on unregulated OTC markets and a significant percentage of gold is held by a relative few (according to estimates of the World Gold Council, approximately 21.3% of total above-ground gold stocks are held by private investors and 17.2% are held by foreign governments; by comparison, 15.7% of Bitcoin are held by the 100 largest Bitcoin addresses, some of which are known to be cold storage addresses of large centralized cryptocurrency trading platforms). *See https://www.gold.org/goldhub/data/above-ground-stocks* for gold data cited in this note and *https://bitinfocharts.com/top-100-richest-bitcoin-addresses.html* for Bitcoin data.

[40] For an extensive listing of such precedents, *see Winklevoss I,* at 14083 n.96.

[41] The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for Bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. *See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.*

(''ISG'') membership in common with, that market.''[42]

The CME[43] is a member of the ISG, the purpose of which is ''to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses.''[44] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.[45]

The Commission has previously noted that the existence of a surveillance-sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance-sharing agreement must be with a market of significant size.[46] The Commission has provided an example of how it interprets the terms ''significant market'' and ''market of significant size,'' though that definition is meant to be illustrative and not exclusive: ''The terms 'significant market' and 'market of significant size' . . . include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.''[47]

As discussed below, the Sponsor maintains that the CME, either alone as the main market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a ''market of significant size'' as it satisfies both elements of the example provided by the Commission.

Reasonable Likelihood That a Person Manipulating the ETP Would Have To Trade on the Market

The first element of what constitutes a ''significant market'' or ''market of significant size'' is that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on a market (or group of markets) to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct.

The Sponsor concludes that the CME meets this element in two ways. First, it is the main market for Bitcoin futures, and compares favorably with other markets that were deemed to be markets of significant size in precedents.[48] One particularly salient group of precedents are prior orders approving the listing of ETPs that invest in gold bullion, since the gold market exhibits a number of similarities with the market for Bitcoin. The Sponsor maintains that, like Bitcoin, the primary markets for gold bullion are unstructured OTC markets[49] and the futures market.

As with the OTC gold market, it is not possible to enter into an information sharing agreement with the OTC Bitcoin market.[50] When the Commission approved the listing of gold ETPs and other commodity-trust ETPs, rather than surveillance sharing agreements with the relevant OTC markets, there have been surveillance sharing agreements between the listing exchange and ''regulated markets for trading futures on the underlying commodity.''[51] It has been widely discussed that manipulating the market for a commodity often involves the futures market for that commodity.[52]

The CME is a member of ISG, is regulated by the CFTC, and is situated very much like the COMEX division of NYMEX is with respect to gold ETPs.[53] The CME is subject to a surveillance-sharing agreement arrangement pursuant to which the Exchange can obtain data from the CME.

Additionally, the Sponsor found that the Bitcoin futures market is larger in size (as a percentage of spot trading) than the size of the gold futures markets are in relation to the gold OTC market (expressed as a percentage).[54] Using the most recent data cited by the World Gold Council, an affiliate of the SPDR Gold Shares (GLD), for 2016, the ratio of daily trading volume of Gold futures on COMEX ($28.9 billion) to daily trading volume on gold OTC markets ($167.9 billion, which is the midpoint of the estimated high and low points by the World Gold Council) is approximately 17.2%.[55] In comparison, using data from the CME and the five CME CF BRR Constituent Platforms over the 6-month period of October 1, 2018 to March 31, 2019, the ratio of daily trading volume of BTC futures on the CME ($90.4 million) to the daily trading volume of BTC/USD spot ($149.5 million) is approximately 60.5%.[56]

[42] *See Winklevoss II,* at 37594.

[43] The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the Bitcoin market since Bitcoin has been designated as a commodity by the CFTC. *See* A CFTC Primer on Virtual Currencies (October 17, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf* (the ''CFTC Primer on Virtual Currencies'') (''The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.''). *See also* 7 U.S.C. Sec. 7(d)(3) (''The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.'').

[44] *https://www.isgportal.org/isgPortal/public/overview.htm.*

[45] *See, e.g., Winklevoss II,* at 37594.

[46] *See, e.g., Winklevoss II,* at 37589–90.

[47] *See, e.g., Winklevoss II,* at 37594 and *see* Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (GraniteShares Bitcoin ETF and GraniteShares Short Bitcoin ETF), n. 85 and accompanying text.

[48] On September 12, 2019, the CME notified the CFTC of its increase of spot month position limits (in net futures equivalents) for the Bitcoin Futures contracts from 1,000 to 2,000 net contracts. ''The increased spot-month position limit certified herein—2,000 net contracts, ie, a notionally deliverable quantity of 10,000 bitcoins—represents one tenth of one percent of this estimate of the notionally deliverable supply. The [CME] deems this to be adequately stringent to discourage attempted manipulation of the BRR benchmark in connection with final settlements of expiring contracts. . . Additionally, with the applicable reportable position level remaining at one (1) contract, the amended spot-month position limit certified herein will not in any way weaken the [CME's] ability to conduct effective market surveillance.'' Letter from Mr. Christopher Bowen, managing director and chief regulatory counsel, CME to Mr. Christopher J. Kirkpatrick, Office of the Secretariat, CFTC, Notification Regarding Increase of Spot Month Position Limits for the Bitcoin Futures Contract, CME Submission No. 19–334 (September 12, 2019).

[49] ''The OTC market has no formal structure and no open-outcry meeting place.'' Securities Exchange Act Release No 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (streetTRACKS Gold Shares) (''streetTRACKS'').

[50] ''It is not possible, however, to enter into an information sharing agreement with the OTC gold market.'' streetTRACKS, at 64619. *See also* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38); and Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR–NYSEArca–2009–94) (ETFS Palladium Trust).

[51] *See Winklevoss II,* at 37591.

[52] *See, e.g.,* Frank Easterbrook, *Monopoly, Manipulation, and the Regulation of Futures Markets,* 59 J. of Bus. S103, S103–S127 (1986); William D. Harrington, *The Manipulation of Commodity Futures Prices,* 55 St. Johns L. Rev. 240, 240–275 (2012); Robert C. Lower, *Disruptions of the Futures Market: A Comment on Dealing With Market Manipulation,* 8 Yale J. on Reg. 391, 391–402 (1991).

[53] Other applicants have made similar arguments in their respective 19b–4 applications. *See* VanEck SolidX Bitcoin Trust, Securities Exchange Act Release No. 34–85119 (February 13, 2019), 84 FR 5140 (February 20, 2019) (SR–CboeBZX–2019–004), n. 11 (''VanEck'').

[54] Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko/Challenger Deep with respect to BTC/USD spot.

[55] Data available at *https://www.gold.org/goldhub/data.*

[56] Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko/Challenger Deep with respect to BTC/USD spot. The Sponsor represents that the volume of the bitcoin futures market is also comparable with volumes on other markets deemed to be markets of significant size in a previous

The Sponsor maintains that another way that the CME meets the first element arises from the fact that the value of the Bitcoin assets held by the Trust is based on the CME CF BRR. Anyone attempting to manipulate the Trust would need to place numerous large sized trades on any of the Constituent Platforms that are used to calculate the CME CF BRR,[57] and if such an attempt was made the BRR Administrator and the CME would be able to detect such manipulative trading patterns.[58] In addition, any platform that is accepted by the CME to become part of the constituent trading platforms that are used to calculate the CME CF BRR, including the Constituent Platforms, (1) must enter into a data sharing agreement with the CME, (2) must cooperate with inquiries and investigations of regulators and the BRR Administrator and (3) must submit each of its clients to its Know-Your-Customer (''KYC'') procedures;[59] therefore, the CME and the Exchange would be able, in the case of any suspicious trades, to discover all material trade information including the identities of the customers placing the trades.

The CME Has Rigorous Criteria for Constituent Platforms Which It Monitors Regularly

The Sponsor notes that the CME's criteria for each of the Constituent Platforms requires that the platform facilitates spot trading of the relevant cryptocurrency against the corresponding fiat currency (the ''Relevant Pair'') and makes trade data and order data available through an API with sufficient reliability, detail and timeliness. In addition, (1) the platform's Relevant Pair spot trading volume must meet the minimum thresholds as detailed in the CME CF Cryptocurrency Indices Methodology Guide; (2) the platform must publish policies to ensure fair and transparent market conditions at all times and have processes in place to identify and impede illegal, unfair or manipulative trading practices; (3) the platform must not impose undue barriers to entry or restrictions on market participants, and utilizing the platform must not expose market participants to undue credit risk, operational risk, legal risk or other risks; (4) the platform must comply with applicable law and regulation, including, but not limited to capital markets regulations, money transmission regulations, client money custody regulations, KYC regulations and anti-money-laundering (AML) regulations; and (5) the platform must cooperate with inquiries and investigations of regulators and the BRR Administrator upon request and must execute data sharing agreements with CME.[60]

Each of the Constituent Platforms Is Subject to Oversight by Federal and State Financial Regulators

Each of the Constituent Platforms are (i) registered with, and licensed by, the relevant financial authorities, (ii) subject to compliance with the rigorous requirements of the U.S. Bank Secrecy Act (''BSA'') and implementing AML regulations, and (iii) subject to the examination and enforcement authority of both federal and state regulators.[61]

Under applicable FinCEN guidance, virtual currency exchanges such as the Constituent Platforms are considered ''money transmitters'' for the purposes of federal AML law and must be registered with FinCEN.[62] As a result, the Constituent Platforms must fully comply with BSA and AML requirements, which include developing, implementing, and maintaining an effective AML program.[63] In general, an effective AML program requires the Constituent Platforms to, among other things:

- Perform a comprehensive money laundering risk assessment;
- Designate a qualified AML compliance officer with reporting lines to the board of directors;
- Implement AML procedures, such as a customer identification program to identify customers and the source of virtual currency;
- Perform customer due diligence or enhanced due diligence;
- Monitor transactions and file suspicious activity reports;
- File currency transaction reports and reports of foreign bank and financial accounts;
- Keep records of transactions for inspection by authorities;
- Screen transactions to ensure that they do not violate sanctions imposed by the Treasury Department;
- Perform independent testing of the AML compliance program; and
- Conduct continuing employee education and training.

Further, most states require money transmitters to obtain a license before offering money transmission services in that state. In order to obtain such state licenses, a money transmitter must implement an AML policy and comply with applicable state AML laws.[64]

Since each Constituent Platform must have AML and KYC procedures in place, and anyone intending to trade on that platform must complete the KYC on-boarding process, each of the Constituent Platforms has information

Commission approval order. *See* VanEck, at 5143 (comparing the bitcoin futures market favorably with the freight futures market).

[57] Because the CME CF BRR is calculated based solely on the price data from the Constituent Platforms, manipulating the CME CF BRR must necessarily entail manipulating the price data at one or more Constituent Platforms.

[58] The BRR Calculation Agent receives trading data from the Constituent Platforms through its Automatic Programming Interface (''API''). *See https://www.cmegroup.com/education/bitcoin/pricing-products-practice-standards.html* (''The [BRR] Administrator will have primary responsibility for all of the following in respect of Bitcoin Pricing Products: . . . Establishing appropriate monitoring processes and procedures designed to identify any breaches of these Practice Standards and any attempted manipulation or manipulative behavior and reporting any such incidents to the Oversight Committee in a timely manner.'')

[59] *See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.*

[60] *See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.* The CME monitors the Constituent Platforms to ensure compliance with its criteria and removed two platforms in April 2017 for failing to meet its criteria. *See* Minutes of the CME CF BRR and BRTI Oversight Committee Meeting for BRR and BRTI held via conference call on 7th June 2017, available at *https://www.cmegroup.com/education/bitcoin/cme-cf-brr-and-brti-oversight-meeting-minutes-2017-06.html.*

[61] All of the Constituent Platforms are registered with FinCEN as a money services business. Additionally, three of the five Constituent Platforms have obtained state money transmitter licenses, as applicable, and the other two Constituent Platforms are operated by trust companies chartered by the state of New York, which subjects it to New York AML requirements and enables it to operate in other states without a separate money transmitter license. *See* 3 NYCRR 504.

[62] FinCEN, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN–2013–G0001, (Mar. 18, 2013), *https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf.* FinCEN has prosecuted entities that omit to register with it as a Money Services Business (''MSB'') or fail to comply with its regulations aggressively. *See, e.g.,* Release by Office of Public Affairs, Department of Justice, *Ripple Labs Inc. Resolves Criminal Investigation,* available at *https://www.justice.gov/opa/pr/ripple-labs-inc-resolves-criminal-investigation; see also* Consent to the Assessment of a Civil Money Penalty, In the Matter of Eric Powers, U.S. Dep't of Treas., No. 2019–01 (Apr. 18, 2019) (enforcement action against a peer-to-peer cryptocurrency exchanger by FinCEN).

[63] *See* 31 CFR part 1022. The effectiveness of AML procedures was noted by FinCEN Director Kenneth A. Blanco. *See* Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the 2018 Chicago-Kent Block (Legal) Tech Conference, Aug. 09, 2018, available at *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-2018-chicago-kent-block* (reporting that FinCEN now receives over 1,500 SARs per month describing suspicious activity involving virtual currency, with reports coming from both MSBs in the virtual currency industry itself and other financial institutions).

[64] The Sponsor concludes that the presence of robust AML and KYC policies and procedures, among other things, should lead to robust trading data and may inhibit trades placed with the intent of facilitating manipulation of the Bitcoin Price.

that identifies anyone who makes a trade on that platform, meaning that no trades are anonymous or ''pseudonymous.''[65] As a result of such AML and KYC procedures, together with the data sharing agreements that each of the Constituent Platforms enters into with CME, the CME and the Exchange will be able to ascertain all necessary information about any suspicious trades on each of the Constituent Platforms, including the identity of the customer(s) placing such trades.

Trading in the ETP Will Not Be the Predominant Influence on Prices in That Market

The second element to determine whether a market or group of markets is of ''significant size'' requires that it is unlikely that trading in the ETP would be the predominant influence on prices in that market. As discussed in more detail below, the Sponsor concludes that, given the nature of the Trust and the composition of its assets, trading in the Trust would not be the predominant influence on prices (i) that make up the CME CF BRR, (ii) in the Bitcoin futures market on the CME, or (iii) in the USD/BTC spot market on the Constituent Platforms.

Due to the structure of the Trust, the Trust will only purchase Bitcoin if (1) required to as a result of the monthly rebalancing of its assets or (2) if it sells Shares to new investors. Conversely, the Trust will only sell Bitcoin if required to as a result of the monthly rebalancing of its assets. This means that trading in the Shares will not cause the Trust to purchase or sell Bitcoin and will therefore not influence the price of Bitcoin.

Even though the Trust may purchase Bitcoin from one or more of the Constituent Platforms[66] in connection with the issuance of Shares or a monthly rebalancing of its assets, such purchases will take place only on limited occasions and will not be the ''predominant influence'' on the market. As noted previously, in no event will the Trust be trading in Bitcoin futures contracts and therefore the purchase or sale of Bitcoin by the Trust will not be the predominant influence on prices in the Bitcoin futures market.

In addition, the Trust's assets consist of (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index. The Sponsor notes that, because Bitcoin is not the sole asset of the Trust, even if it were possible to influence the price of Bitcoin or the CME CF BRR through trading shares of the Trust, the influence of such trades would be muted by the presence of the T-Bills held by the Trust, and therefore such trading would not be the predominant influence on Bitcoin prices in such market.

Unique Aspects of the Trust Enhancing the Trust's Resistance to Market Manipulation and Volatility

According to the registration statement, the Trust was created as a way for market participants to gain reasonable exposure to Bitcoin through a vehicle that mitigates the volatility that has historically been associated with Bitcoin.[67] According to the registration statement, the Trust is designed to utilize a passive rules-based methodology without the use of derivatives or leverage in order to avoid complexity and confusion (often associated with those methods) and to provide for increased transparency to shareholders.

According to the Registration Statement, the Trust will have no assets other than (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index, which is calculated and published by Solactive AG.

T-Bills are among the most liquid and widely traded assets in the world and are deemed to be risk free. The Sponsor believes that its selection of T-Bills as a constituent of the Trust will dampen the volatility of Bitcoin as it relates to the Trust, and consequently the Shares.

In addition, based on the passive rules-based methodology noted above, as the CME CF BRR becomes more volatile, the Index, and thus the Trust, will have less exposure to Bitcoin and more exposure to T-Bills, and conversely, when the CME CF BRR becomes less volatile, the Index, and thus the Trust, will have more exposure to Bitcoin and less exposure to T-Bills. Therefore, the monthly rebalancing of the Trust's assets will also reduce the effects of Bitcoin volatility on the Trust and the Shares.

The Sponsor maintains that, in contrast to other Bitcoin-related ETP Rule 19b–4 filings previously submitted, because Bitcoin is not the only constituent of the Trust (with the other constituent, T-Bills, being historically stable and risk-free), any potential manipulation of the Trust and the Shares would be extremely difficult and therefore unlikely.

Availability of Information

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

The Index value and price information for T-Bills is available from major market data vendors. The CME CF BRR and CME CF BRTI values are available on the CME website and from major market data vendors. The spot price of Bitcoin also is available on a 24-hour basis from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of

[65] The Sponsor notes that all Bitcoin trades are visible publicly, but because trades are made from and to electronic wallets, only the electronic ''addresses'' of these wallets are available publicly. This form of trading has been called ''pseudonymous'', meaning that while the wallet addresses are discernable, the identity of the wallet owners is not. Because each Constituent Platform knows the identity of its customers and the wallet addresses they use to trade on the platform, the Constituent Platform can ascertain the identity of the customer making each trade on that platform.

[66] None of the transaction documents relating to the Trust, nor the Trust's or the Sponsor's internal policies, require the Trust to purchase Bitcoin from any of the Constituent Platforms.

[67] *See, e.g.,* Statement on Cryptocurrencies and Initial Coin Offerings by Chairman Jay Clayton, Dec. 11, 2017, n. 7; and CFTC Primer on Virtual Currencies pp. 7 and 19 (noting that trading in virtual currencies may involve significant speculation and volatility risk and that the virtual currency marketplace has been subject to substantial volatility and price swings).

the Trust.[68] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 [69] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[70] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').[71] The Exchange is also able to obtain information regarding trading in the Shares in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust 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 Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares; (3) 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; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Rule 9.2–E(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's

[68] *See* NYSE Arca Rule 7.12–E.

[69] 17 CFR 240.10A–3.

[70] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[71] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

investment objectives; and (4) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [72] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E.

Investing in the Trust will provide investors with exposure to Bitcoin in a manner that is efficient and convenient, while also reducing the volatility typically associated with Bitcoin. The Trust uses the CME CF BRR to determine the value of its Bitcoin assets, its NAV and the ratio of Bitcoin to T-Bills held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Therefore, use of the CME CF BRR would mitigate the effects of potential manipulation of the Bitcoin market. Additionally, the capital necessary to maintain a significant presence on any Constituent Platform would make manipulation of the CME CF BRR unlikely. Bitcoin trades in a well-arbitraged and distributed market. The linkage between the Bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of Bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.

In addition, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services. In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters.

Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares and of the suitability requirements of NYSE Arca Rule 9.2–E(a). The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of Commodity-Based Trust Share based in part on the price of Bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based in part on the price of Bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[72] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. In particular, the Commission seeks comment on the questions posed in the Order Instituting Proceedings previously issued by the Commission with respect to this proposed rule change.[73] Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–39. 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–NYSEArca–2019–39, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22884 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[73] *See* Order Instituting Proceedings, *supra* note 7, 84 FR at 51648.

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87299; File No. SR–CboeBYX–2019–016]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Applicable to Members and Non-Members of the Exchange Pursuant to BYX Rules 15.1(a) and (c)

October 15, 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 BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule applicable to Members and non-Members [3] of the Exchange pursuant to BYX Rules 15.1(a) and (c). The text of the proposed rule change is attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' See Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to adopt a new Non-Displayed Volume Tier.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 21% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0005 per share for orders that remove liquidity and assesses a fee of $0.0019 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month

[4] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (September 30, 2019), available at *https://markets.cboe.com/us/equities/market_statistics/.*

demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels, which provides increasingly higher or different benefits or discounts for satisfying increasingly more stringent criteria or different criteria.

For example, pursuant to footnote 2 of the Fees Schedule, the Exchange offers a Mid-Point Peg Tier that provides Members an opportunity to receive a discounted rate for orders that yield fee code ''MM'', which is appended to non-displayed orders that add liquidity using the Mid-Point Peg order type.[5] To qualify for a discounted rate for such orders, pursuant to the Mid-Point Peg Tier, a Member must add an ADAV[6] of greater than or equal to 0.30% of the TCV[7] for orders yielding a fee code MM. The Exchange notes that this tier is designed to encourage Members that provide non-displayed Mid-Point Peg liquidity on the Exchange to increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange also notes that it currently does not provide for a similar tier that accounts for other non-displayed order types that add liquidity. The Exchange now proposes to add such a tier to its fee schedule.

Specifically, the Exchange proposes to add a new Non-Displayed Volume Tier under footnote 2 which would provide Members an opportunity to qualify for a fee reduction on other non-displayed orders that add liquidity, specifically, those yielding fee code ''HA''[8], as well as an additional opportunity to qualify for a fee reduction on order yielding fee code MM. Under the proposed Non-Displayed Volume Tier, a Member would receive a reduction in fees by $0.0004 per share for their qualifying orders which yield fee codes HA or MM where the Member has an ADAV that is greater or equal to 0.075% of the TCV as orders yielding fee codes HA, MM, or ''HI''.[9] Members that achieve the proposed Non-Displayed Volume Tier must therefore increase their non-displayed, liquidity adding order flow as a percentage greater than or equal to 0.075% of the TCV as orders yielding fee codes HA, HI, or MM. The Exchange believes the proposed fee reduction for liquidity adding non-displayed orders will incentivize increased overall order flow to the Book and price-improvement opportunities. The proposed tier gives liquidity providing Members on the Exchange an additional opportunity to receive a discounted rate. It is designed to provide Members that provide non-displayed liquidity on the Exchange a further incentive to contribute to a deeper, more liquid market, in turn providing additional execution opportunities at improved prices as a result of such increased, non-displayed liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier is available to all Members and is competitively achievable for all Members that submit non-displayed order flow, in that all firms that submit the requisite non-displayed order flow could compete to meet the tiers.

In light of the proposed tier under footnote 2, the Exchange also proposes to rename footnote 2 ''Non-Displayed Liquidity Incentives'' and move the existing Mid-Point Peg Tier into a distinct tier table under footnote 2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[12] 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive a discounted rate by reaching the proposed threshold by means of liquidity adding non-displayed orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[13] including the Exchange,[14] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct

[5] An order yielding fee code MM is assessed a fee of $0.001 per share. *See* Rule 11.9(c)(9), which states that a Mid-Point Peg order is a limit order that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the NBBO to be pegged to the mid-point of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation inside the same side of the NBBO as the order.

[6] ''ADAV'' means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[7] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[8] Fee code ''HA'' is appended to non-displayed orders that add liquidity and are assessed $0.0024 per share.

[9] Fee code ''HI'' is appended to non-displayed orders that add liquidity and receive a price improvement, and are assessed a fee of $0.0030 per share.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f.(b)(5).

[13] *See e.g.,* The Nasdaq Stock Market LLC Rules, Equity 7, Sec. 118(a)(1), which generally provides for discounts for participants' non-displayed orders that together reach certain thresholds of consolidated volume.

[14] *See e.g.,* Cboe BYX U.S. Equities Exchange Fee Schedule, Footnote 1, Add/Remove Volume Tiers, which has an ADV component to its required criteria for certain volume-adding and/or removing orders.

their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[15]

Moreover, the Exchange believes the proposed Non-Display Volume Tier is a reasonable means to encourage Members to increase their overall non-displayed order flow to the Exchange based on increasing their daily total added volume (ADAV) above a percentage of the total volume (TCV). Particularly, the Exchange believes that adopting a Non-Displayed Volume Tier based on a Member's non-displayed adding orders will encourage non-displayed liquidity providing Members to provide for a deeper, more liquid market, and, as a result, increased execution opportunities at improved price levels and, thus, overall order flow. The Exchange believes that these increases benefit all Members by contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed discount (*i.e.,* fee reduction) per share amount also does not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the fee assessed under the existing Mid-Point Peg Tier, for which, as stated, a Member must have a daily volume add (ADAV) of 0.30% or greater than the TCV, is $0.0005 per share. In other words, under this tier, Members receive a $0.0005 ''discount'' from the standard $0.001 assessed for orders yielding fee code MM, which is comparable to the proposed $0.0004 discount offered under the proposed Non-Displayed Volume Tier.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Non-Displayed Volume Tier, and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Given previous months' data, the Exchange notes that one of its Members would have reached this proposed tier in recent past months had the proposed tier been in place. Accordingly, the proposed tier is designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional non-displayed order flow to achieve the proposed discount. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for this tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at up to five Members will be able to compete for and reach the proposed tier. The Exchange anticipates that these will include multiple Member types, including liquidity providers and broker-dealers, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rebate would uniformly apply to all Members that meet the required criteria under proposed Non-Displayed Volume Tier.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [16]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed rebate if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier would incentivize market participants to direct non-displayed liquidity and, as a result, executable and price-improving order flow, to the Exchange. Greater overall order flow benefits all market participants on the Exchange by providing more trading opportunities and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 21% of the market share.[17] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining

[15] *See supra* note 13. For example, Nasdaq offers a rebate of $0.0030 per share where a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.75% of Consolidated Volume during the month and member provides a daily average of at least 5 Million shares of non-displayed liquidity. The Exchange notes that this is substantially similar to the proposed

[16] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[17] *See supra* note 4.

prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[19] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2019–016 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-CboeBYX–2019–016. 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–CboeBYX–2019–016 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22833 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[18] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[19] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, October 23, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street, NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Resolution of litigation claims;
Consideration of amicus participation; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: October 16, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–22962 Filed 10–17–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87312; File No. SR–CboeBZX–2019–086]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

October 15, 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 October 1,2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. The text of the proposed changes to the fee schedule are enclosed as Exhibit 5. [sic]

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products. The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no commenter letters on the proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Suspension Order'').[4] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5]

Current Fees

The Cboe One Summary Feed is a top of book data feed that provides real-time U.S. equity quote and trade information to investors based on equity orders submitted to the Exchange and its affiliated equities exchanges—*i.e.,* Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe EDGA Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is $5,000 per month, and external distributors are also liable for a Data Consolidation Fee of $1,000 per month, and User fees equal to $10 per month for each Professional User, and $0.25 per month for each Non-Professional User.[6]

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide Cboe One Summary Feed Data to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that they meet the following criteria: (1) Distributor is a broker-dealer distributing Cboe One Summary Feed Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) More than 50% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving Cboe One Summary Feed Data ; and (3) Distributor distributes Cboe One Summary Feed Data to no more than 5,000 Non-Professional Data Users.

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide Cboe One Summary Feed Data to a limited number of subscribers. As explained later in this filing, distributors that provide BZX Exchange Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86667 (August 14, 2019), 84 FR 43233 (August 20, 2019) (SR–CboeBZX–2019–069).

[4] *See* Securities Exchange Act Release No. 87164 (September 30, 2019) (SR–CboeBZX–2019–069) (**Federal Register** publication pending).

[5] *Id.*

[6] The Exchange also offers an Enterprise license for the Cboe One Summary Feed at a cost of $50,000 per month. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers.

similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Cboe One Summary Feed with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The Program would be exclusive to the Cboe One Summary Feed, which is a top of book offering, as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.[7] The distribution fee charged for the Cboe One Summary Feed would be lowered by 30% from the current $5,000 per month to $3,500 per month for distributors that meet the requirements of the Program. In addition, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current $1,000 per month to $350 per month. User fees for any Professional or Non-Professional Users that access Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.[8]

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.[9] The Cboe One Summary Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.[10]

The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option for small retail brokers. Although that filing was ultimately suspended by the Commission, the Exchange believes that its experience in offering the Program while it was in effect reflect the competitive nature of the market for the creation and distribution of top of book data. Specifically, after the Exchange initially reduced the fees charged to small retail brokers under the Initial Proposal, it successfully onboarded one new customer due to the attractive pricing, and is currently in the process of onboarding another customer.[11] These customers are now able to offer high quality and cost effective data to their retail investor clients. The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in providing top of book data to retail investors. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead purchase such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is

[7] New external distributors of the Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

[8] By comparison, The Nasdaq Stock Market LLC (''Nasdaq'') charges a subscriber fee for Nasdaq Basic that adds up to $26 per month for Professional Subscribers and $1 per month for Non-Professional Subscribers (Tapes A, B, and C). *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

[9] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[10] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

[11] *See e.g.,* Cboe Innovation Spotlight, ''dough—The commission-free online broker with premium content and insights,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight/.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[14] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[15] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to the Cboe One Summary Feed. The Cboe One Summary Feed is a competitively-priced alternative to top of book data disseminated by SIPs, or similar data disseminated by other national securities exchanges.[17] It provides subscribers with consolidated top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.[18] The Cboe One Summary Feed is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the Cboe One Summary Feed benefits a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe One Summary Feed is within 1% of the national best bid and offer approximately 98% of the time,[19] and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

Indeed, the Exchange has already successfully onboarded one new Distributor that has decided to purchase Cboe One Summary Data from the Exchange rather than purchasing top of book data from a competitor exchange, and is in the process of onboarding another new Distributor. In addition, the Exchange is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges. Making the Exchange's top of book data available at a lower cost, ultimately serves the interests of retail investors that rely on the public markets. The Exchange understands that the Commission is interested in ensuring that retail investors are appropriately served in the U.S. equities market. The Exchange agrees that it is important to ensure that our markets continue to serve the needs of ordinary investors, and the Program is consistent with this goal.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from BZX and its affiliated equities exchanges to their retail investor clients. The market for top of book data is

[14] 15 U.S.C. 78k–1.

[15] *See* 17 CFR 242.603.

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] *See e.g.,* supra note 5 (discussing Nasdaq Basic).

[18] *Id.*

[19] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [20]

Today, the Cboe One Summary Feed is among the most competitively priced top of book offerings in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange's data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange's lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up the majority of the distributor's total subscriber population. While there is no ''exact science'' to choosing one eligibility threshold compared to another, the Exchange believes that having more Non-Professional Data Users than Professional Data User across a firm's entire business, *i.e.,* not limited exclusively to Data Users that are provided access to the Exchange's data products, is indicative of a broker-dealer that is primarily and actively engaged in the business of serving retail investors. This understanding is confirmed by the current customers that participate in or are soon to participate in the Program, each of which are focused on providing trading services to ordinary investors. As such, the Program would be broadly available to a wide range of retail brokers that either purchase the Cboe One Summary Feed today, or that may choose to switch from competing products due to the potential cost savings. In addition to the subscribers that are participating and are soon to participate in the Program, dozens of distributors that currently purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.[21] The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Non-Professional Data Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide Cboe One Summary Feed Data to more than 5,000 Non-Professional Data Users already enjoy cost savings compared to competitor products. The Program would therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

The table below illustrates the impact of the proposed pricing on firms that qualify for the Program, both compared to the Exchange's current pricing, and compared to the fees charged for a competitor product, *i.e.,* Nasdaq Basic. As shown, Cboe One Summary Feed Data provided pursuant to the Program would be cheaper than Nasdaq Basic for firms with more than 1,200 Non-Professional Users, and the benefits of the pricing structure would continue to scale up to firms with 5,000 Non-Professional Users. After 5,000 Non-Professional Users the firm would no longer be eligible for the Small Retail Broker Distribution Program but would already enjoy significant cost savings compared to Nasdaq Basic under the current pricing structure. The Exchange therefore believes that the Program would allow the Exchange to better compete with competitors for smaller firms that currently pay a lower fee under, for example, the Nasdaq Basic pricing model, while also ensuring that larger firms continue to receive attractive pricing that is already cheaper than top of book data offered by the main competitor product. The Exchange believes this supplemental information further validates its assessment that the proposed fee reduction is reasonable, equitable, and not unfairly discriminatory. Without the proposed fee reduction, small retail brokers that would otherwise qualify for the reduced fees proposed would be subject to either higher fees for accessing Exchange top of book data, or may switch to competitor offerings that are also less cost effective, but at current fees levels, cheaper than the current Cboe One Summary fee.

[20] *See* Regulation NMS Adopting Release, supra note 12, at 37503.

[21] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf.*

Small Retail Broker Distribution Program					
	1,200			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	1,200	$ 6,000.00	$ 3,850.00	$3,850	0.00
BZX Top	1,200	$ 2,500.00	$ 2,500.00	$3,850	1350.00
	3,350			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	3,350	$ 6,000.00	$ 3,850.00	$6,000	2150.00
BZX Top	3,350	$ 2,500.00	$ 2,500.00	$6,000	3500.00
	7,500			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	7,500	$ 6,000.00	$ 3,850.00	$10,150	4150.00
BZX Top	7,500	$ 2,500.00	$ 2,500.00	$10,150	7650.00

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and paragraph (f) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2019–086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–086 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22828 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87304; File No. SR–CBOE–2019–082]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule in Connection With Migration

October 15, 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, 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule in connection with migration. 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 the 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, including with respect to connectivity, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. The Exchange 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 (the ''migration''). As a result of this migration, the Exchange's current connectivity architecture will be rendered obsolete, and as such, the Exchange must offer new functionality, including new logical connectivity, and adopt corresponding fees.[3] In determining the proposed fee changes, the Exchange assessed the impact on market participants to ensure that the proposed fees would not create a financial burden and have an undue impact on any market participants, including smaller market participants. Indeed, the Exchange notes that it anticipates its post-migration connectivity revenue to be approximately 1.75% lower than today. In addition to providing a consistent technology offering across the Cboe Affiliated Exchanges, the upcoming migration will also provide market participants a latency equalized infrastructure, improving trading performance, and increased sustained order and quote per second capacity, as discussed more fully below. Accordingly, in connection with the migration and in order to more closely align the Exchange's fee structure with that of its Affiliated Exchanges, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that effective October 7, 2019, market participants will no longer have connectivity to the old Exchange architecture.

Exchange intends to update and simplify its fee structure with respect to access and connectivity and adopt new access and connectivity fees, effective October 1, 2019 (or as otherwise stated herein).[4]

Physical Connectivity

A physical port is utilized by a Trading Permit Holder (''TPH'') or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses fees for Network Access Ports for these physical connections to the Exchange. Specifically, TPHs and non-TPHs can elect to connect to Cboe Options' trading system via either a 1 gigabit per second (''Gb'') Network Access Port or a 10 Gb Network Access Port. The Exchange currently assesses a monthly fee of $1,500 per port for 1 Gb Network Access Ports and a monthly fee of $5,000 per port for 10 Gb Network Access Ports for access to Cboe Options primary system. Through January 31, 2020, Cboe Options market participants will continue to have the ability to connect to Cboe Options' trading system via the current Network Access Ports. For the month of October 2019, the Exchange will continue to assess the current fee for any legacy Network Access Port a TPH or non-TPH uses during the month of October. Effective November 1, 2019, the Exchange will assess the proposed fees described below for any physical port, regardless of whether the TPH or non-TPH connects via the current Network Access Ports or the new Physical Ports.

Effective October 7, 2019, in connection with the migration, TPHs and non-TPHs may alternatively elect to connect to Cboe Options via new latency equalized Physical Ports.[5] The new Physical Ports will similarly allow TPHs and non-TPHs the ability to connect to the Exchange at the data center where the Exchange's servers are located and TPHs and non-TPHs will have the option to connect via 1 Gb or 10 Gb Physical Ports. Effective November 1, 2019, the Exchange proposes to continue to assess a monthly fee of $1,500 per port for 1 Gb Physical Ports and increase the monthly fee for 10 Gb Physical Ports to $7,000 per port. The new Physical Port fees will be prorated based on the remaining trading days in the calendar month. The proposed fee for 10 Gb Physical Ports is in line with the amounts assessed by other exchanges for similar connections by its Affiliated Exchanges and other Exchanges.[6]

In addition to the benefits resulting from the new Physical Ports being latency equalized (*i.e.,* faster connectivity), TPHs and non-TPHs may be able to reduce their overall physical connectivity fees. Particularly, the Fees Schedule currently provides that Network Access Port fees are assessed for unicast (orders, quotes) and multicast (market data) connectivity separately. More specifically, Network Access Ports may only receive one type of connectivity each (thus requiring a market participant to maintain two ports if that market participant desires both types of connectivity). The new Physical Ports however, will all allow access to both unicast and multicast connectivity with a single physical connection to the Exchange. Therefore, TPHs and non-TPHs that currently purchase two legacy Network Access Ports for the purpose of receiving each type of connectivity will have the option upon migration to purchase only one new Physical Port to accommodate their connectivity needs, which may result in reduced costs for physical connectivity.[7]

Cboe Data Services—Port Fees

The Exchange proposes to amend the ''Port Fee'' under the Cboe Data Services (''CDS'') Fees Schedule, effective October 1, 2019. Currently, the Port Fee is payable by any Customer that receives data through a direct connection to CDS (''direct connection'') or through a connection to CDS provided by an extranet service provider (''extranet connection''). The Port Fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. The Exchange proposes to amend the monthly CDS Port Fee to provide that it is payable ''per source'' used to receive data, instead of ''per data port''. The Exchange also proposes to increase the fee from $500 per data port/month to $1,000 per data source/month. In connection with the proposed change, the Exchange also proposes to rename the ''Port Fee'' to ''Direct Data Access Fee''. As the fee will be payable ''per source'' used to receive data, instead of ''per data port'', the Exchange believes the proposed name is more appropriate and that eliminating the term ''port'' from the fee will eliminate confusion as to how the fee is assessed. The Exchange notes the proposed change in assessing the fee (*i.e.,* per source vs per port), the proposed fee amount and the proposed name are the same as the corresponding fee on its affiliate C2.[8]

Logical Connectivity

Next, the Exchange proposes to amend its login fees. By way of background, Cboe Options market participants may currently access Cboe Command via either a CMI or a FIX Port, depending on how their systems are configured. Effective October 7, 2019, market participants will no longer be able to use CMI and FIX Login IDs. Rather, the Exchange will utilize a variety of logical connectivity ports as further described below. Both a legacy CMI/FIX Login ID and proposed logical port represent a technical port established by the Exchange within the Exchange's trading system for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Market participants that wish to connect directly to the Exchange can request a number of different types of ports, including ports that support order entry, customizable purge functionality, or the receipt of market data. Market participants can also choose to connect indirectly through a number of different third-party providers, such as another broker-

[4] The Exchange initially filed the proposed fee changes on October 1, 2019 (SR–CBOE–2019–077). On business date October 2, 2019, the Exchange withdrew that filing and submitted this filing.

[5] As previously noted, market participants will continue to have the option of connecting to Cboe Options via a 1 Gbps or 10 Gbps Network Access Port and would be assessed current rates of $1,500 and $5,000 per port, respectively. If a TPH replaces a legacy Network Access Port with a new C1 latency equalized Physical Port in October 2019, the TPH will not be billed an additional fee for the new C1 platform physical connection until November 2019.

[6] *See* Cboe EDGA U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe EDGX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe BZX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe BYX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe EDGX Options Exchange Fee Schedule, Physical Connectivity Fees; and Cboe BZX Options Exchange Fee Schedule, Physical Connectivity Fees (collectively, ''Affiliated Exchange Fee Schedules''). *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[7] The Exchange proposes to eliminate the current Cboe Command Connectivity Charges table in its entirety and create and relocate such fees in a new table in the Fees Schedule that addresses fees for physical connectivity, including fees for the current Network Access Ports, the new Physical Ports and Disaster Recovery (''DR'') Ports. The Exchange notes that it is not proposing any changes with respect to DR Ports other than renaming the DR ports from ''Network Access Ports'' to ''Physical Ports'' to conform to the new Physical Port terminology.

[8] *See* Cboe C2 Options Exchange Fee Schedule, Cboe Data Services, LLC Fees, Section IV, Systems Fees.

dealer or service bureau that the Exchange permits through specialized access to the Exchange's trading system and that may provide additional services or operate at a lower mutualized cost by providing access to multiple members. In light of the upcoming discontinuation of CMI and FIX Login IDs, the Exchange proposes to eliminate the fees associated with the CMI and FIX login IDs effective October 1, 2019 and adopt the below pricing for logical connectivity in its place.

Service	Cost per month
Logical Ports (BOE, FIX) 1 to 5	$750 per port.
Logical Ports (BOE, FIX) >5	$800 per port.
Logical Ports (Drop)	$750 per port.
BOE Bulk Ports 1 to 5	$1,500 per port.
BOE Bulk Ports 6 to 30	$2,500 per port.
BOE Bulk Ports >30	$3,000 per port.
Purge ports	$850 per port.
GRP Ports	$750/primary (A or C Feed).
Multicast PITCH/Top Spin Server Ports	$750/set of primary (A or C feed).

The Exchange proposes to provide for each of the logical connectivity fees that new requests will be prorated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service. The Exchange notes that the proration policy is the same on its Affiliated Exchanges.[9] The Exchange also proposes to make clear in the Fees Schedule that port fees for BOE, FIX, BOE Bulk and Drop ports will be assessed the full month rates for October for ports available for use on the new trading platform beginning October 7, 2019. The port fees for BOE, FIX, Drop and BOE Bulk ports added on or after October 8, 2019, will be pro-rated. The Exchange notes that BOE, FIX, Drop and BOE Bulk ports offer similar functionality as current CMI and FIX Login Ids. As such, in lieu of assessing the current CMI and FIX Login Id fees for the month of October, the Exchange proposes to assess the proposed Logical Ports and BOE Bulk Port fees at the full rate for the month of October for any of these ports subscribed to on the date of the migration (October 7, 2019). Fees for Purge, Spin Server and GRP will be pro-rated beginning October 7, as these ports can only be used within the new platform.

Logical Ports (BOE, FIX, Drop): The new Logical Ports represent ports established by the Exchange within the Exchange's system for trading purposes. Each Logical Port established is specific to a TPH or non-TPH and grants that TPH or non-TPH the ability to operate a specific application, such as order/quote[10] entry (FIX and BOE Logical Ports) or drop copies (Drop Logical Ports). Similar to CMI and FIX Login IDs, each Logical Port will entitle a firm to submit message traffic of up to specified number of orders per second.[11] The Exchange proposes to assess $750 per port per month for all Drop Logical Ports and also assess $750 per port per month (which is the same amount currently assessed per CMI/FIX Login ID per month), for the first 5 FIX/BOE Logical Ports and thereafter assess $800 per port, per month for each additional FIX/BOE Logical Port. While the proposed ports will be assessed the same monthly fees as current CMI/FIX Login IDs (for the first five logical ports), the proposed logical ports provide for significantly more message traffic as shown below:

	CMI/FIX Login Ids		BOE/FIX Logical Ports
	Quotes	Orders	Quotes/Orders
Bandwidth Limit per login	5,000 quotes/3 sec[12]	30 orders/sec	15,000 quotes/orders/3 sec.
Cost	$750 each	$750 each	$750/$800 each.
Cost per Quote/Order Sent @Limit	$0.15 per quote/3 sec	$25.00 per order/sec	$0.05/$0.053 per quote/order/3 sec.

Logical Port fees will be limited to Logical Ports in the Exchange's primary data center and no Logical Port fees will be assessed for redundant secondary data center ports. Each BOE or FIX Logical Port will incur the logical port fee indicated in the table above when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. Incremental usage will be determined on a monthly basis based on the average orders per day entered in a single month across all of a market participant's subscribed BOE and FIX Logical Ports.[13] The Exchange believes that the pricing implications of going beyond 70,000 orders per trading day per Logical Port encourage users to mitigate message traffic as necessary. The Exchange notes that the proposed

[9] *See* Affiliated Exchange Fee Schedules, Logical Port Fees.

[10] Effective October 7, 2019, the definition of quote in Cboe Options Rule 1.1 shall mean a firm bid or offer a Market-Maker (a) submits electronically as an order or bulk message (including to update any bid or offer submitted in a previous order or bulk message) or (b) represents in open outcry on the trading floor.

[11] Login Ids restrict the maximum number of orders and quotes per second in the same way logical ports do, and Users may similarly have multiple logical ports as they may have Trading Permits and/or bandwidth packets to accommodate their order and quote entry needs.

[12] Each Login ID has a bandwidth limit of 80,000 quotes per 3 seconds. However, in order to place such bandwidth onto a single Login ID, a TPH or non-TPH would need to purchase a minimum of 15 Market-Maker Permits or Bandwidth Packets (each Market-Maker Permit and Bandwidth Packet provides 5,000 quotes/3 sec). For purposes of comparing ''quote'' bandwidth, the provided example assumes only 1 Market-Maker Permit or Bandwidth Packet has been purchased.

[13] For October 2019, average daily order quantities used to determine incremental usage will be determined based on the number of trading days between October 7th and October 31st.

fee of $750 per port is the same amount assessed not only for current CMI and FIX Login Ids, but also similar ports available on its affiliate exchange.[14]

The Exchange also proposes to provide that the fee for one FIX Logical Port connection to PULSe and one FIX Logical Port connection to Cboe Silexx (for FLEX trading purposes) will be waived per TPH. The Exchange notes that only one FIX Logical Port connection is required to support a firm's access through each of PULSe and Cboe Silexx FLEX.

BOE Bulk Logical Ports: Post-migration, the Exchange will also offer BOE Bulk Logical Ports, which provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. While BOE Bulk Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market-Makers or firms that conduct similar business activity, as the primary purpose of the proposed bulk message functionality is to encourage market-maker quoting on exchanges. As indicated above, BOE Bulk Logical Ports are assessed $1,500 per port, per month for the first 5 BOE Bulk Logical Ports, assessed $2,500 per port, per month thereafter up to 30 ports and thereafter assessed $3,000 per port, per month for each additional BOE Bulk Logical Port. Like CMI and FIX Login IDs, and FIX/BOX Logical Ports, BOE Bulk Ports will also entitle a firm to submit message traffic of up to specified number of quotes/orders per second.[15] The proposed BOE Bulk ports also provide for significantly more message traffic as compared to current CMI/FIX Login IDs, as shown below:

	CMI/FIX Login Ids	BOE bulk ports
	Quotes	Quotes [16]
Bandwidth Limit	5,000 quotes/3 sec [17]	225,000 quotes 3 sec.
Cost	$750 each	$1,500/$2,500/$3,000 each.
Cost per Quote/Order Sent @Limit	$0.15 per quote/3 sec	$0.006/$0.011/$0.013 per quote/3 sec.

Each BOE Bulk Logical Port will incur the logical port fee indicated in the table above when used to enter up to 30,000,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 30,000,000 orders per day per BOE Bulk Logical Port will incur an additional logical port fee of $3,000 per month. Incremental usage will be determined on a monthly basis based on the average orders per day entered in a single month across all of a market participant's subscribed BOE Bulk Logical Ports.[18] The Exchange believes that the pricing implications of going beyond 30,000,000 orders per trading day per BOE Bulk Logical Port encourage users to mitigate message traffic as necessary. The Exchange notes that the proposed BOE Bulk Logical Port fees are similar to the fees assessed for these ports by BZX Options.[19]

Purge Ports: As part of the migration, the Exchange will be introducing Purge Ports to provide TPHs additional risk management and open order control functionality. The proposed ports are designed to assist TPHs, in the management of, and risk control over, their quotes, particularly if the TPH is dealing with a large number of options. Particularly, Purge Ports will allow TPHs to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID''). This would allow TPHs to seamlessly avoid unintended executions, while continuing to evaluate the direction of the market. While Purge Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market-Makers or firms that conduct similar business activity and are therefore exposed to a large amount of risk across a number securities. The Exchange notes that market participants will also be able to cancel orders through the proposed FIX/BOE Logical Ports and as such a dedicated Purge Port is not required nor necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk. As indicated in the table above, the Exchange proposes to assess a monthly charge of $850 per Purge Port. The Exchange notes that the proposed fee is in line with the fee assessed by other exchanges, including its Affiliated Exchanges, for Purge Ports.[20]

Multicast PITCH/Top Spin Server and GRP Ports: In connection with the migration, the Exchange will also offer optional Multicast PITCH/Top Spin Server (''Spin'') and GRP ports and proposes to assess $750 per month, per port. Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH/Top data feeds. The Exchange's Multicast PITCH/Top data feeds are available from two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the ''B feed'' and the ''D feed.'' All secondary feed Spin and GRP Ports will be provided for redundancy at no additional cost. The Exchange notes a dedicated Spin and GRP Port is not required nor necessary. Rather, Spin ports enable a market participant to receive a snapshot of the current book quickly in the middle of the trading session without worry of gap request limits and GRP Ports were specially developed to request and receive retransmission of data in the event of missed or dropped message. The Exchange notes that the proposed fee is

[14] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[15] The Exchange notes that while technically there is no bandwidth limit per BOE Bulk Port, there may be possible performance degradation at 15,000 messages per second (which is the equivalent of 225,000 quotes/orders per 3 seconds). As such, the Exchange uses the number at which performance may be degraded for purposes of comparison.

[16] *See* Cboe Options Rule 1.1.

[17] Each Login ID has a bandwidth limit of 80,000 quotes per 3 seconds. However, in order to place such bandwidth onto a single Login ID, a TPH or non-TPH would need to purchase a minimum of 15 Market-Maker Permits or Bandwidth Packets (each Market-Maker Permit and Bandwidth Packet provides 5,000 quotes/3 sec). For purposes of comparing ''quote'' bandwidth, the provided example assumes only 1 Market-Maker Permit or Bandwidth Packet has been purchased.

[18] For October 2019, average daily order quantities used to determine incremental usage will be determined based on the number of trading days between October 7th and October 31st.

[19] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[20] *See e.g.,* Nasdaq ISE Options Pricing Schedule, Section 7(C), Ports and Other Services. *See also* Cboe EDGX Options Exchange Fee Schedule, Options Logical Port Fees; Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees and Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

in line with the fee assessed for the same ports on BZX Options.[21]

Access Credits

The Exchange next proposes to amend its Affiliate Volume Program (''AVP'') to provide Market-Makers an opportunity to obtain credits on their monthly BOE Bulk Port Fees.[22] By way of background, under AVP, if a TPH Affiliate[23] or Appointed OFP[24] of a Market-Maker qualifies under the Volume Incentive Program (''VIP''), that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider (''LP'') Sliding Scale transaction fees and Trading Permit fees. The Exchange proposes to amend AVP to provide that qualifying Market-Makers will receive a discount on Bulk Port fees (instead of Trading Permits). As discussed more fully below, the Exchange is amending its Trading Permit structure, such that off-floor Market-Makers no longer need to hold more than one Market-Maker Trading Permit. As such, in place of credits for Trading Permits, the Exchange will provide credits for BOE Bulk Ports.[25] The proposed credits are as follows:

Market Maker Affiliate Access Credit	VIP tier	% Credit on monthly BOE bulk port fees
Credit Tier	1	0
	2	0
	3	0
	4	15
	5	25

The Exchange believes the proposed change to AVP continues to allow the Exchange to provide TPHs that have both Market-Maker and agency operations reduced Market-Maker costs via the credits, albeit credits on BOE Bulk Port fees instead of Trading Permit fees.

In addition to the opportunity to receive credits via AVP, the Exchange proposes to provide an opportunity for Market-Makers to obtain credits on their monthly BOE Bulk Port fees based on the previous month's make rate percentage. By way of background, the Liquidity Provider Sliding Scale Adjustment Table provides that Taker fees be applied to electronic ''Taker'' volume and a Maker rebate be applied to electronic ''Maker'' volume, in addition to the transaction fees assessed under the Liquidity Provider Sliding Scale.[26] The amount of the Taker fee (or Maker rebate) is determined by the Liquidity Provider's percentage of volume from the previous month that was Maker (''Make Rate'').[27] Market-Makers are given a Performance Tier based on their Make Rate percentage which currently provides adjustments to transaction fees. Thus, the program is designed to attract liquidity from traditional Market-Makers. The Exchange proposes to additionally provide that the Performance Tier earned will determine the percentage credit applied to a Market-Maker's monthly BOE Bulk Port fees.

Market maker access credit	Liquidity provider sliding scale adjustment performance tier	Make rate (% based on prior month)	% Credit on monthly BOE bulk port fees
Credit Tier	1	0–50	0
	2	Above 50–60	0
	3	Above 60–75	0
	4	Above 75–90	40
	5	Above 90%	40

The Exchange believes the proposal mitigates costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). The Exchange lastly notes that both the Market-Maker Affiliate Access Credit and Market-Maker Access Credit both can be earned by a TPH, and these credits will each apply to the total monthly BOE Bulk Port Fees including any incremental BOE Bulk Port fees

[21] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[22] As noted above, while BOE Bulk Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market Makers or firms that conduct similar business activity.

[23] For purposes of AVP, ''Affiliate'' is defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

[24] *See* Cboe Options Fees Schedule Footnote 23. Particularly, a Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP.

[25] The Exchange notes that Trading Permits currently each include a set bandwidth allowance and 3 logins. Current logins and bandwidth are akin to the proposed logical ports, including BOE Bulk Ports which will primarily be used by Market-Makers.

[26] *See* Cboe Options Exchange Fees Schedule, Liquidity Provider Sliding Scale Adjustment Table.

[27] More specifically, the Make Rate is derived from a Liquidity Provider's electronic volume the previous month in all symbols excluding Underlying Symbol List A using the following formula: (i) The Liquidity Provider's total electronic automatic execution (''auto-ex'') volume (*i.e.,* volume resulting from that Liquidity Provider's resting quotes or single sided quotes/orders that were executed by an incoming order or quote), divided by (ii) the Liquidity Provider's total auto-ex volume (*i.e.,* volume that resulted from the Liquidity Provider's resting quotes/orders and volume that resulted from that LP's quotes/orders that removed liquidity). For example, a TPH's electronic Make volume in September 2019 is 2,500,000 contracts and its total electronic auto-ex volume is 3,000,000 contracts, resulting in a Make Rate of 83% (Performance Tier 4). As such, the TPH would receive a 40% credit on its monthly Bulk Port fees for the month of October 2019. For the month of October 2019, the Exchange will be billing certain incentive programs separately, including the Liquidity Provider Sliding Scale Adjustment Table, for the periods of October 1–October 4 and October 7–October 31 in light of the migration of its billing system. As such, a Market-Maker's Performance Tier for November 2019 will be determined by the Market-Maker's percentage of volume that was Maker from the period of October 7–October 31, 2019.

incurred, before any credits/adjustments have been applied (*i.e.* an electronic MM can earn a credit from 15% to 65%).

Bandwidth Packets

As described above, post-migration, the Exchange will utilize a variety of logical ports. Part of this functionality is similar to bandwidth packets currently available on the Exchange. Bandwidth packets restrict the maximum number of orders and quotes per second. Post-migration, market participants may similarly have multiple Logical Ports and/or BOE Bulk Ports as they may have bandwidth packets to accommodate their order and quote entry needs. As such, the Exchange proposes to eliminate all of the current Bandwidth Packet fees, effective October 1, 2019.[28] The Exchange believes that the proposed pricing implications of going beyond specified bandwidth described above in the logical connectivity fees section will be able to otherwise mitigate message traffic as necessary.

CAS Servers

By way of background, in order to connect to Cboe Command, which allows a TPH to trade on the Cboe Options System, a TPH must connect via either a CMI or FIX interface (depending on the configuration of the TPH's own systems). For TPHs that connect via a CMI interface, they must use CMI CAS Servers. In order to ensure that a CAS Server is not overburdened by quoting activity for Market-Makers, the Exchange currently allots each Market-Maker a certain number of CASs (in addition to the shared backups) based on the amount of quoting bandwidth that they have. Post-migration, the Exchange will no longer use CAS Servers. In light of the upcoming elimination of CAS Servers, the Exchange proposes to eliminate the CAS Server allotment table and extra CAS Server fee, effective October 1, 2019.

Trading Permit Fees

By way of background, the Exchange may issue different types of Trading Permits and determine the fees for those Trading Permits.[29] The Exchange currently issues the following three types of Trading Permits: (1) Market-Maker Trading Permits, which are assessed a monthly fee of $5,000 per permit; (2) Floor Broker Trading Permits, which are assessed a monthly fee of $9,000 per permit; and (3) Electronic Access Permits (''EAPs''), which are assessed a monthly fee of $1,600 per. The Exchange also offers separate Market-Maker and Electronic Access Permit for the Global Trading Hours (''GTH'') session, which are assessed a monthly fee of $1,000 per permit and $500 per permit respectively.[30] For further color, a Market-Maker Trading Permit currently entitles the holder to act as a Market-Maker, including a Market-Maker trading remotely, DPM, eDPM, or LMM, and also provides an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins, trading floor access and TPH status.[31] A Floor Broker Trading Permit entitles the holder to act as a Floor Broker, provides an order entry bandwidth allowance, up to 3 logins, trading floor access and TPH status.[32] Lastly, an EAP entitles the holder to electronic access to the Exchange. Holders of EAPs must be broker-dealers registered with the Exchange in one or more of the following capacities: (a) Clearing TPH, (b) TPH organization approved to transact business with the public, (c) Proprietary TPHs and (d) order service firms. The permit does not provide access to the trading floor. An EAP also provides an order entry bandwidth allowance, up to 3 logins and TPH status.[33] The Exchange also provides an opportunity for TPHs to pay reduced rates for Trading Permits via the Market Maker and Floor Broker Trading Permit Sliding Scale Programs (''TP Sliding Scales''). Particularly, the TP Sliding Scales allow Market-Makers and Floor Brokers to pay reduced rates for their Trading Permits if they commit in advance to a specific tier that includes a minimum number of eligible Market-Maker and Floor Broker Trading Permits, respectively, for each calendar year.[34]

As noted above, Trading Permits are currently tied to bandwidth allocation, logins and appointment costs, and as such, TPH organizations may hold multiple Trading Permits of the same type in order to meet their connectivity and appointment cost needs. Post-Migration, bandwidth allocation, logins and appointment costs will no longer be tied to a Trading Permit, and as such, the Exchange proposes to modify its Trading Permit structure. Particularly, effective October 7, 2019, the Exchange will adopt separate on-floor and off-floor Trading Permits for Market-Makers and Floor Brokers, adopt a new Clearing TPH Permit, and modify the corresponding fees and discounts. As is the case today, the proposed access fees discussed below will continue to be non-refundable and will be assessed through the integrated billing system during the first week of the following month. If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Membership Services Department by 4 p.m. CT on the second-to-last business day of the prior month to cancel the Trading Permit effective at or prior to the end of the applicable month. Trading Permit Holders will only be assessed a single monthly fee for each type of electronic Trading Permit it holds. All Trading Permits will be assessed the full proposed monthly rates, as described below, based on the quantity of Trading Permits a TPH maintains from October 7–October 31, 2019.[35]

First, as proposed, TPHs will no longer need to hold multiple permits for each type of electronic Trading Permit (*i.e.,* electronic Market-Maker Trading Permits and/or and Electronic Access Permits). Rather, the Exchange proposes to provide that for electronic access to the Exchange, a TPH need only purchase one of the following permit types for each trading function the TPH intends to perform: Market-Maker Electronic Access Permit (''MM EAP'') in order to act as an off-floor Market-Maker and which will continue to be assessed a monthly fee of $5,000, Electronic Access Permit (''EAP'') in order to submit orders electronically to the Exchange[36] and which will be assessed a monthly fee of $3,000, and a Clearing TPH Permit, for TPHs acting solely as a Clearing TPH, which will be assessed a monthly fee of $2,000 (and is more fully described below). For example, a TPH organization that wishes to act as a Market-Maker and

[28] *See* Cboe Options Fees Schedule, Bandwidth Packet Fees.

[29] *See* Cboe Options Rules 3.1(a)(iv)–(v).

[30] The fees are currently waived through September 2019 for the first Market-Maker and Electronic Access GTH Trading Permits.

[31] *See* Cboe Options Fees Schedule.

[32] Id.

[33] Id.

[34] Due to the October 7 migration, the amended the TP Sliding Scale Programs to provide that any commitment to Trading Permits under the TP Sliding Scales shall be in place through September 2019, instead of the calendar year. *See* Cboe Options Fees Schedule, Footnotes 24 and 25.

[35] The Exchange proposes to eliminate the current Trading Permit fees, effective October 1, 2019 and for the month of October 2019 will instead assess the full proposed rates for the Trading Permits held by a TPH from October 7, 2019–October 31, 2019.

[36] EAPs may be purchased by TPHs that both clear transactions for other TPHs (*i.e.,* a ''Clearing TPH'') and submit orders electronically.

also submit orders electronically in a non-Market Maker capacity would have to purchase one MM EAP and one EAP. TPHs will be assessed the monthly fee for each type of Permit once per electronic access capacity.

Next, the Exchange proposes to adopt a new Trading Permit, exclusively for Clearing TPHs that are approved to act solely as a Clearing TPH (as opposed to those that are also approved in a capacity that allows them to submit orders electronically). Currently any TPH that is registered to act as a Clearing TPH must purchase an EAP, whether or not that Clearing TPH acts solely as a Clearing TPH or acts as a Clearing TPH and submits orders electronically. The Exchange proposes to adopt a new Trading Permit, for any TPH that is registered to act solely as Clearing TPH at a discounted rate of $2,000 per month.[37]

Additionally, the Exchange proposes to eliminate its fees for Global Trading Hours Trading Permits. Particularly, the Exchange proposes to provide that any Market-Maker EAP, EAP and Clearing TPH Permit provides access (at no additional cost) to the GTH session.[38] Additionally, the Exchange proposes to amend Footnote 37 of the Fees Schedule regarding GTH in connection with the migration. Currently Footnote 37 provides that separate access permits and connectivity is needed for the GTH session. The Exchange proposes to eliminate this language as that will no longer be the case upon migration (*i.e.,* an electronic Trading Permits will grant access to both sessions and physical and logical ports may be used in both sessions, eliminating the need to purchase separate connectivity). The Exchange also notes that upon migration, the Book used during Regular Trading Hours (''RTH'') will be the same Book used during GTH (as compared to today where the Exchange maintains separate Books for each session). The Exchange therefore also proposes to eliminate language in Footnote 37 stating that GTH is a segregated trading session and that there is no market interaction between the two sessions.

The Exchange next proposes to adopt MM EAP Appointment fees. By way of background, a registered Market-Maker may currently create a Virtual Trading Crowd (''VTC'') Appointment, which confers the right to quote electronically in an appropriate number of classes selected from ''tiers'' that have been structured according to trading volume statistics, except for the AA tier.[39] Each Trading Permit currently held by a Market-Maker has an appointment credit of 1.0. A Market-Maker may select for each Trading Permit the Market-Maker holds any combination of classes whose aggregate appointment cost does not exceed 1.0. A Market-Maker may not hold a combination of appointments whose aggregate appointment cost is greater than the number of Trading Permits that Market-Maker holds.[40]

As discussed, post-migration, bandwidth allocation, logins and appointment costs will no longer be tied to a single Trading Permit and therefore the Exchange is proposing to provide that TPHs no longer need to have multiple permits for each type of electronic Trading Permit. As proposed however, upon migration, Market-Makers must still select class appointments in the classes they seek to make markets electronically.[41] Particularly, a Market-Maker firm will only be required to have one permit and will thereafter be charged for one or more ''Appointment Units'' (which will scale from 1 ''unit'' to more than 5 ''units''), depending on which classes they elect appointments in. Appointment Units will replace the standard 1.0 appointment cost, but function in the same manner. Appointment weights (formerly known as ''appointment costs'') for each appointed class will be set forth in proposed Cboe Options Rule 5.50(g) and will be summed for each Market-Maker in order to determine the total appointment units, to which fees will be assessed. This is the current manner in which the tier costs per class appointment are summed to meet the 1.0 appointment cost, the only difference will be that if a Market-Maker exceeds this ''unit'' then their fees will be assessed under the ''unit'' that corresponds to the total of their appointment weights, as opposed to holding another Trading Permit because it exceeded the 1.0 ''unit''. Particularly, the Exchange proposes to adopt a new MM EAP Appointment Sliding Scale. Appointment Units for each assigned class will be aggregated for each Market-Maker and Market-Maker affiliate. If the sum of appointments is a fractional amount, the total will be rounded up to the next highest whole Appointment Unit. The following lists the progressive monthly fees for Appointment Units:[42]

Market-maker EAP appointments	Quantity	Monthly fees (per unit)
Appointment Units	1	$0
	2	6,000
	3 to 5	4,000
	>5	3,100

As noted above, upon migration the Exchange will have separate Trading Permits for on-floor and off-floor activity. As such, the Exchange proposes to maintain a Floor Broker Trading Permit and adopt a new Market-Maker Floor Permit for on-floor Market-Makers. In addition, RUT, SPX, and VIX Tier Appointment fees will be charged separately for Permit, as discussed more fully below.

As briefly described above, the Exchange currently maintains TP Sliding Scales, which allow Market-Makers and Floor Brokers to pay reduced rates for their Trading Permits if they commit in advance to a specific

[37] Cboe Option Rules provides the Exchange authority to issue different types of Trading Permits which allows holders, among other things, to act in one or more trading functions authorized by the Rules. *See* Cboe Options Rule 3.1(a)(iv). The Exchange notes that currently 4 out of 38 Clearing TPHs are approved to act solely as a Clearing TPH.

[38] The Exchange notes that Clearing TPHs must be properly authorized by the Options Clearing Corporation (''OCC'') to operate during the Global Trading Hours session and all TPHs must have a Letter of Guarantee to participate in the GTH session (as is the case today).

[39] *See* proposed Cboe Options Rule 5.50 (Appointment of Market-Makers), which rule will be effective October 7, 2019.

[40] For example, if a Market-Maker selects a combination of appointments that has an aggregate appointment cost of 2.5, that Market-Maker must hold at least 3 Market-Maker Trading Permits.

[41] *See* Proposed Cboe Options Rule 5.50(a), which rule will be effective October 7, 2019.

[42] For example, if a Market-Maker's total appointment costs amount to 3.5 unites, the Market-Maker will be assessed a total monthly fee of $14,000 (1 appointment unit at $0, 1 appointment unit at $6,000 and 2 appointment units at $4,000) as and for appointment fees and $5,000 for a Market-Maker Trading Permit, for a total monthly sum of $19,000, where a Market-Maker currently (*i.e.,* prior to migration) with a total appointment cost of 3.5 would need to hold 4 Trading Permits and would therefore be assessed a monthly fee of $20,000.

tier that includes a minimum number of eligible Market-Maker and Floor Broker Trading Permits, respectively, for each calendar year. The Exchange proposes to eliminate the current TP Sliding Scales, including the requirement to commit to a specific tier, and replace it with new TP Sliding Scales as follows: [43]

Floor TPH permits	Current permit qty	Current monthly fee (per permit)	Proposed permit qty	Proposed monthly fee (per permit)
Market-Maker Floor Permit	1–10	$5,000	1	$6,000
	11–20	3,700	2 to 5	4,500
	21 or more	1,800	6 to 10	3,500
			>10	2,000
Floor Broker Permit	1	9,000	1	7,500
	2–5	5,000	2 to 3	5,700
	6 or more	3,000	4 to 5	4,500
			>5	3,200

Floor Broker ADV Discount

Footnote 25, which governs rebates on Floor Broker Trading Permits, currently provides that any Floor Broker that executes a certain average of customer or professional customer/voluntary customer (collectively ''customer'') open-outcry contracts per day over the course of a calendar month in all underlying symbols excluding Underlying Symbol List A (except RLG, RLV, RUI, and UKXM), DJX, XSP, and subcabinet trades (''Qualifying Symbols''), will receive a rebate on that TPH's Floor Broker Trading Permit Fees. Specifically, any Floor Broker Trading Permit Holder that executes an average of 15,000 customer (''C'' origin code) and/or professional customer and voluntary customer (''W'' origin code) open-outcry contracts per day over the course of a calendar month in Qualifying Symbols will receive a rebate of $9,000 on that TPH's Floor Broker Trading Permit fees. Additionally, any Floor Broker that executes an average of 25,000 customer open-outcry contracts per day over the course of a calendar month in Qualifying Symbols will receive a rebate of $14,000 on that TPH's Floor Broker Trading Permit fees. The Exchange proposes to maintain, but modify, its discount for Floor Broker Trading Permit fees. First, the measurement criteria to qualify for a rebate will be modified to only include customer (''C'' origin code) open-outcry contracts executed per day over the course of a calendar month in all underlying symbols, while the rebate amount will be modified to be a percentage of the TPH's Floor Broker Permit total costs, instead of a straight rebate.[44] The criteria and corresponding percentage rebates are noted below.[45]

Floor broker ADV discount tier	ADV	Floor broker permit rebate (percent)
1	0 to 99,999	0
2	100,000 to 174,999	15
3	>174,999	25

Next, the Exchange proposes to modify its SPX, VIX and RUT Tier Appointment Fees. Currently, these fees are assessed to any Market-Maker TPH that either (i) has the respective SPX, VIX or RUT appointment at any time during a calendar month and trades a specified number of contracts or (ii) trades a specified number of contracts in open outcry during a calendar month. More specifically, the $3,000 per month SPX Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an SPX Tier Appointment at any time during a calendar month and trades at least 100 SPX contracts while that appointment is active or (ii) conducts any open outcry transaction in SPX or SPX Weeklys at any time during the month. The $2,000 per month VIX Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an SPX Tier Appointment at any time during a calendar month and trades at least 100 VIX contracts while that appointment is active or (ii) conducts at least 1000 open outcry transaction in VIX at any time during the month. Lastly, the $1,000 RUT Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an RUT Tier Appointment at any time during a calendar month and trades at least 100 RUT contracts while that appointment is active or (ii) conducts at least 1000 open outcry transaction in RUT at any time during the month. Because the Exchange is separating Market-Making Trading Permits for electronic and open-outcry market-making, the Exchange will be assessing separate Tier Appointment Fees for each type of Market-Making Trading Permit. The Exchange proposes, effective October 1, 2019, a MM EAP will be assessed the Tier Appointment Fee whenever the Market-Maker executes the corresponding specified number of contracts. The Exchange also proposes to modify the threshold number of contracts a Market-Maker must execute in a month to trigger the fee for VIX and RUT. Particularly, for the VIX and RUT Tier appointments, the Exchange proposes to increase the threshold from 100 contracts a month to 1,000 contracts a month. The Exchange notes the Tier Appointment Fee amounts are not changing.[46] In connection with the

[43] In light of the proposed change to eliminate the TP Sliding Scale, the Exchange proposes to eliminate Footnote 24 in its entirety.

[44] As is the case today, the Floor Broker ADV Discount will be available for all Floor Broker Trading Permits held by affiliated Trading Permit Holders and TPH organizations.

[45] In light of the proposal to eliminate the TP Sliding Scales and the Floor Broker rebates currently set forth under Footnote 25, the Exchange proposes to eliminate Footnote 25 in its entirety.

[46] Floor Broker Trading Surcharges for SPX/SPXW and VIX are also not changing. The Exchange however, is creating a new table for Floor Broker Trading Surcharges and relocating such fees in the Fees Schedule in connection with the proposal to eliminate fees currently set forth in the ''Trading Permit and Tier Appointment Fees'' Table.

proposed changes, the Exchange proposes to relocate the Tier Appointment Fees to a new table and eliminate the language in the current respective notes sections of each Tier Appointment Fee as it is no longer necessary.

Trading Permit Holder Regulatory Fee

The Exchange currently assesses a Trading Permit Holder Regulatory Fee of $90 per month, per RTH Trading Permit, applicable to all TPHs, which fee helps more closely cover the costs of regulating all TPHs and performing regulatory responsibilities. In light of the proposed changes to the Exchange's Trading Permit structure, the Exchange proposes to eliminate the TPH Regulatory Fee. The Exchange notes that there is no regulatory requirement to maintain this fee.

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.[47] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[48] 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 Section 6(b)(4) of the Act,[49] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[50] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. There is also no regulatory requirement that any market participant connect to any one options exchange, or that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. Even the number of members between the Exchange and its 3 other options exchange affiliates vary. Indeed, a number of firms currently do not participate on the Exchange, or participate on the Exchange though sponsored access arrangements rather than by becoming a member. Particularly, the Exchange notes that as of August 2019, the Exchange had 97 members (TPH organizations), of which only 45 directly connected to the Exchange. In addition, of those market participants that do connect to the Exchange, it is the individual needs of each market participant that determine the amount and type of Trading Permits and physical and logical connections to the Exchange.[51]

Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.''[52] The number of available exchanges to connect to ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees for access to its market. Additionally, the Exchange notes that non-TPHs such as Service Bureaus and Extranets resell Cboe Options connectivity.[53] This indirect connectivity is another viable alternative that is already being used by non-TPHs, further constraining the price that the Exchange is able to charge for connectivity to its Exchange. Accordingly, in the event that a market participant views one exchange's direct connectivity and access fees as more or less attractive than the competition they can choose to connect to that exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 15 options markets. Moreover, the Commission has recognized that while some exchanges may have a unique business model that is not currently offered by competitors, it believes a competitor could create similar business models if demand were adequate, and if they did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[54] The proposed fees therefore reflect a competitive environment, as the Exchange seeks to amend its access fees in connection with the upcoming migration of its technology platform, while still attracting market participants to continue to be, or become, connected to the Exchange.

In determining the proposed fee changes discussed above, the Exchange reviewed the current competitive landscape, considered the fees historically paid by market participants for connectivity to the current system, and also assessed the impact on market participants to ensure that the proposed fees would not create a financial burden and have an undue impact on any market participants, including smaller market participants. The proposed connectivity structure and corresponding fees, like the current connectivity structure and fees, provide market participants flexibility with respect to how to connect to the Exchange based on each market participants' respective business needs. For example, the amount and type of physical and logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the proposed connectivity

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78f(b)(4).

[50] 15 U.S.C. 78f(b)(5).

[51] To assist market participants that are connected or considering connecting to the Exchange, the Exchange provides detailed information and specifications about its available connectivity alternatives in the Cboe C1 Options Exchange Connectivity Manual, as well as the various technical specifications. *See http://markets.cboe.com/us/options/support/technical/.*

[52] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[53] Currently, there are 13 firms that resell Cboe Options connectivity. Post-migration, the Exchange anticipates that there will be 19 firms that resell Cboe Options connectivity (both physical and logical). The Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.

[54] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

structure is designed to encourage market participants to be efficient with their physical and logical port usage. While the Exchange has no way of predicting with certainty the amount or type of connections market participants will in fact purchase, if any, the Exchange anticipates that like today, some market participants will continue to decline to connect and participate on the Exchange, some will participate on the Exchange via indirect connectivity, some will only purchase one physical connection and/or logical port connection, and others will purchase multiple connections. The Exchange lastly notes that market participants were provided advanced notice of the proposed fee changes in August 2019 via Exchange Notice.[55]

Physical Ports

The Exchange believes increasing the fee for the new 10 Gb Physical Port is reasonable because unlike, the current 10 Gb Network Access Ports, the new Physical Ports provides a connection through a latency equalized infrastructure and also allows access to both unicast order entry and multicast market data with a single physical connection. As discussed above, legacy Network Access Ports do not permit market participants to receive unicast and multicast connectivity. As such, in order to receive both connectivity types, a market participant currently needs to purchase and maintain at least two 10 Gb Network Access Ports. The proposed Physical Ports not only provide a latency reduction as compared to the legacy ports, improving trading performance, but also alleviate the need to pay for two physical ports as a result of needing unicast and multicast connectivity. Accordingly, market participants who historically had to use two separate ports for each of multicast and unicast activity, will be able to purchase only one port, and consequently pay lower fees overall. For example, if a TPH has two 10 Gb legacy Network Access Ports, one of which receives unicast traffic and the other of which receives multicast traffic, that TPH is currently assessed $10,000 per month ($5,000 per port). Using the new Physical Ports, that TPH has the option of utilizing one single port, instead of two ports, to receive both unicast and multicast traffic, therefore paying only $7,000 per month for a port that provides both connectivity types. The Exchange notes that currently, approximately 50% of TPHs maintain two or more 10 Gb Network Access Ports. While the Exchange has no way of predicting with certainty the amount or type of connections market participants will in fact purchase post-migration, the Exchange anticipates approximately 50% of the TPHs with two or more 10 Gb Network Access Ports to reduce the number of 10 Gb Physical Ports that they purchase. The Exchange also expects the remaining 50% of TPHs to maintain their current 10 Gb Physical Ports, but reduce the number of 1 Gb Physical Ports. Particularly, a number of TPHs currently maintain two 10 Gb Network Access Ports to receive multicast data and two 1 Gb Network Access Ports for order entry (unicast connectivity). As the new 10 Gb Physical Ports are able to accommodate unicast connectivity (order entry), TPHs may choose to eliminate their 1 Gb Network Access Ports and utilize the new 10 Gb Physical Ports for both multicast and unicast connectivity.

As discussed above, if a TPH deems a particular exchange as charging excessive fees for connectivity, such market participants may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for physical connectivity. The Exchange also notes that the proposal represents an equitable allocation of reasonable dues, fees and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. The proposed amounts are in line with, and in some cases lower than, the costs of physical connectivity at other Exchanges,[56] including the Exchange's Affiliated Exchanges which will have the same connectivity infrastructure once the Exchange has migrated.[57] The Exchange believes the proposed Physical Port fees are equitable and not unreasonably discriminatory as the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants.

The Exchange also believes increasing the fee for 10 Gb Physical Ports and charging a higher fee as compared to the 1 Gb Physical Port is equitable as the 1 Gb Physical Port is 1/10th the size of the 10 Gb Physical Port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products). Thus the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb Physical Ports utilize the most bandwidth and therefore consume the most resources from the network. As such, the Exchange believes the proposed fees for the 1 and 10 Gb Physical Ports, respectively are reasonably and appropriately allocated.

Data Port Fees

The Exchange believes assessing the data port fee per data source, instead of per port, is reasonable because it may allow for market participants to maintain more ports at a lower cost and applies uniformly to all market participants. The Exchange believes the proposed increase is reasonable because, as noted above, market participants will likely still pay lower fees as a result of charging per data source and not per data port. Indeed, while the Exchange has no way of predicting with certainty the impact of the proposed changes, the Exchange anticipates approximately 76% of the 51 market participants who currently pay data port fees to pay lower fees upon implementation of the proposed change. The Exchange anticipates that 19% of TPHs who currently pay data port fees will pay a modest increase of only $500 per month. Additionally as discussed above, the Exchange's affiliate C2 has the same fee which is also assessed at the proposed rate and assessed by data source instead of per port. The proposed name change is also appropriate in light

[55] *See* Exchange Notice ''Cboe Options Exchange Access and Capacity Fee Schedule Changes Effective October 1, 2019 and November 1, 2019'' Reference ID C2019081900.

[56] *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[57] *See e.g.,* Affiliated Exchange Fee Schedules, Physical Connectivity Fees. For example, Cboe BZX, Cboe EDGX and C2 each charge a monthly fee of $2,500 for each 1Gb connection and $7,500 for each 10Gb connection.

of the Exchange's proposed changes and may alleviate potential confusion.

Logical Connectivity

Port Fees

The Exchange believes it's reasonable to eliminate certain fees associated with legacy options for connecting to the Exchange and to replace them with fees associated with new options for connecting to the Exchange that are similar to those offered at its Affiliated Exchanges. In particular, the Exchange believes it's reasonable to no longer assess fees for CMI and FIX Login IDs because the Login IDs will be retired and obsolete upon migration and because the Exchange is proposing to replace them with fees associated with the new logical connectivity options. The Exchange believes that it is reasonable to harmonize the Exchange's logical connectivity options and corresponding connectivity fees once the Exchange is on a common platform as its Affiliated Exchanges. Additionally, the Exchange notes the proposed fees are the same as, or in line with, the fees assessed on its Affiliated Exchanges for similar connectivity.[58] The proposed logical connectivity fees are also equitable and not unfairly discriminatory because the Exchange will apply the same fees to all market participants that use the same respective connectivity options.

The Exchange believes the proposed Logical Port fees are reasonable as it is the same fee for Drop Ports and the first five BOE/FIX Ports that is assessed for CMI and FIX Logins, which the Exchange is eliminating in lieu of logical ports. Additionally, while the proposed ports will be assessed the same monthly fees as current CMI/FIX Login IDs, the proposed logical ports provide for significantly more message traffic. Specifically, the proposed BOE/FIX Logical Ports will provide for 3 times the amount of quoting[59] capacity and approximately 165 times order entry capacity. Similarly, the Exchange believes the proposed BOE Bulk Port fees are reasonable because while the fees are higher than the current CMI and FIX Login Id fees and the proposed Logical Port fees, BOE Bulk Ports offer significantly more bandwidth capacity than both CMI and FIX Login Ids and Logical Ports. Particularly, a single BOE Bulk Port offers 45 times the amount of quoting bandwidth than CMI/FIX Login Ids[60] and 5 times the amount of quoting bandwidth than Logical Ports will offer. Additionally, the Exchange believes that its fees for logical connectivity are reasonable, equitable, and not unfairly discriminatory as they are designed to ensure that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. Although the Exchange charges a ''per port'' fee for logical connectivity, it notes that this fee is in effect a capacity fee as each FIX, BOE or BOE Bulk port used for order/quote entry supports a specified capacity (*i.e.,* messages per second) in the matching engine, and firms purchase additional logical ports when they require more capacity due to their business needs.

An obvious driver for a market participant's decision to purchase multiple ports will be their desire to send or receive additional levels of message traffic in some manner, either by increasing their total amount of message capacity available, or by segregating order flow for different trading desks and clients to avoid latency sensitive applications from competing for a single thread of resources. For example, a TPH may purchase one or more ports for its market making business based on the amount of message traffic needed to support that business, and then purchase separate ports for proprietary trading or customer facing businesses so that those businesses have their own distinct connection, allowing the firm to send multiple messages into the Exchange's trading system in parallel rather than sequentially. Some TPHs that provide direct market access to their customers may also choose to purchase separate ports for different clients as a service for latency sensitive customers that desire the lowest possible latency to improve trading performance. Thus, while a smaller TPH that demands more limited message traffic may connect through a service bureau or other service provider, or may choose to purchase one or two logical ports that are billed at a rate of $750 per month each, a larger market participant with a substantial and diversified U.S. options business may opt to purchase additional ports to support both the volume and types of activity that they conduct on the Exchange. While the Exchange has no way of predicting with certainty the amount or type of logical ports market participants will in fact purchase post-migration, the Exchange anticipates approximately 16% of TPHs to purchase one to two logical ports, and approximately 22% of TPHs to not purchase any logical ports. At the same time, market participants that desire more total capacity due to their business needs, or that wish to segregate order flow by purchasing separate capacity allocations to reduce latency or for other operational reasons, would be permitted to choose to purchase such additional capacity at the same marginal cost. The Exchange believes the proposal to assess an additional Logical and BOE Bulk port fee for incremental usage per logical port is reasonable because the proposed fees are modestly higher than the proposed Logical Port and BOE Bulk fees and encourage users to mitigate message traffic as necessary. The Exchange notes one of its Affiliated Exchanges has similar implied port fees.[61]

In sum, the Exchange believes that the proposed BOE/FIX Logical Port and BOE Bulk Port fees are appropriate as these fees would ensure that market participants continue to pay for the amount of capacity that they request, and the market participants that pay the most are the ones that demand the most resources from the Exchange. The Exchange also believes that its logical connectivity fees are aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.''[62]

The Exchange believes waiving the FIX/BOE Logical Port fee for one FIX Logical Port used to access PULSe and Silexx (for FLEX Trading) is reasonable because it will allow all TPHs using PULSe and Silexx to avoid having to pay a fee that they would otherwise have to pay. The waiver is equitable and not unfairly discriminatory because TPHs using PULSe are already subject to a monthly fee for the PULSe Workstation, which the Exchange views as inclusive of fees to access the Exchange. Moreover, while PULSe users today do not require a FIX/CMI Login Id, post-migration, due to changes to the connectivity infrastructure, PULSe users will be required to maintain a FIX Logical Port and as such incur a fee they previously would not have been subject to. Similarly, the Exchange believes that

[58] *See* Affiliated Exchange Fee Schedules, Logical Port Fees.

[59] Based on the purchase of a single Market-Maker Trading Permit or Bandwidth Packet.

[60] Based on the purchase of a single Market-Maker Trading Permit or Bandwidth Packet.

[61] *See e.g.,* Cboe C2 Options Exchange Fees Schedule, Logical Connectivity Fees.

[62] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

the waiver for Silexx (for FLEX trading) will encourage TPHs to transact business using FLEX Options using the new Silexx System and encourage trading of FLEX Options. Additionally, the Exchange notes that it currently waives the Login Id fees for Login IDs used to access the CFLEX system.

The Exchange believes its proposed fee for Purge Ports is reasonable as it is also in line with the amount assessed for similar ports by both its Affiliated Exchanges and other exchanges.[63] Moreover, the Exchange believes that offering Purge Port functionality at the Exchange level promotes robust risk management across the industry, and thereby facilitates investor protection. Some market participants, and, in particular, larger firms, could build similar risk functionality on their trading systems that permit the flexible cancellation of orders entered on the Exchange. Offering Exchange level protections however, ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality. The Exchange operates in a highly competitive market in which exchanges offer connectivity and related services as a means to facilitate the trading activities of TPHs and other participants. As the proposed Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all TPHs that choose to use dedicated Purge Ports. The proposed Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no TPH is required or under any regulatory obligation to utilize them. The Exchange believes that adopting separate fees for these ports ensures that the associated costs are borne exclusively by TPHs that determine to use them based on their business needs, including Market-Makers or similarly situated market participants. Similar to Purge Ports, Spin and GRP Ports are optional products that provide an alternative means for market participants to receive multicast data and request and receive a retransmission of such data. As such excessive fees would simply serve to reduce demand for these products, which TPHs are under no regulatory obligation to utilize. All TPHs that voluntarily select these service options (*i.e.,* Purge Ports, Spin Ports or GRP Ports) will be charged the same amount for the same respective services. All TPHs have the option to select any connectivity option, and there is no differentiation among TPHs with regard to the fees charged for the services offered by the Exchange.

Access Credits

The Exchange believes the proposal to adopt credits for BOE Bulk Ports is reasonable, equitable and not unfairly discriminatory because it provides an opportunity for TPHs to pay lower fees for logical connectivity. The Exchange notes that the proposed credits are in lieu of the current credits that Market-Makers are eligible to receive today for Trading Permits fees. Although only Market-Makers may receive the proposed BOE Bulk Port credits, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have.

The Exchange believes the proposed BOE Bulk Port fee credits provided under AVP will incentivize the routing of orders to the Exchange by TPHs that have both Market-Maker and agency operations, as well as incent Market-Makers to tighten market widths due to the reduced costs the incentives will provide. In the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker operations. The Exchange is aware not only of the importance of providing credits on the order routing side in order to encourage the submission of orders, but also of the operations costs on the Market-Maker side. The Exchange believes the proposed change to AVP continues to allow the Exchange to provide relief to the Market-Maker side via the credits, albeit credits on BOE Bulk Port fees instead of Trading Permit fees. Additionally, the proposed credits may incentivize and attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the required criteria to receive the credits, the Exchange anticipates approximately two TPHs (out of approximately 5 TPHs that are eligible for AVP) to reach VIP Tiers 4 or 5 and consequently earn the BOE Bulk Port fee credits for their respective Market-Maker affiliate.

The Exchange believes the proposed BOE Bulk Port fee credits available for TPHs that reach certain Performance Tiers under the Liquidity Provider Sliding Scale Adjustment Table is reasonable as the credits provide for reduced connectivity costs for those Market-Makers that reach the required thresholds. The Exchange believe it's reasonable, equitable and not unfairly discriminatory to provide credits to those Market-Makers that primarily provide and post liquidity to the Exchange, as the Exchange wants to continue to encourage Market-Makers with significant Make Rates to continue to participate on the Exchange and add liquidity. Greater liquidity benefits all market participants by providing more trading opportunities and tighter spreads.

Moreover, the Exchange notes that Market-Makers with a high Make Rate percentage generally require higher amounts of capacity than other Market-Makers. Particularly, Market-Makers with high Make Rates are generally streaming significantly more quotes than those with lower Make Rates. As such, Market-Makers with high Make Rates may incur more costs than other Market-Makers as they may need to purchase multiple BOE Bulk Ports in order to accommodate their capacity needs. The Exchange believes the proposed credits for BOE Bulk Ports encourages Market-Makers to continue to provide liquidity for the Exchange, notwithstanding the costs incurred by purchasing multiple ports. Particularly, the proposal is intended to mitigate the costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). While the Exchange cannot predict with certain which Market-Makers will reach Performance Tiers 4 and 5 each month, based on historical performance it anticipates approximately 10 Market-Makers to achieve Tiers 4 or 5. Lastly, the Exchange notes that it is common practice among options exchanges to differentiate fees for adding liquidity and fees for removing liquidity.[64]

Bandwidth Packets and CMI CAS Server Fees

The Exchange believes it's reasonable to eliminate Bandwidth Packet fees and

[63] *See* Affiliated Exchange Fee Schedules, Logical Port Fees. *See also,* Nasdaq ISE Pricing Schedule, Section 7(C). ISE charges a fee of $1,100 per month for SQF Purge Ports.

[64] *See e.g.,* MIAX Options Fees Schedule, Section 1(a), Market Maker Transaction Fees.

the CMI CAS Server fee because TPHs will not pay fees for these connectivity options and because Bandwidth Packets and CAS Servers will be retired and obsolete upon the upcoming migration. The Exchange believes that even though it will be discontinuing Bandwidth Packets, the proposed incremental pricing for Logical Ports and BOE Bulk Ports will continue to encourage users to mitigate message traffic. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

Access Fees

The Exchange believes its proposed restructuring of its Trading Permits is reasonable in light of the changes to the Exchange's connectivity infrastructure in connection with the migration and the resulting separation of bandwidth allowance, logins and appointment costs from each Trading Permit. The Exchange also believes that it is reasonable to harmonize the Exchange's Trading Permit structure and corresponding connectivity options to more closely align with the structures offered at its Affiliated Exchanges once the Exchange is on a common platform as its Affiliated Exchanges.[65] The proposed Trading Permit structure and corresponding fees are also in line with the structure and fees provided by other exchanges. The proposed Trading Permit fees are also equitable and not unfairly discriminatory because the Exchange will apply the same fees to all market participants that use the same type and number of Trading Permits.

With respect to electronic Trading Permits, the Exchange notes that TPHs currently request multiple Trading Permits because of bandwidth, login or appointment cost needs. As described above, upon migration, bandwidth, logins and appointment costs will no longer be tied to Trading Permits or Bandwidth Packets and as such, the need to hold multiple permits and/or Bandwidth Packets will be obsolete. As such, the Exchange believes the proposed structure to require only one of each type of applicable electronic Trading Permit is appropriate. Moreover, the Exchange believes offering separate marketing making permits for off-floor and on-floor Market-Makers provides for a cleaner, more streamlined approach to trading permits and corresponding fees. Other exchanges similarly provide separate and distinct fees for Market-Makers that operate on-floor vs off-floor and their corresponding fees are similar to those proposed by the Exchange.[66]

The Exchange believes the proposed fee for its MM EAP Trading Permits is reasonable as it is the same fee it assess today for Market-Maker Trading Permits (*i.e.,* $5,000 per month per permit). Additionally, the proposed fee is in line with, and in some cases even lower than, the amounts assessed for similar access fees at other exchanges, including its affiliate C2.[67] The Exchange believes the proposed EAP fee is also reasonable, and in line with the fees assessed by other Exchanges for non-Market-Maker electronic access.[68] The Exchange notes that while the Trading Permit fee is increasing, TPHs overall cost to access the Exchange may be reduced in light of the fact that a TPH no longer must purchase multiple Trading Permits, Bandwidth Packets and Login Ids in order to receive sufficient bandwidth and logins to meet their respective business needs. To illustrate the value of the new connectivity infrastructure, the Exchange notes that the cost that would be incurred by a TPH today in order to receive the same amount of order capacity that will be provided by a single Logical Port post-migration (*i.e.,* 5,000 orders per second), is approximately 98% higher than the cost for the same capacity post-migration. The following examples further demonstrate potential cost savings/value added for an EAP holder with modest capacity needs and an EAP holder with larger capacity needs:

TPH THAT HOLDS 1 EAP, NO BANDWIDTH PACKETS AND 1 CMI LOGIN

	Current fee structure	Post-migration fee structure
EAP	$1,600	$3,000.
CMI Login/Logical Port	$750	$750.
Bandwidth Packets	0	N/A.
Total Bandwidth Available	30 orders/sec	5,000 orders/sec.
Total Cost	$2,350	$3,750.
Total Cost per message	$78.33/order/sec	$0.75/order/sec.

TPH THAT HOLDS 1 EAP, 4 BANDWIDTH PACKETS AND 15 CMI LOGINS

	Current fee structure	Post-migration fee structure
EAP	$1,600	$3,000.
CMI Login/Logical Port	$11,250 (15@750)	$750.
Bandwidth Packets	$6,400 (4@$1,600)	N/A.
Total Bandwidth Available	150 orders/sec	5,000 orders/sec.
Total Cost	$19,250	$3,750.
Total Cost per message	$128.33/order/sec	$0.75/order/sec.

[65] For example, the Exchange's affiliate, C2, similarly provides for Trading Permits that are not tied to connectivity, and similar physical and logical port options at similar pricings. *See* Cboe C2 Options Exchange Fees Schedule. Physical connectivity and logical connectivity are also not tied to any type of permits on the Exchange's other options exchange affiliates.

[66] *See e.g.,* PHLX Section 8A, Permit and Registration Fees. *See also,* BOX Options Fee Schedule, Section IX Participant Fees; NYSE American Options Fees Schedule, Section III(A) Monthly ATP Fees and NYSE Arca Options Fees and Charges, OTP Trading Participant Rights. For similar Trading Floor Permits for Floor Market Makers, Nasdaq PHLX charges $6,000; BOX charges up to $5,500 for 3 registered permits in addition to a $1,500 Participant Fee, NYSE Arca charges up to $6,000; and NYSE American charges up to $8,000.

[67] *See e.g.,* Cboe C2 Options Exchange Fees Schedule. *See also,* NYSE Arca Options Fees and Charges, General Options and Trading Permit (OTP) Fees, which assesses up to $6,000 per Market Maker OTP and NYSE American Options Fee Schedule, Section III. Monthly ATP Fees, which assess up to $8,000 per Market Maker ATP. *See also,* PHLX Section 8A, Permit and Registration Fees, which assesses up to $4,000 per Market Maker Permit.

[68] *See e.g.,* PHLX Section 8A, Permit and Registration Fees, which assesses up to $4,000 per Permit for all member and member organizations other than Floor Specialists and Market Makers.

The Exchange believes the proposal to adopt a new Clearing TPH Permit is reasonable because it offers TPHs that only clear transactions of TPHs a discount. Particularly, Clearing TPHs that also submit orders electronically to the Exchange would purchase the proposed EAP at $3,000 per permit. The Exchange believe it's reasonable to provide a discount to Clearing TPHs that only clear transactions and do not otherwise submit electronic orders to the Exchange. The Exchange notes that another exchange similarly charges a separate fee for clearing firms.[69]

The Exchange believes the proposed fee structure for on-floor Market-Makers is reasonable as the fees are in line with those offered at other Exchanges.[70] The Exchange believes that the proposed fee for MM Floor Permits as compared to MM EAPs is reasonable because it is only modestly higher than MM EAPs and Floor MMs don't have other costs that MM EAP holders have, such as MM EAP Appointment fees.

The Exchange believes its proposed fees for Floor Broker Permits are reasonable because the fees are similar to, and in some cases lower than, the fees the Exchange currently assesses for such permits. Specifically, 60% of TPHs that hold Floor Broker Trading Permits will be pay lower Trading Permit fees. Particularly, any Floor Broker holding ten or less Floor Broker Trading Permits will pay lower fees under the proposed tiers as compared to what they pay today. While the remaining 40% of TPHs holding Floor Broker Trading Permits (who each hold between 12–21 Floor Broker Trading Permits) will pay higher fees, the Exchange notes the monthly increase is de minimis, ranging from an increase of 0.6%—2.72%.[71]

The Exchange believes the proposed ADV Discount is reasonable because it provides an opportunity for Floor Brokers to pay lower FB Trading Permit fees, similar to the current rebate program offered to Floor Brokers. The Exchange notes that while the new ADV Discount program includes only customer volume (''C'' origin code) as compared to Customer and Professional Customer/Voluntary Professional, the amount of Professional Customer/Voluntary Professional volume was de minimis and the Exchange does not believe the absence of such volume will have a significant impact.[72] Additionally, the Exchange notes that while the ADV requirements under the proposed ADV Discount program are higher than are required under the current rebate program, the proposed ADV Discount counts volume from all products towards the thresholds as compared to the current rebate program which excludes volume from Underlying Symbol List A (except RLG, RLV, RUI, and UKXM), DJX, XSP, and subcabinet trades. Moreover, the ADV Discount is designed to encourage the execution of orders in all classes via open outcry, which may increase volume, which would benefit all market participants (including Floor Brokers who do not hit the ADV thresholds) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the ADV thresholds). The Exchange believes the proposed discounts are equitable and not unfairly discriminatory because all Floor Brokers are eligible. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the various thresholds under the ADV Discount, the Exchange anticipates approximately 3 Floor Brokers to receive a rebate under the program.

The Exchange believes its proposed MM EAP Appointment fees are reasonable in light of the Exchange's elimination of appointment costs tied to Trading Permits. Other exchanges also offer a similar structure with respect to fees for appointment classes.[73] Additionally, the proposed MM EAP Appointment fee structure results in approximately 36% electronic MMs paying lower fees for trading permit and appointment costs. For example, in order to have the ability to make electronic markets in every class on the Exchange, a Market-Maker would need 1 Market-Maker Trading Permit and 37 Appointment Units post-migration. Under, the current pricing structure, in order for a Market-Maker to quote the entire universe of available classes, a Market-Maker would need 33 Appointment Credits, thus necessitating 33 Market-Maker Trading Permits. With respect to fees for Trading Permits and Appointment Unit Fees, under the proposed pricing structure, the cost for a TPH wishing to quote the entire universe of available classes is approximately 29% less (if they are not eligible for the MM TP Sliding Scale) or approximately 2% less (if they are eligible for the MM TP Sliding Scale). To further demonstrate the potential cost savings/value added, the Exchange is providing the following examples comparing current Market-Maker connectivity and access fees to projected connectivity and access fees for different scenarios. The Exchange notes that the below examples not only compare Trading Permit and Appointment Unit costs, but also the cost incurred for logical connectivity and bandwidth. Particularly, the first example demonstrates the total minimum cost that would be incurred today in order for a Market-Maker to have the same amount of capacity as a Market-Maker post-migration that would have only 1 MM EAP and 1 Logical Port (*i.e.,* 15,000 quotes/3 sec). The Exchange is also providing examples that demonstrate the costs of (i) a Market-Maker with small capacity needs and appointment unit of 1.0 and (ii) a Market-Maker with large capacity needs and appointment cost/unit of 30.0:

MARKET-MAKER THAT NEEDS CAPACITY OF 15,000/QUOTES/3 SECONDS

	Current fee structure	Post-migration fee structure
MM Permit/MM EAP	$5,000	$5,000.
Appointment Unit Cost	N/A (1 appointment cost)	$0 (1 appointment unit).
CMI Login/Logical Port	$750[74]	$750.
Bandwidth Packets	$5,500 (2@$2,750)	N/A.
Total Bandwidth Available	15,000 quotes/3 sec	15,000 quotes/3 sec.
Total Cost	$11,250	$5,750.

[69] *See e.g.,* NYSE Arca Options Fees and Charges, General Options and Trading Permit (OTP) Fees and NYSE American Options Fee Schedule, Section III. Monthly ATP Fees.

[70] *See e.g.,* PHLX Section 8A, Permit and Registration Fees, which assesses $6,000 per permit for Floor Specialists and Market Makers.

[71] The Floor Brokers whose fees are increasing have each committed to a minimum number of permits and therefore currently receive the rates set forth in the current Floor Broker TP Sliding Scale.

[72] Furthermore, post-migration the Exchange will not have Voluntary Professionals.

[73] *See e.g.,* PHLX Section 8. Membership Fees, B, Streaming Quote Trader (''SQT'') Fees and C. Remote Market Maker Organization (RMO) Fee.

MARKET-MAKER THAT NEEDS CAPACITY OF 15,000/QUOTES/3 SECONDS—Continued

	Current fee structure	Post-migration fee structure
Total Cost per message allowed	$0.75/quote/3 sec	$0.38/quote/3 sec.

MARKET MAKER THAT NEEDS CAPACITY OF NO MORE THAN 5,000 QUOTES/3 SECS

	Current fee structure	Post-migration fee structure
MM Permit/MM EAP	$5,000	$5,000.
Appointment Unit Cost	N/A (1 appointment cost)	$0 (1 appointment unit).
CMI Login/Logical Port	$750	$750.
Bandwidth Packets	0	N/A.
Total Bandwidth Available	5,000 quotes/3 sec	15,000 quotes/3 sec.
Total Cost	$5,750	$5,750.
Total Cost per message allowed	$1.15/quote/3 sec	$0.38/quote/3 sec.

MARKET-MAKER THAT NEEDS 30 APPOINTMENT UNITS AND CAPACITY OF 300,000 QUOTES/3 SEC

	Current fee structure	Post-migration fee structure
MM Permits/MM EAP	$105,000 (30 MM Permits assumes eligible for MM TP Sliding Scale)[75].	$5,000.
Appointment Units Cost	N/A (30 appointment costs)	$95,500 (30 appointment units).
CMI Logins/BOE Bulk Port	$3,000 (4@$750)[76]	$3,000 (2 BOE Bulk@$1,500).
Bandwidth Packets	$82,500(30@$2750)	N/A.
Total Bandwidth Available	300,000 quotes/3 sec	*450,000 quotes/3 sec.
Total Cost	$190,500	$103,500.
Total Cost per message allowed	$0.63/quotes/3 sec	$0.23/quote/3 sec.

* possible performance degradation at 15,000 messages per second.

The Exchange believes its proposal to provide separate fees for Tier Appointments for MM EAPsand MM Floor Permits as the Exchange will be issuing separate Trading Permits for on-floor and off-floor market making as discussed above. The proposal to increase the electronic volume thresholds for VIX and RUT are reasonable as those that do not regularly trade VIX or RUT in open-outcry will continue to not be assessed the fee. In fact, any TPH that executes more than 100 contracts but less than 1,000 in the respective classes will no longer have to pay the proposed Tier Appointment fee. As noted above, the Exchange is not proposing to change the amounts assessed for each Tier Appointment Fee. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

Trading Permit Holder Regulatory Fee

The Exchange believes it's reasonable to eliminate the Trading Permit Holder Regulatory fee because TPHs will not pay this fee and because the Exchange is restructuring its Trading Permit structure. The Exchange notes that although it will less closely be covering the costs of regulating all TPHs and performing its regulatory responsibilities, it still has sufficient funds to do so. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

The Exchange believes corresponding changes to eliminate obsolete language in connection with the proposed changes described above and to relocate and reorganize its fees in connection with the proposed changes maintain clarity in the Fees Schedule and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

With respect to 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. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can buy the less expensive 1 Gb Physical Port and utilize only one Logical Port. Moreover, the pricing for 1 Gb Physical Ports and FIX/BOE Logical Ports are no different than are assessed today (*i.e.,* $1,500 and $750 per port, respectively), yet the capacity and access associated with each is greatly increasing. While pricing may be increased for larger capacity physical and logical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

[74] The maximum quoting bandwidth that may be applied to a single Login Id is 80,000 quotes/3 sec.

[75] For simplicity of the comparison, this assumes no appointments in SPX, VIX, RUT, XEO or OEX (which are not included in the TP Sliding Scale).

[76] Given the bandwidth limit per Login Id of 80,000 quotes/3 sec, example assumes Market-Maker purchases minimum amount of Login IDs to accommodate 300,000 quotes/3 sec.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed in the Statutory Basis section above, options market participants are not forced to connect to (or purchase market data from) all options exchanges, as shown by the number of TPHs at Cboe and shown by the fact that there are varying number of members across each of Cboe's Affiliated Exchanges. The Exchange operates in a highly competitive environment, and its ability to price access and connectivity is constrained by competition among exchanges and third parties. As discussed, there are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or taking the exchange's data indirectly. For example, there are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange or reseller to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is 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

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [77] and paragraph (f) of Rule 19b–4 [78] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–082 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–2019–082. 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–2019–082 and should be submitted on or before November 12,2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Jill M. Peterson,

Assistant Secretary.

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[77] 15 U.S.C. 78s(b)(3)(A).

[78] 17 CFR 240.19b–4(f).

[79] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87298; File No. SR–IEX–2019–11]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 11.280 To Extend the Pilot Period for the Market-Wide Circuit Breaker to the Close of Business on October 18, 2020 and To Clarify That the Remaining Parts of Rule 11.280 Are Not Subject to Any Pilot Period

October 15, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 11, 2019, the Investors Exchange LLC (''IEX'' or the ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend IEX Rule 11.280 to extend the pilot period for the market-wide circuit breaker to the close of business on October 18, 2020 and to clarify that the remaining parts of Rule 11.280 are not subject to any pilot period. IEX has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [6] and provided the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Paragraphs (a) through (d) and (f) of Rule 11.280 describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 11.280 was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan. The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.280 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10]

The purpose of this proposed rule change is to amend Rule 11.280(a) to extend the pilot period for the MWCB, set forth in paragraphs (a) through (d) and (f),[11] to the close of business on October 18, 2020. In addition, this proposed rule change will clarify that the remaining paragraphs of Rule 11.280 are not subject to any pilot period. This filing does not propose any substantive or additional changes to Rule 11.280. The Exchange will use the MWCB pilot extension period to develop with the other self-regulatory organizations (''SROs'') rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the SROs to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

MWCBs under Rule 11.280 provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when securities markets experience extreme broad-based declines. All SROs have rules relating to MWCBs, which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[12] MWCBs provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.280(a) through (d) and (f), a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: A 7% market decline (Level 1), a 13% market decline (Level 2), and a 20% market decline (Level 3). A market decline that triggers a Level 1 or Level 2 circuit breaker after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 circuit breaker, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

The Exchange also proposes to amend Rule 11.280(a) to clarify that the pilot period set forth in Rule 11.280(a) only applies to paragraphs (a) through (d) and (f) of Rule 11.280 (*i.e.,* the MWCB mechanism). Paragraph (e) of Rule 11.280, which relates to IEX's LULD Mechanism[13] was subject to the pilot period specified in paragraph (a) of Rule 11.280, as described above.[14] With the Commission's LULD Plan Amendment 18 Approval Order providing that the LULD Plan now operates on a permanent basis,[15] the Exchange is proposing to update Rule 11.280(a) to reflect that IEX's LULD Mechanism no longer operates on a pilot basis, thus ensuring continued compliance with the LULD Plan.

Similarly, the Exchange proposes to amend Rule 11.280(a) to clarify that paragraphs (g) and (h) of Rule 11.280 are not subject to any pilot period. Rule 11.280(g) provides the authority under which the Exchange can initiate a trading halt ''in circumstances in which IEX deems it necessary to protect investors and the public interest,'' and Rule 11.280(h) provides the procedures by which IEX can both initiate and terminate a trading halt. Neither of these paragraphs are related to either the MWCB or LULD Plans, but Rule 11.280(a) may inadvertently connote that these two paragraphs were subject to a pilot period. The proposed changes to paragraph (a) will clarify that the trading halt procedures contained in

[7] 17 CFR 240.19b–4.

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). An amendment to the LULD Plan adding IEX as a Participant was filed with the Commission on August 11, 2016, and became effective upon filing pursuant to Rule 608(b)(3)(iii) of the Act. *See* Securities Exchange Act Release No. 78703 (August 26, 2016), 81 FR 60397 (September 1, 2016) (File No. 4–631).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (''LULD Plan Amendment 18 Approval Order'').

[10] *See* Securities Exchange Act Release No. 85576 (April 9, 2019), 84 FR 15237 (April 15, 2019) (SR–IEX–2019–04).

[11] Rule 11.280(f) also relates to the MWCB because it specifies the time zone for all times referenced in Rule 11.280(a) and (b).

[12] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[13] The Exchange is required by the LULD Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the LULD and trading pause requirements specified in the LULD Plan. Rule 11.280(e) sets forth the Exchange's LULD mechanism, including provisions stating that the Exchange is a Participant in the LULD Plan and that IEX Members are required to comply with the provisions of the LULD Plan. Furthermore, Rule 11.280(e) describes order handling performed by the Exchange to maintain compliance with the LULD Plan. Specifically, Rule 11.280(e): (1) Provides that the System shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan; (2) describes how the System re-prices and/or cancels buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band; (3) confirms that the Exchange may declare a Trading Pause during a Straddle State; and (4) addresses how the Exchange would re-open a security following a Trading Pause.

[14] *See supra* note 10.

[15] *See supra* note 9.

paragraphs (g) and (h) of Rule 11.280 are not subject to a pilot period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Sections 6(b)[16] and 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The MWCB mechanism under Rule 11.280 is an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. equity markets while the Exchange, with the other SROs, considers and develops rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the SROs to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.280(a) through (d) and (f) should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

Additionally, the Exchange believes that it is consistent with the public interest and the protection of investors to modify the language in Rule 11.280(a) to indicate that the LULD Plan Amendment 18 Approval Order made permanent the Exchange's LULD Mechanism contained in paragraph (e) of Rule 11.280. Furthermore, the Exchange believes it is consistent with the public interest and the protection of investors to clarify that paragraphs (g) and (h) of Rule 11.280, which set forth the Exchange's authority and process for initiating and terminating trading halts, are not subject to any pilot period. These clarifying changes are designed to ensure continued compliance by the Exchange and its Members with the requirements of the LULD Plan and remove any ambiguity on the ongoing applicability of the trading halt provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change implicates any competitive issues because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, considers and develops rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. Furthermore, as noted above, the extension will permit the SROs to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

Further, IEX understands that the other SROs will file proposals to extend their rules regarding the MWCB pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

Additionally, clarifying that paragraph (e) of Rule 11.280 was made permanent by the LULD Plan Amendment 18 Approval Order is designed to ensure continued compliance with the requirements of the LULD Plan. And the Exchange believes that clarifying that the trading halt provisions of paragraphs (g) and (h) of Rule 11.280 are not subject to any pilot period, removes any ambiguity on the ongoing applicability of the trading halt provisions, which the Exchange believes would not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[22]

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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2019–11 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2019–11. This file number should be included in 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 Section, 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 will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2019–11 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87306; File No. SR–CboeBZX–2019–087]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Institute a Derived Data API Service

October 15, 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 October 1, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fee schedule to institute a Derived Data API Service. The text of the proposed rule change is attached as Exhibit 5 [sic].

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement a pricing structure that would reduce fees charged to Distributors that distribute Derived Data through an Application Programming Interface (''API'')—*i.e.,* the Derived Data API Service (the ''Program''). The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') based on customer demand, and in order to be able to decrease the cost of Derived Data to Distributors that wish to distribute Derived Data through an API Service.[3] The Initial Proposal was published in the **Federal Register** on August 20, 2019,[4] and the Commission received no commenter letters on the proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Suspension Order'').[5] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[6]

The Exchange continues to believe that it is in the best interest of its customers and investors to permit the distribution of Derived Data through an API Service at a lower cost, and is therefore filing again to reduce the fees charged to Distributors that offer an API Service. By reducing its pricing, the Exchange hopes to be able to better compete with top of book market data products offered by other national securities exchanges and the securities information processors (''SIPs''). For the reasons expressed both in this filing and the Initial Proposal, the Exchange believes that the Program is pro-competitive, and otherwise consistent with the Exchange Act. In sum, the Exchange remains committed to competing for business by offering both high quality and cost effective data. Continued operation of the Program

[3] An ''API Service'' is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

[4] *See* Securities Exchange Act Release No. 86671 (August 14, 2019), 84 FR 43237 (August 20, 2019) (SR–CboeBZX–2019–070).

[5] *See* Securities Exchange Act Release No. 87125 (September 26, 2019) (SR–CboeBZX–2019–070) (**Federal Register** publication pending).

[6] *Id.*

would ultimately support that goal, and indeed would foster additional competition in the market for U.S. equity market data.

Derived Data

''Derived Data'' is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. The Exchange currently offers a Derived Data White Label Service Program that allows Distributors to benefit from discounted fees when distributing Derived Data taken from BZX Top, which is a proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange.[7] The current program is limited to the distribution of Derived Data to subscribers within a White Label Service which is a type of hosted display solution in which a Distributor hosts, maintains, and controls a website or platform on behalf of a third-party entity.

When the Exchange filed to introduce the White Label Service Program, a number of Distributors contacted the Exchange to inquire about offering a similar program for API Services due to demand for such products from their end clients. The Derived Data API Service would supplement the current Derived Data White Label Service Program by offering discounted fees for Distributors that make Derived Data available through an API, thereby allowing Distributors to benefit from reduced fees when distributing Derived Data to subscribers that establish their own platforms rather than relying on a hosted display solution. In turn, the Exchange believes that the Program would allow Distributors to reach a broader customer base that includes end clients that desire more flexibility and control over how Derived Data is used, furthering both the distribution and cost effectiveness of Exchange market data, and allowing the Exchange to compete for business that may otherwise go to its competitors.

Although White Label Service Platforms are valuable to certain end clients that may not have the technology or resources to build their own applications to display Derived Data, such products offer only an ''off-the-shelf'' solution, as the platform is ultimately designed and controlled by the Distributor. Thus, subsequent to the introduction of the White Label Service Program, Distributors have encouraged the Exchange to offer a Program for API Services that would provide greater flexibility and control to end clients who have already developed applications and tools for servicing their customers. Unlike the White Label Service, where the Distributor is responsible for developing an ''off-the-shelf'' technology platform that is standard and not designed specifically for a particular client, the API Service allows Distributors to use Exchange market data to create financial instruments, such as contracts for difference, that are then offered via API to end clients that can use that information in one or more of their own customized applications based on their specific business needs and the needs of their downstream users. The API Service would therefore offer significant advantages over the White Label Service Program, and would provide another alternative pricing option that Distributors can choose to utilize (or not) in their efforts to obtain high quality and cost effective access to top of book U.S. equities data to create Derived Data.

With the implementation of the API Service Program, the Exchange would continue to offer the current White Label Service Platform, thereby ensuring that Distributors that prefer the design or cost structure of that offering can continue to reap the benefits of that program. Offering additional programs for Derived Data based on customer demand and the ways in which Derived Data is currently being utilized enhances customer choice, and provides alternatives to the market that would otherwise not be available to Distributors and their end clients.

Current Fee Structure

The Exchange currently charges a fee of $2,500 per month for external distribution of BZX Top. In addition, external distributors of BZX Top are charged a fee of $4 per month for each Professional User and $0.10 per month for each Non-Professional User. The Exchange also offers special pricing for Derived Data provided through a White Label Service, as mentioned above. This service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor.[8] The White Label Service Program can be used for a number of different purposes, including the display of information or data, or the creation of derivative instruments, primarily contracts for difference,[9] but is unavailable to Distributors that make such information available through an API. Such Distributors are not eligible for discounted Derived Data pricing today, and are instead liable for the fees normally applicable for the distribution of BZX Top, as listed at the beginning of this paragraph.

Discounted Fees for Derived Data API Service

As proposed, a Distributor that provides a Derived Data API Service for Derived Data taken from BZX Top would be liable for the following fees instead of the fees normally applicable for the distribution of BZX Top. Instead of the regular fee for external distribution, Distributors would be charged a tiered External Subscriber Fee based on the number of API Service Platforms (*i.e.,* ''External Subscribers'') that receive Derived Data from the Distributor through a Derived Data API Service.

As proposed, Distributors would continue to be charged a fee of $2,500 per month for each External Subscriber if the Distributor makes Derived Data available to 1–5 External Subscribers. Distributors that make Derived Data available to additional External Subscribers would benefit from discounted pricing based on the number of External Subscribers. Specifically, the external distribution fee would be lowered by 20% to $2,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6–20 External Subscribers, and further lowered another 20% to $1,500 per month for each External Subscriber if the Distributor makes Derived Data available to 21 or more External Subscribers.

As is the case under the Derived Data White Label Service, the External Subscriber Fee would be non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of $12,000 (*i.e.,* 6 External Subscribers × $2,000 each). The Derived Data API Service, however, would allow end clients to, at their discretion, choose to use Derived Data in one or more customized applications (*e.g.,* mobile

[7] *See* Rule 13.8(c).

[8] The Distributor maintains control of the application's data, entitlements and display.

[9] A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

application, website, terminal) without incurring additional External Subscriber fees. That is, the fees would be charged per API Service, and not based in any way on the number of applications used by the end client to serve their downstream users. By contrast, under the White Label Service, end clients are generally limited to a single platform managed by the Distributor, rather than uncontrolled access to an API, and would be subject to the full External Subscriber fee for access to that single platform without the ability to offer additional platforms for the same fee.

The Exchange would continue to charge a monthly Professional User fee of $4 per month for each Professional User that accesses Derived Data through an API Service. The current Non-Professional User fee of $0.10 per month would be eliminated when participating in the Derived Data API Service, further reducing costs for Distributors that provide access to such data to downstream investors.

Financial Product Distribution Program

With the proposed introduction of the Derived Data API Service, the Exchange would bring together the Derived Data White Label Service and Derived Data API Service under the common heading ''Financial Product Distribution Program.'' The Financial Product Distribution Program would encompass both of these products.

Similar to the Derived Data White Label Service, the Derived Data API Service would be entirely optional, in that it applies only to Distributors that opt to use Derived Data from BZX Top to create an API Service, as described herein. It does not impact or raise the cost of any other Exchange product, nor does it affect the cost of BZX Top, except in instances where Derived Data is made available on an API Service. A Distributor that provides a White Label Service or API Service for Derived Data taken from BZX Top would be liable for the fees associated with the White Label Service or API Service instead of the fees normally applicable for the distribution of BZX Top. A Distributor that provides a White Label Service or API Service for BZX Top data that is not Derived Data or distributes Derived Data through a platform other than a White Label Service or API Service would be liable for the fees normally applicable for the distribution of BZX Top.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the SIPs to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.

In an effort to widen distribution to market participants that use equities market data to compute pricing for certain derivatives instruments, national securities exchanges including the Exchange, its affiliate, Cboe EDGX Exchange Inc., and The Nasdaq Stock Market LLC (''Nasdaq'') offer discounted pricing for Derived Data that is created using their top of book products. The Program would therefore compete with similar products offered by other national securities exchanges that offer discounted fees to market participants that purchase Derived Data. Derived Data is largely used to create derivative instruments, such as contracts for difference, rather than to trade equity securities, and is often purchased by market data customers outside of the U.S. where such derivative instruments are more commonly offered. As a result, customers that purchase top of book data to create Derived Data do not need a consolidated quotation, and typically only purchase top of book data to create Derived Data from one source. Customers therefore choose where to obtain top of book data to create Derived Data based on two factors: (1) Data quality, *i.e.,* how much the quoted prices reflect the overall market for particular securities, and (2) the cost of obtaining that data. The Program would allow the Exchange to better compete on the second of these factors by reducing the cost of market data charged to Distributors that offer an API Service.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option to Distributors that wish to provide Derived Data through an API Service rather than a White Label Service due to the advantages of this form of distribution, including more flexibility and control for end clients. Although that filing was suspended by the Commission, the Exchange believes that its experience in offering the Program while it was in effect reflect the competitive nature of the market for the creation and distribution of Derived Data. Specifically, after the Exchange initially reduced the fees charged for API Services under the Initial Proposal, it successfully onboarded one new customer that switched from a competitor product offered by Nasdaq due to the attractive pricing.[10] The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in offering API Services. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead continue purchasing such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[13] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603

[10] *See* Cboe Innovation Spotlight, ''Invast Global—An alternative prime broker,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight.*

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78k–1.

of Regulation NMS,[14] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for one of its proprietary top of book data offerings through the introduction of a Derived Data API Service.

The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on API Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities. The fees that are the subject of this rule filing are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete more effectively for market data distributors that purchase market information to offer Derived Data to investors. The existence of alternatives to the Program ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such alternatives. That is, the Exchange competes with other exchanges that provide similar market data products and pricing programs. Expanding the availability of diverse competitive products actually promotes *additional* competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that introduction of pricing programs such as the Derived Data API Service are not only constrained by competition but also ensure continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges and the SIPs.

Derived Data is primarily purchased for the creation of certain derivative instruments rather than for the trading of U.S. equity securities. As a result, Distributors of Derived Data do not need a consolidated view of the market across multiple exchanges, and generally purchase such data from a single exchange. If a competing exchange were to charge less for a similar product than the Exchange charges under the proposed fee structure, prospective subscribers may choose not subscribe to, or cease subscribing to, the Program. The Exchange believes that lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to BZX Top market data instead of competitor products.

Indeed, the Exchange has already successfully onboarded one new Distributor that has decided to purchase top of book data from the Exchange to create Derived Data rather than purchasing top of book data from a competitor exchange, and is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges, including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change would provide an alternate fee structure for providing BZX Top market data to Distributors that make Derived Data available to External Subscribers via API Services. As proposed, if a Distributor uses an API Service to distribute Derived Data, the Distributor will be charged a fee that is tiered based on the number of External Subscribers that are provided access to that data instead of the higher fee normally charged for external distribution. The Exchange believes that this fee is equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service, with Distributors providing access to six or more External Subscribers receiving a discount compared to the current pricing applicable for external distribution of BZX Top.

The Exchange believes that it is equitable and not unfairly discriminatory to begin providing discounted rates to Distributors that provide access to at least six External Subscribers as the discounted rates are designed to incentivize firms to grow the number of External Subscribers that purchase Derived Data from the Exchange. The Exchange understands that Distributors that may provide this sort of API Service typically serve a relatively larger number of External Subscribers, and would therefore be able to meet the proposed threshold by providing Derived Data taken from BZX Top to those customers. The one current subscriber that began participating in the Program after the Initial Proposal intends to provide Derived Data to significantly more than six External Subscribers.

The Exchange would also continue to charge a small fee for Professional Users but would eliminate Non-Professional User fees for data provided under the Program. The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that

[14] *See* 17 CFR 242.603.

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

Further, the proposed fees will only apply to Distributors that elect to participate in the Program by distributing Derived Data through an API Service. BZX Top market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Distributors of BZX Top are not required to participate in the proposed Program, which is merely an alternative option being proposed by the Exchange to potentially lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a While Label Service. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange's market data products. Although the proposed pricing for the Program differs from the pricing currently in place for the White Label Service Program, the Exchange believes that its pricing reflects the relative benefits provided to Distributors that offer an API Service that allows end clients to offer one or more customized applications to their customers rather than simply offering a single ''off-the-shelf'' solution designed and controlled by the Distributors. Indeed, the Program was developed by the Exchange in response to demand for such a product for Distributors that believe that they would be better able to serve their end clients with an API Service. Distributors that prefer the design or cost structure of the White Label Service Program would continue to be able to subscribe to that offering. Based on customer feedback, however, the Exchange believes that the API Service Program would be valuable to a number of Distributors that have expressed interest specifically in that offering.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products, and pricing options, to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce fees charged to Distributors that distribute Derived Data through an API. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting investors that are provided access to such data.

The proposed fees apply to data derived from BZX Top, which is subject to competition from both the SIPs and exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and Nasdaq offer pricing discounts for Derived Data today. These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. In order to better compete for this segment of the market, the Exchange is proposing to expand the programs that it offers to include a Derived Data API Service, allowing additional market data customers to benefit from discounted pricing. The Exchange does not believe that the proposed price reduction for Derived Data offered through an API would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–087. 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

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b-4(f).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–087 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22836 Filed 10–18–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87310; File No. SR–CBOE–2019–086]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Move Certain Rules in Chapter XXI of the Currently Effective Rulebook to Proposed Section F of Chapter 4 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform

October 15, 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, 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to move certain Rules in Chapter XXI of the currently effective Rulebook (''current Rulebook''), which governs Government securities options, to proposed Section F of Chapter 4 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 certain rules in Chapter XXI, which govern Government securities options, to proposed Section F of Chapter 4 in the shell Rulebook. The Exchange notes that in addition to relocating certain rules regarding Government securities options to proposed Section F of Chapter 4 in the shell Rulebook, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

Proposed rule	Current rule
Introductory paragraph under Section F heading	Introduction.
4.50 Definitions	21.1 Definitions.
4.51 Designation of Government Security Options (Treasury Bonds and Notes).	21.6 Designation of Government Security Options (Treasury Bonds and Notes).
4.52 Approval of Underlying Treasury Securities for Specific Coupon Options (Treasury Bonds and Notes).	21.7 Approval of Underlying Treasury Securities for Specific Coupon Options (Treasury Bonds and Notes).
4.53 Terms of Treasury Security Options (Treasury Bonds and Notes)	21.8 Terms of Treasury Security Options (Treasury Bonds and Notes).
4.54 Series of Treasury Security Options Open for Trading (Treasury Bonds and Notes).	21.9 Series of Treasury Security Options Open for Trading (Treasury Bonds and Notes).
4.55 Special Rules for Treasury Bill Options	21.31 Special Rules for Treasury Bill Options.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Proposed rule	Current rule
4.56 Wire Connections	21.2 Wire Connections.
4.57 Trading Rotations	21.11 Trading Rotations.
4.58 Priority of Bids and Offers	21.14 Priority of Bids and Offers.
4.59 Limit Order Book for Government Securities Options	21.18 Limit Order Book for Government Securities Options.

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 [3] and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules. The Exchange notes that it removes the rule text under current Rule 21.2 (proposed Rule 4.56) that states that (current) Rule 21.2 replaces Rule 4.3 because Rule 4.3 no longer exists in the currently effect Rulebook.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] 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) [6] 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.

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)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may 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 proposed rule change may become operative immediately. The Exchange notes that the proposed rule change is merely relocating certain rules to its shell rulebook—which includes corresponding updates to rule numbers, paragraph structure, and internal references—in order to conform these rules to the shell rulebook upon the technology October 7, 2019 migration explained above. The Exchange believes that the proposed rule change will make its rules easier to read and understand for all investors. The Exchange also asserts that the relocation of the rules explained above will not impose any significant burden on competition because the substance of the rules remains unchanged. The Commission agrees that allowing this proposed rule change to become operative upon filing in order to facilitate the Exchange's technology migration—without changing the substance of these Exchange Rules—is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day

[3] The Exchange notes that the paragraph structure for definitions listed under rules in the shell Rulebook is in alphabetized format. Therefore, the same structure is used under proposed Rule 4.50.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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 Commission has waived that requirement in this case.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–086 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–2019–086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–086, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22835 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87309; File No. SR–CBOE–2019–085]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Move Certain Rules in Chapter XXVIII of the Currently Effective Rulebook to Proposed Section D of Chapter 4 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform

October 15, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to move certain Rules in Chapter XXVIII of the currently effective Rulebook (''current Rulebook''), which governs Corporate Debit Security options, to proposed Section D of Chapter 4 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 certain rules in Chapter XXVIII, which govern Corporate Debt Security options, to proposed Section D of Chapter 4 in the shell Rulebook. The Exchange notes that in addition to relocating certain rules regarding Corporate Debt Security options to proposed Section D of Chapter 4 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
Introduction	Introductory paragraph under Section D heading.
Rule 28.1 Definitions	Rule 4.30 Definitions.
Rule 28.5 Designation of Corporate Debt Security Options	Rule 4.31 Designation of Corporate Debt Security Options.
Rule 28.6 Approval of Underlying Corporate Debt Securities	Rule 4.32 Approval of Underlying Corporate Debt Securities.
Rule 28.7 Terms of Corporate Debt Security Options	Rule 4.33 Terms of Corporate Debt Security Options.
Rule 28.8 Series of Corporate Debt Security Options Open for Trading	Rule 4.34 Series of Corporate Debt Security Options Open for Trading.
Rule 28.17. FLEX Trading	Rule 4.35. FLEX Trading.

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 [3] 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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] 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) [6] 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.

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)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the

[3] The Exchange notes that the paragraph structure for definitions listed under rules in the shell Rulebook is in alphabetized format. Therefore, the same structure is used under proposed Rule 4.30.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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 Commission has waived that requirement in this case.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

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 immediately. The Exchange notes that the proposed rule change is merely relocating certain rules to its shell rulebook—which includes corresponding updates to rule numbers, paragraph structure, and internal references—in order to conform these rules to the shell rulebook upon the technology migration explained above. The Exchange believes that the proposed rule change will make its rules easier to read and understand for all investors. The Exchange also asserts that the relocation of the rules explained above will not impose any significant burden on competition because the substance of the rules remains unchanged. The Commission agrees that allowing this proposed rule change to become operative upon filing in order to facilitate the Exchange's technology migration—without changing the substance of these Exchange Rules—is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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–2019–085 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–2019–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–085, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22829 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87311; File No. SR–CBOE–2019–049]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan To Address Extraordinary Market Volatility

October 15, 2019.

I. Introduction

On August 21, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility (the ''Plan''). The proposed rule change was published for comment in the **Federal Register** on August 29, 2019.[3] On October 10, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On October 11, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change, as modified by Amendment No. 1.[5] On October 11, 2019, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86744 (August 23, 2019), 84 FR 45565 (''Notice'').

[4] In Amendment No. 1, the Exchange revised the proposed rule text to reflect rule numbering and organizational changes enacted by separate proposed rule changes that became effective while the instant proposal was pending before the Commission. Because Amendment No. 1 is a technical amendment that does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-cboe-2019-049/srcboe2019049-6279378-193288.pdf.*

[5] In Amendment No. 2, the Exchange revised the proposal to remove the aspect of the proposed rule change that would have permitted current Rule 5.22—relating to market-wide trading halts due to extraordinary market volatility—to operate on a permanent basis. In Amendment No. 2, the Exchange notes that it intends to submit a separate rule filing proposing to continue to allow Rule 5.22 to operate on a pilot basis. Amendment No. 2 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-cboe-2019-049/srcboe2019049-6285845-193338.pdf.*

[6] 15 U.S.C. 78s(b)(2).

longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[7] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to make permanent certain options market rules in connection with the Plan. In an attempt to address extraordinary market volatility in NMS stocks, the national securities exchanges and the Financial Industry Regulatory Authority, Inc. adopted the Plan pursuant to Rule 608 of Regulation NMS under the Act.[8] Following the initial adoption of the Plan, the Exchange adopted and amended current Rule 5.21, Rule 5.22 [9] and Interpretation and Policy .01 to Rule 6.5 to address certain aspects of the options market that it believed may be impacted by the operation of the Plan, and implemented such rules on a pilot basis that has coincided with the pilot period for the Plan. These rules are scheduled to expire on October 18, 2019.[10]

In order to codify changes to its rules in connection with the Plan, the Exchange adopted Rule 5.21, which essentially serves as a roadmap for the Exchange's universal changes due to the implementation of the Plan.[11] The Exchange also amended Rule 6.5 to modify its obvious and catastrophic error rules in connection with the implementation of the Plan.[12] After the Plan was approved on a permanent basis, the pilot periods in Rules 5.21, 5.22 and 6.5 were extended until the close of business on October 18, 2019.[13] The Exchange now proposes to make these pilot periods permanent. The Exchange is not proposing any additional or substantive changes to Rules 5.21 or 6.5.[14] At this time, the Exchange is not proposing to make the pilot period in Rule 5.22 permanent.[15]

Interpretation and Policy .01 to Rule 6.5 currently provides that options transactions executed while the underlying security was in a limit or straddle state (as defined in the Plan) will not be subject to review as an obvious or catastrophic error during a pilot period that expires on October 18, 2019 (''Obvious Error Pilot'').[16] A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or National Best Offer (''NBO'' and, together with the NBB, the ''NBBO'') is priced at a non-tradable level.[17] Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is within the price band or when the NBO is above the upper price band and the NBB is within the band.[18] A limit state occurs when the NBO equals the lower price band (without crossing the NBB) or the NBB equals the upper price band (without crossing the NBO).[19]

Pursuant to Rule 6.5, the determination of the theoretical price of an option, which is used to determine whether to adjust or nullify an options transaction subject to obvious or catastrophic error review, generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question. The Exchange states that this process is not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case during limit and straddle states.[20] According to the Exchange, when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option and, therefore, the application of the obvious and catastrophic error rules would be impracticable given the potential for the lack of a reliable NBBO in the options market during such limit or straddle state.[21]

During the course of the Obvious Error Pilot, the Exchange has provided, to the Commission and the public, data for each limit and straddle state in optionable stocks that had at least one trade on the Exchange.[22] In addition, the Exchange has provided, to the Commission and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states, including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets; and (2) an assessment of whether the lack of obvious error rules in effect during the limit and straddle states are problematic. The Exchange states that, during its most recent review period, the Exchange did not receive any obvious error review requests for limit-up-limit down trades, and limit up-limit down trade volume accounted for nominal overall trade volume.[23] Accordingly, and based on the data made available to the Commission and the public during the pilot period, the Exchange believes that the Obvious

[7] *See* Securities Exchange Act Release No. 87291. The Commission extended the date by which the Commission shall approve or disapprove the proposed rule change to October 18, 2019.

[8] *See* Securities Exchange Act Release Nos. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) and 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the initial Plan, as amended, on a pilot basis).

[9] The Exchange has determined not to propose to make the provisions in Rule 5.22 permanent at this time. *See supra* note 5.

[10] *See* Securities Exchange Act Release No. 69328 (April 5, 2013), 78 FR 21642 (April 11, 2013) (SR–CBOE–2013–030) (''Options Pilot Approval'') (order approving certain options rule changes to coincide with the pilot period for the Plan, including Rule 5.21). *See also* Amendment No. 1, *supra* note 4 (describing the relocation of these rules to their current location in the Cboe Options rulebook).

[11] *See* Options Pilot Approval, *supra* note 10, at 21643. Specifically, Rule 5.21 includes rule changes in connection with special handling for market orders, market-on-close orders, stop orders, and stock-option orders; certain electronic order handling features in a limit up-limit down state; the obvious error rules; and market-maker to quoting requirements during a limit up-limit down state.

[12] *See id.* at 21645. The amendments to Rule 6.5 were originally adopted on a one-year pilot basis, which was later extended to coincide with the pilot period for the Plan. *See* Securities Exchange Act Release No. 76223 (October 22, 2015), 80 FR 66102 (October 28, 2015) (SR–CBOE–2015–097).

[13] *See* Securities Exchange Act Release Nos. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (order approving Amendment No. 18 to the Plan, which, among other things, allowed the Plan to continue to operate on a permanent basis) and 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (extending the pilot periods in Rules 5.21 and 6.5 to October 18, 2019).

[14] According to the Exchange, it expects the other national securities exchanges to also file similar proposals to make their respective pilot programs permanent. *See* Notice, *supra* note 3, at 45566.

[15] *See supra* note 5.

[16] Such transactions may still be reviewed on an Exchange official's own motion pursuant to Rule 6.5(c)(3), or adjusted or nullified pursuant to Rule 6.5(e)–(j) and Interpretation and Policy .05. *See* Interpretation and Policy .01 to Rule 6.5.

[17] *See* Notice, *supra* note 3, at 45565. Pursuant to the Plan, each NMS stock is subject to a lower price band and a higher price band, designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. *See* Options Pilot Approval, *supra* note 10, at 21642.

[18] *See* Notice, *supra* note 3, at 45565.

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See* Cboe Global Markets, LULD Limit and Straddle Reports, *available at http://markets.cboe.com/us/options/market_statistics/luld_reports/?mkt=opt.* For each trade on the Exchange, the Exchange has provided: (a) The stock symbol, the option symbol, the time at the start of the limit or straddle state, and an indicator for whether it is a limit or straddle state; and (b) the executed volume, the time-weighted quoted bid-ask spread, the time-weighted average quoted depth at the bid, the time-weighted average quoted depth at the offer, the high execution price, the low execution price, the number of trades for which a request for review for error was received during limit and straddle states, and an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state.

[23] *See* Notice, *supra* note 3, at 45566 n.9.

Error Pilot does not negatively impact market quality during normal market conditions.[24] The Exchange also concluded that there has been insufficient data to assess whether a lack of obvious error rules is problematic.[25] However, the Exchange believes the continuation of Interpretation and Policy .01 to Rule 6.5 would protect against any unanticipated consequences and add certainty in the options markets during a limit or straddle state.[26]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In the Options Pilot Approval, the Commission noted the potential inequity of nullifying or adjusting executions occurring during limit or straddle states due to the lack of a reliable NBBO.[29] At the same time, the Commission expressed concern about the potential impact on investors during limit and straddle states without the protections of the obvious or catastrophic error rules.[30] However, in the same order, the Commission also highlighted certain aspects of the Exchange's proposal that could help mitigate those concerns. Specifically, the Exchange stated that there are additional measures in place designed to protect investors, despite the removal of obvious and catastrophic error protection during limit and straddle states.[31] For example, the Exchange stated that by rejecting market orders and not triggering stop orders, only those orders with a limit price will be executed during a limit or straddle state.[32] Additionally, the Exchange noted the existence of Rule 15c3–5 under the Act,[33] requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders.[34] Further, the Commission stressed the importance of placing the proposal on a pilot and requesting data to allow the Commission to further evaluate the effect of the proposal prior to any determination to make such changes permanent.[35]

Under the terms of the Options Pilot Approval, the Exchange provided the Commission and the public with data and assessments relating to the impact of the operation of the obvious and catastrophic error rules during limit and straddle states.[36] The Commission notes that, as described above, the Exchange stated that it did not receive any obvious error review requests for limit up-limit down trades during its most recent review period.[37] Accordingly, based on the data from the Exchange and in light of the additional measures in place designed to protect investors, despite the removal of obvious and catastrophic error protection during limit and straddle states, the Commission believes it is appropriate to permit the Obvious Error Pilot to operate on a permanent basis.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, 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–CBOE–2019–049 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–2019–049. 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–2019–049, and should be submitted on or before November 12, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. As discussed above, in Amendment No. 2, the Exchange revised the proposal to remove the aspect of the proposed rule change that would permit current Rule 5.22 to operate on a permanent basis. The Commission believes that Amendment No. 2 does not raise any novel regulatory issues. Instead, it removes one aspect of the proposed rule change that does not alter remaining aspects of the proposal, which was subject to a full

[24] *See id.* at 45566.

[25] *See id.*

[26] *See id.*

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Options Pilot Approval, *supra* note 10, at 21645, 21647.

[30] *See id.* at 21647.

[31] *See id.*

[32] *See id. See also* Rule 5.32(c)(5).

[33] 17 CFR 240.15c3–5.

[34] *See* Options Pilot Approval, *supra* note 10, at 21647.

[35] *See id.* at 21647–48.

[36] *See supra* note 22.

[37] *See* Notice, *supra* note 3, at 45566 n.9.

notice and comment period during which no comments were received. The Commission also notes that, according to the Exchange, it intends to submit a separate rule filing proposing to continue to allow Rule 5.22 to operate on a pilot basis.[38] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[39] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–CBOE–2019–049), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22834 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[38] *See* Amendment No. 2, *supra* note 5.

[39] 15 U.S.C. 78s(b)(2).

[40] *Id.*

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87297; File No. SR–ICC–2019–007]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework

October 15, 2019.

I. Introduction

On June 28, 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 ''Rules'')[3] and related procedures to provide for the clearing of credit default index swaptions (''Index Swaptions''). The proposed rule change was published for comment in the **Federal Register** on July 17, 2019.[4] On August 28, 2019, the Commission extended the period to take action on the proposed rule change until October 15, 2019.[5] The Commission has not received any comments on the proposed rule change. On September 5, 2019, ICC filed Partial Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, ''proposed rule change'') on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

The proposed rule change would amend ICC's Rules, End-of-Day Price Discovery Policies and Procedures (the ''EOD Policy'') and Risk Management Framework (the ''Risk Framework'') to provide for the clearing by ICC of Index Swaptions.[7]

An Index Swaption is a contract whereby one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms.[8] In the case of Index Swaptions that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.

B. Amendments to ICC's Rules

The proposed rule change would adopt a new Subchapter 26R of ICC's Rules, which would set out the contract terms and specifications for cleared Index Swaptions.

Rule 26R–102 would set out key definitions used for Index Swaptions, which would be generally similar to those used in the subchapters for other index Contracts cleared by ICC. Key defined terms would include ''Eligible Untranched Swaption Index'', which would specify the applicable series and version of a CDX or iTraxx index or sub-index underlying an Index Swaption. As with other index CDS, ICC would maintain a List of Eligible Untranched Swaption Indices, which would contain the Eligible Untranched Swaption Indices as well as the eligible expiration dates and strike prices, as well as other relevant terms, for Index Swaptions that would be accepted for clearing by ICC. Rule 26R–102 would also define the ''Relevant Index Swaption Untranched Terms Supplement,'' (referred to herein as the ''Swaption Terms Supplement''). The Swaption Terms Supplement, published by the International Swaps and Derivatives Association, Inc. (''ISDA''), would provide the standard contractual terms for index swaptions of the relevant type. These terms would be incorporated by reference into the contract terms in the Rules for a cleared Index Swaption.

Rule 26R–102 also would define the ''Underlying Contract,'' which would be the index CDS Contract into which the Index Swaption may be exercised, and the ''Underlying New Trade,'' which would be a new single name CDS trade that would arise upon exercise of an Index Swaption where a relevant Restructuring Credit Event, if applicable, has occurred with respect to a reference entity in the relevant index.

New Rule 26R–103 would clarify the application of certain aspects of the Rules to Index Swaptions. Specifically, it would specify that Index Swaptions would be CDS Contracts for purposes of Chapters 20 (regarding default management), 20A (regarding transfers of positions), 21 (regarding determination of credit events), and 26E (regarding restructuring credit events). Chapter 22, regarding physical settlement of CDS, would not apply to Index Swaptions. Although Index Swaptions would be physically settled, in the sense that the Index Swaption,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework; Exchange Act Release No. 86358 (July 11, 2019); 84 FR 34220 (July 17, 2019) (''Notice'').

[5] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework; Exchange Act Release No. 86799 (Aug. 28, 2019); 84 FR 46588 (Sept. 4, 2019)

[6] In Partial Amendment No. 1 to the proposed rule change, ICC provided additional details and analyses surrounding the proposed rule change in the form of a confidential Exhibit 3. Partial Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change.

[7] As explained in the Notice, prior to the commencement of clearing of Index Swaptions, ICC intends to adopt certain other policies and procedures in addition to this proposed rule change. ICC does not intend to commence clearing of Index Swaptions until any such policies and procedures, as well as the current proposed rule change, have been approved by the Commission or otherwise become effective. *See* Notice, 84 FR at 34220.

[8] The description that follows is excerpted from the Notice, 84 FR 34220.

upon exercise, would result in the parties entering into an index CDS position, the physical settlement terms for CDS Contracts in Chapter 22 of the Rules would not apply to settlement of the Index Swaption itself. Instead, new Rule 26R–317(c) would, as discussed below, specify the physical settlement terms for Index Swaptions. Finally, Rule 26R–103 would specify that once an Index Swaption has been exercised, the resulting Underlying Contract and Underlying New Trade, if any, would themselves be treated as CDS Contracts for all purposes of the Rules.

New Rule 26R–309 would require CDS Participants to use reasonable efforts not to submit for clearing an Index Swaption at a time when the Underlying Contract could not be submitted for clearing under the Rules or at a time when the CDS Participant would be under an obligation to use reasonable efforts not to submit a trade in such Underlying Contract. New Rule 26R–309 would be necessary because the Rules related to CDS Contracts cleared by ICC impose limitations on submission of trades for clearing at certain times.[9] Thus, ICC would not accept for clearing an Index Swaption at a time when it could not accept the Underlying Contract for clearing. As with other CDS Contracts under the Rules, a CDS Participant would also be required to notify ICC if it has submitted an Index Swaption that was not a Conforming Trade under the Rules, meaning a trade that was not submitted in accordance with, and did not meet the requirements established by, the Rules and the ICE Clear Credit Procedures.[10]

Rule 26R–315 would establish certain of ICC's basic contractual terms for Index Swaptions. The Rule would provide that each Index Swaption is governed by the applicable Swaption Terms Supplement, subject to the relevant provisions of Subchapter 26R of the Rules. In the case of any inconsistency between the Swaption Terms Supplement and the Rules, the Rules would govern. This approach would be consistent with the treatment of other cleared index CDS Contracts under the Rules, which rely on and incorporate their own market-standard terms supplements.

New Rule 26R–316 would address ICC's process in the event that ISDA publishes a new Swaption Terms Supplement that would apply to an Index Swaption that is already being cleared by ICC. Consistent with ICC's practice for other index CDS Contracts,[11] the ICC Board or its designee would determine whether Index Swaptions referencing the existing standard terms supplement would be fungible with Index Swaptions referencing the new standard terms supplement, and if so, ICC would, in effect make the new Swaption Terms Supplement applicable to existing Index Swaptions by updating relevant existing Index Swaptions to reference the new Swaption Terms Supplement.

New Rule 26R–317 would specify other key terms for Index Swaptions. Subsection (a) would, with respect to an Index Swaption referencing a CDX.NA index, modify the Relevant Index Swaption Standard Terms Supplement and the 2014 ISDA Credit Derivatives Definitions incorporated into the Supplement. These modifications would reflect changes ICC would make to accommodate the clearing of the Index Swaption transactions, including to incorporate ICC's procedures for determination of a Credit Event and for application of physical settlement. These modifications would be consistent with similar modifications that ICC uses for the CDX.NA index itself.[12] Subsection (b) of new Rule 26R–317 would make similar modifications with respect to an Index Swaption referencing an iTraxx Europe index.[13] Rule 26R–317(c) would state explicitly that Index Swaptions would be physically settled in accordance with Subchapter 26R.

New Rule 26–317(d) would set out certain terms and elections under the Swaption Terms Supplement that would apply to all Index Swaptions of a particular type and underlying index. Significantly, ICC would only accept Index Swaptions that are European style, such that the option may only be exercised on the expiration date. New Rule 26–317(d) would also define ICC as the Calculation Agent, except as provided in the CDS Committee Rules in Chapter 21. This would mean that upon settlement ICE Clear Credit, as calculation agent, would determine the applicable settlement payment or payments (as determined under the Swaption Terms Supplement, and based on the strike adjustment amount and accrued amount thereunder) which shall be owed by the Swaption Buyer or the Swaption Seller under any exercised Index Swaption, in respect of such exercise. Finally, Rule 26–317(d) would also make inapplicable certain provisions under the Swaption Terms Supplement that would not apply to Index Swaptions.

New Rule 26–317(e) would set out the terms for an Index Swaption that must be included in the submission of an Index Swaption transaction for clearing. Specifically, the submission must identify the underlying index, trade date, expiration date, Swaption Buyer, Swaption Seller, strike price and swaption premium. The submission must also specify whether the Index Swaption is a ''payer'' or ''call'' option, in which case the Swaption Buyer, upon exercise, would be the fixed rate payer under the Underlying Contract, or a ''receiver'' or ''put'' option, in which case the Swaption Seller, upon exercise, would be the fixed rate payer under the Underlying Contract. The submission must also specify the scheduled termination date of the Underlying Contract and original notional amount of the Underlying Contract.

New Rule 26R–318 would provide procedures for exercise and assignment of Index Swaptions. The rule would provide that an Open Position in an Index Swaption may be exercised on its expiration date by the relevant Participant (or, in the case of a client position, the relevant Non-Participant Party) that is the Swaption Buyer delivering an exercise notice to ICC. New Rule 26R–318(d) would further provide that upon receipt of the exercise notice, ICC would assign the exercise notices to Open Positions of Participants that are Swaption Sellers (across both the house and customer origin accounts) in accordance with the Exercise Procedures.[14] Under new Rule 26R–318(e), such an assignment would constitute exercise of the relevant Open Position in such Index Swaption between ICE Clear Credit, as Swaption Buyer and such Swaption Seller. Moreover, the exercise of both the Open Position between the Swaption Buyer and ICE Clear Credit and the offsetting Open Position between ICE Clear Credit and the Swaption Seller would be deemed effective simultaneously at the time of such assignment, as recorded in the books and records of ICE Clear Credit. New Rule 26R–318(g) would specify that, for the avoidance of doubt, the assignment of an exercise notice does not create a direct relationship between the exercising Swaption Buyer and the assigned Swaption Seller.

[9] *See, e.g.,* ICC Rule 26A–309.

[10] *See* ICC Rule 309(g).

[11] *See* ICC Rule 26A–316(b) (CDX North America); ICC Rule 26C–316(b) (CDX Emerging Markets); ICC Rule 26F–316(b) (iTraxx Europe); ICC Rule 26J–316(b) (iTraxx Asia/Pacific).

[12] *See* ICC Rule 26A–317(b).

[13] *See* ICC Rule 26F–317.

[14] As discussed in the Notice, ICC intends to adopt a set of Exercise Procedures that will provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers and in which notices of exercise will be assigned to Swaption Sellers. *See* Notice, 84 FR at 34221, n.5.

Rather, both such parties would continue to face ICC as clearing organization. Finally, new Rule 26R–318(f) would specify that Index Swaptions that are not validly exercised on the expiration date would expire without further obligation of any party.

New Rule 26R–319 would provide procedures for settlement of an exercised Index Swaption. New Rule 26R–319(a) would provide that upon exercise, a cleared Contract in the form of the Underlying Contract would automatically come into effect as between the exercising Swaption Buyer and ICC and an offsetting cleared Contract would automatically come into effect as between ICC and the assigned Swaption Seller. ICC, as a Calculation Agent, would determine the settlement payment or payments owed by the Swaption Buyer or the Swaption Seller in connection with the exercise. Such payments would represent a strike adjustment amount based on the strike price of the Index Swaption and an accrual amount reflecting the accrued fixed payment for the Underlying Contract through expiration. The Swaption Buyer or the Swaption Seller, as applicable, would make such payments in accordance with the terms of the relevant Index Swaption (based on the Swaption Terms Supplement).

Consistent with the terms of the Index Swaption, new Rule 26R–319(b) would require additional settlements if one or more Credit Events has occurred with respect to the underlying index at or prior to the expiration date of the Index Swaption. In general, such settlements would be designed so that the party in the position of the protection buyer under the Index Swaption would receive settlement for all such Credit Events as if it had held the Underlying Contract at the time of the Credit Event. These settlement amounts may include auction cash settlement amounts, fixed rate payments, and accruals with respect to such credit events. The proposed rule would also provide for an additional accrual amount, owed by the party that is in the position of fixed rate payer or floating rate payer, as applicable, to ensure consistency in economic result where the swaption expiration occurs after the relevant auction date for a Credit Event as compared to cases where expiration occurs before the auction date. New Rule 26R–319(b) would also address cases where the relevant Underlying Contract is itself subject to physical settlement under Chapter 22 of the Rules. In that case, the rule would provide for matching of Swaption Buyers and Swaption Sellers for that purpose.

New Rule 26R–319(c) would apply in the case of a relevant M(M)R Restructuring Credit Event and would provide for delivery of MP Notices (both Restructuring Credit Event Notices and Notices to Exercise Movement Option) by Swaption Buyer and Swaption Sellers prior to expiration of the Index Swaption. Such notices would have effect with respect to the Underlying New Trade established if the Index Swaption is exercised. New Rule 26R–319(c) would also address settlement with respect to the Underlying New Trade.

Rule 26R–502 would clarify that ICC may take the following actions with respect to Index Swaptions without consulting the Risk Committee: (i) Adding new eligible Strike Prices; (ii) adding new Expiration Dates for Index Swaptions; (iii) adding new series and tenors for the indices which are Underlying Contracts for Index Swaptions; and (iv) adding new eligible Scheduled Termination Dates for Underlying Contracts. In ICC's view, these actions are business-as-usual actions necessary to maintain existing cleared contracts and do not pose a material risk change to ICC. As such, consultation with ICC's Risk Committee would not be necessary for these changes.

Finally, Consistent with similar provisions for other product subchapters,[15] new Rule 26R–616 would provide that actions by the Board or its designee to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee, such as succession events and the like, would not constitute a Contract Modification for purposes of the Rules. Thus, new Rule 26R–616 would allow ICC's Board or its designee to give effect to determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee, as those determinations affect the Underlying Contracts for Index Swaptions, without complying with ICC Rule 616. ICC Rule 616 requires that ICC provide Participants notice ahead of certain Contract Modifications. In ICC's view, these changes would not constitute Contract Modifications, as defined in ICC's Rules, because they are changes built into the terms of the contracts that are expected, and traded on, by market participants.

C. EOD Policy Amendments

The proposed rule change would also amend ICC's EOD Policy to incorporate Index Swaptions. The EOD Policy sets out ICC's EOD price discovery process used to determine the daily settlement prices for all cleared Contracts, based on submissions made by Participants. The proposed amendments to the EOD Policy would specify the characteristics that define a unique Index Swaption instrument for purposes of price submissions by Participants, including exercise style, underlying index, option type (put or call), expiration date, strike price and convention (price or spread), and transaction type (reflecting the Swaption Terms Supplement).

The amendments to the EOD Policy would establish a methodology for determining EOD bid-offer widths (''BOWs'') for clearing-eligible Index Swaptions, which are used for establishing EOD settlement prices. Under the methodology, ICC would determine a systematic EOD BOW for each Index Swaption. The final BOW for an Index Swaption would be determined as the greater of the systematic BOW and a dynamic BOW determined on the range of a series of unique price submissions made by Participants for the particular Index Swaption (excluding certain of the largest and smallest elements), in a manner similar to that which ICC currently uses for calculating dynamic BOWs for single name CDS instruments.

The amendments to the EOD Policy also would set out price submission requirements for Participants. Under the amendments, if a Participant has a gross notional position for any Index Swaption in any strip [16] of puts or calls, the Participant must provide submissions for all clearing-eligible instruments in that strip of puts or calls and the corresponding strip of calls or puts. In addition, if an insufficient number of Participants are required to submit under this standard, ICC may require all Participants to provide relevant submissions. Finally, the amendments would establish the times that Participants are required to submit prices related to Index Swaptions and specify the required format of submissions.

The amendments would apply ICC's firm trade requirements to Index Swaptions. Under ICC's firm trade requirements, Participants are required

[15] *See* ICC Rule 26B–616; 26D–616; 26G–616; 26H–616; 26I–616; 26L–616; 26M–616; 26N–616; 26O–616; 26P–616; and 26Q–616.

[16] The amendments would define a ''strip'' as the group of Index Swaptions on a given ''surface'' with the same expiration date (but with different strike prices). The amendments would define a ''surface'' as the group of Index Swaptions from a given put/call surface pair with the same option type. The amendments would define a ''put/call surface pair,'' as the group of Index Swaptions with the same combination of underlying index, strike convention and transaction type, but differ with respect to option type, expiration date and strike price.

to enter into a subset of trades generated by ICC's cross-and lock algorithm. As with other cleared products, the amendments would establish be a notional limit for firm trades for Participants in affiliate groups. The amendments would set out procedures for determining the relevant firm trade days for Index Swaptions and the strips of puts and calls that are firm-trade eligible. Finally, the amendments would amend the governance provisions of the EOD Policy to make the ICC Risk Management Department responsible for performing certain functions regarding firm trades and Index Swaptions, like selecting days for firm trades in Index Swaptions.

The amendments would also address distribution of Index Swaption prices, both to Participants and publicly. As with indices and CDS, the amendments would require that ICC publish a subset of EOD prices for Index Swaptions on its website.

The amendments would make certain other clarifications to the EOD Policy. The amendments would incorporate Index Swaptions into the table in the appendix setting out the timing for various aspects of the price submission process. The amendments would also add a reference to ICE Data Services' Credit Market Analysis services as a potential source of alternative pricing data to use if ICC determines that the EOD price discovery process has failed to determine reliable EOD prices. The amendments would also make clarifications to the existing process for index and single name CDS Contracts to distinguish it from the additional submission process for Index Swaptions. Finally, the amendments would also update defined terms and make typographical corrections.

D. Risk Framework Amendments

The proposed rule change would amend the Risk Framework to incorporate the clearing of Index Swaptions. The amendments would define Index Swaptions and identify key terms of Index Swaptions, consistent with the Rules and EOD Policy. The amendments would, for risk management purposes, define an Index Swaption instrument as a specific combination of underlying index, expiration date, strike price, option type, exercise type, currency and transaction type. The amendments would apply the ICC initial margin model to Index Swaptions and would specifically address how each component of the model would apply to Index Swaptions. For example, the amendments would apply the integrated spread response component of the margin model to Index Swaptions, based on implied forward looking Index Swaption prices. Moreover, the amendments would specify that because Index Swaptions would not be eligible for index-single name decomposition benefits for purposes of determining the integrated spread response, they would not be subject to basis risk requirements based on decomposed index positions. The amendments would explain that certain price-based scenarios and jump to default requirements in the margin model would, in the case of Index Swaptions, be applied to delta equivalent notional amounts of the underlying index swap position. Similarly, the amendments would also apply concentration charges to Index Swaption positions, based on delta equivalent notional amounts of the underlying index.

The amendments to the Risk Framework would also remove certain outdated references and clarify certain risk management data and systems used in the margin models. For example, the amendments would delete a reference to ICC relying on its outsourcing relationship with its affiliate, the Clearing Corporation, for the technology systems and infrastructure to automate processing, reporting, and data gathering because ICC now maintains such systems in-house. The amendments would also update Appendix 2 to the Risk Framework to incorporate Index Swaptions. Appendix 2 contains a list of risk-related questions and document requests that ICC uses when evaluating an applicant for membership as a Clearing Participant.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[17] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [18] and Rules 17Ad–22(b)(2), 17Ad–22(d)(2), 17Ad–22(d)(4), and 17Ad–22(d)(8) thereunder.[19]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[20]

As described in detail above, the proposed rule change would adopt a new Subchapter 26R to the Rules, which would identify, define, and set forth the key contract terms governing, and specifications for, cleared Index Swaptions. By doing so, Subchapter 26R would allow ICC to create the basic contractual structure of Index Swaptions, without which ICC could not clear Index Swaptions. In addition, Subchapter 26R would support ICC's clearance and settlement of Index Swaptions and the Underlying Contracts by identifying and defining the rights and obligations of CDS Participants with respect to submitting Index Swaptions for clearing, and setting forth the requirements for exercising, assigning, settling, and modifying Index Swaptions, including after the occurrence of certain credit events. For example, Subchapter 26R would define the terms for an Index Swaption that must be included in the submission of an Index Swaption transaction for clearing; require CDS Participants to use reasonable efforts not to submit for clearing an Index Swaption at a time when the Underlying Contract could not be submitted for clearing; provide basic procedures for the exercise, assignment, settlement, and modification of Index Swaptions; and provide procedures to use for settlement in case of the occurrence of certain credit events. Finally, the Commission believes that the proposed new Subchapter 26R, in providing procedures to address the publication of a new Swaption Terms Supplement; allowing ICC to take certain business-as-usual actions with respect to Index Swaptions without consulting the Risk Committee; and providing that actions to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee would not constitute a Contract Modification for purposes of the Rules, would give ICC flexibility to modify Index Swaptions as

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(b)(2), (d)(2), (d)(4), and (d)(8).

[20] 15 U.S.C. 78q–1(b)(3)(F).

necessary in response to routine changes to the Underlying Contract and thus continue clearing and settling Index Swaptions despite changes to the Underlying Contracts. Thus, the Commission believes that the proposed rule change, in general, would allow ICC to clear and settle Index Swaptions and the Underlying Contracts, which, in turn, would promote the prompt and accurate clearance and settlement of Index Swaptions.

Moreover, as discussed above, the proposed rule change would apply ICC's EOD Policy to Index Swaptions and specify how ICC generates EOD prices for Index Swaptions. Specifically, the proposed rule change would establish a methodology for determining EOD BOWs for Index Swaptions and apply the existing price submission requirements under the current EOD Policy to Index Swaptions, including a price submission window and ICC's firm trade requirements. Similarly, the proposed rule change would apply ICC's existing margin model to Index Swaptions and specify the manner in which key aspects of the model would function with respect to Index Swaptions. Because ICC uses EOD prices and its margin model to generate margin requirements for cleared transactions, and because the proposed rule change would allow ICC to generate margin requirements for cleared Index Swaptions, the Commission believes that the proposed rule change would allow ICC to manage the risks associated with clearing Index Swaptions. The Commission believes that these risks, if not properly managed, could cause ICC to realize losses on the clearance of Index Swaptions and thereby disrupt ICC's ability to promptly and accurately clear securities transactions. Accordingly, the Commission therefore believes that the proposed rule change, in applying the EOD Policy and ICC's margin model to Index Swaptions, would promote the prompt and accurate clearance and settlement of securities transactions. Similarly, given that mismanagement of the risks associated with clearing Index Swaptions could cause ICC to realize losses on such transactions and threaten ICC's ability to operate, thereby threatening access to securities and funds in ICC's control, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of the ICC or for which it is responsible. Finally, for both of these reasons, the Commission believes the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[21]

B. Consistency With Rules 17Ad–22(b)(2)

Rule 17Ad–22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.[22]

As discussed above, the proposed rule change would apply ICC's existing EOD Policy to Index Swaptions and specify the manner in which ICC would generate EOD prices for Index Swaptions, including establishing a methodology for determining EOD BOWs for Index Swaptions and applying the price submission requirements to Index Swaptions. Similarly, the proposed rule change would apply ICC's margin model to Index Swaptions and describe the manner in which components of the model would work with respect to Index Swaptions. Both of these changes would allow ICC to generate margin requirements for Participants that clear Index Swaptions, which would help to ensure that ICC uses margin requirements to limit its credit exposures to Participants that clear Index Swaptions under normal market conditions and help to ensure that ICC uses risk-based models and parameters to set margin requirements associated with Index Swaptions. The Commission therefore finds that the proposed rule change is consistent with Rule 17Ad–22(b)(2).[23]

The Commission further believes that the other changes the proposed rule change would make to the EOD Policy and the Risk Framework would help improve the operation of both. Specifically, in adding a reference to ICE Data Services' Credit Market Analysis services as a potential source of alternative pricing data to use if ICC determines that the EOD price discovery process has failed to determine reliable EOD prices, the Commission believes the proposed rule change would help to ensure that ICC has a backup source of data to use for EOD prices. Moreover, in making clarifications to the existing process for index and single name CDS Contracts to distinguish it from the additional submission process for Index Swaptions, the Commission believes the proposed rule change would help to avoid potential confusion between the two different processes. Similarly, in updating defined terms and references and making typographical corrections, the Commission believes the proposed rule change would help to ensure that the EOD Policy operates as intended, with the correct references. Likewise, by updating references to risk management data and systems in the Risk Framework, the proposed rule change would help to ensure that the Risk Framework references the correct and existing ICC risk management systems. Thus, the Commission believes these changes would help to improve the operation and use of both the EOD Policy and the Risk Framework in the clearance of Index Swaptions. Because, as discussed above, the Commission finds that the application of both of these policies to Index Swaptions is consistent Rule 17Ad–22(b)(2),[24] the Commission therefore finds that these changes are also consistent with that Rule.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(2).[25]

C. Consistency With Rule 17Ad–22(d)(2)

Rule 17Ad–22(d)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; have participation requirements that are objective and publicly disclosed; and permit fair and open access.[26] The Commission believes that the proposed rule change would establish participation requirements for Participants that clear Index Swaptions by applying price submission and firm trade requirements to Index Swaptions as part of the EOD pricing process, including incorporating Index Swaptions into the table in the

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(b)(2).

[23] 15 U.S.C. 17Ad–22(b)(2).

[24] 15 U.S.C. 17Ad–22(b)(2).

[25] 15 U.S.C. 17Ad–22(b)(2).

[26] 15 U.S.C. 17Ad–22(d)(2).

appendix setting out the timing for various aspects of the price submission process. Similarly, the Commission believes that the proposed rule change would establish requirements for Participants that clear Index Swaptions by adding Index Swaptions to Appendix 2 to the Risk Framework, which ICC uses to evaluate an applicant for membership as a Clearing Participant. Moreover, the Commission believes that both of these requirements would be objective and publicly disclosed, as they would be applicable to all Participants and publicly described in this proposed rule change. Similarly, the Commission believes that in requiring that ICC publish a subset of EOD prices for Index Swaptions on its website, the proposed rule change would permit fair and open access by providing non-Participants and firms looking to become Participants at ICC access to the pricing information for Index Swaptions.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(2).[27]

D. Consistency With Rule 17Ad–22(d)(4)

Rule 17Ad–22(d)(4) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.[28] The Commission believes that the proposed rule change, in establishing procedures for the exercise and settlement of Index Swaptions, would identify possible operational risks in clearing Index Swaptions and minimize those risks through appropriate controls. Specifically, as discussed above, new Rule 26R–319 would provide that, upon exercise, a cleared Contract in the form of the Underlying Contract would automatically come into effect as between the exercising Swaption Buyer and ICC and an offsetting cleared Contract would automatically come into effect as between ICC and the assigned Swaption Seller. The Commission believes that this aspect of the proposed rule change would reduce the operational risks associated with clearing Index Swaptions by providing for the automatic settlement into an offsetting cleared Contract upon exercise, rather than requiring some further manual step or procedure by ICC or the Participants. Similarly, the Commission believes that, in specifying that Index Swaptions that are not validly exercised on the expiration date would expire without further obligation of any party, the proposed rule change would eliminate the potential operational risks associated with Participants attempting late exercises of Index Swaptions. Finally, in providing procedures for the exercise and assignment of Index Swaptions, the Commission believes the proposed rule change would reduce the potential operational risks associated with exercise and assignment by setting out in advance a method that a Swaption Buyer must use to exercise its Index Swaption and a method that ICC must use to assign the Swaption Buyer's position to a corresponding Swaption Seller.

Therefore, for the above reason the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(4).[29]

E. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures.[30] The Commission believes that the proposed rule change, in amending the governance provisions of the EOD Policy to make the ICC Risk Management Department responsible for performing certain functions related to the firm trade requirements for Index Swaptions, would establish clear and transparent governance arrangements for Index Swaptions. The Commission also believes that, in providing that actions by the Board or its designee to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee would not constitute a Contract Modification for purposes of the Rules, the proposed rule change would establish clear and transparent arrangements for the Board or its designee to take such actions.

Therefore, for the above reason the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(8).[31]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2019–007 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2019–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2019–007 and should be submitted on or before November 12, 2019.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the

[27] 15 U.S.C. 17Ad–22(d)(2).

[28] 17 CFR 240.17Ad–22(d)(4).

[29] 15 U.S.C. 17Ad–22(d)(4).

[30] 15 U.S.C. 17Ad–22(d)(8).

[31] 15 U.S.C. 17Ad–22(d)(8).

Act,[32] to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 provides additional details and analyses surrounding ICC's proposed changes to implement clearing of Index Swaptions. By providing the additional information, Partial Amendment No. 1 provides for a more clear and comprehensive understanding of the estimated impact of the proposed rule change, which helps to improve the Commission's review of the proposed rule change for consistency with the Act.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is designed to promote the prompt and accurate clearance and settlement of securities transactions, help assure the safeguarding of securities and funds which are in the custody or control of ICC, and, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[33] Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[34]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[35] and Rules 17Ad–22(b)(2), 17Ad–22(d)(2), 17Ad–22(d)(4), and 17Ad–22(d)(8) thereunder.[36]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[37] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–ICC–2019–007), be, and hereby is, approved on an accelerated basis.[38]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22841 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(2).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 15 U.S.C. 78s(b)(2).

[35] 15 U.S.C. 78q–1(b)(3)(F).

[36] 17 CFR 240.17Ad–22(b)(2), (d)(2), (d)(4), and (d)(8).

[37] 15 U.S.C. 78s(b)(2).

[38] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, October 23, 2019 at 10:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov*.

MATTER TO BE CONSIDERED: The Commission will consider whether to adopt amendments to the Commission's rules implementing its whistleblower program. The proposed amendments are intended to clarify the Commission's discretion, enhance claim processing efficiency, and otherwise address specific issues that have developed during the whistleblower program's eight year history. The Commission will also consider whether to adopt interpretive guidance concerning the terms ''unreasonable delay'' and ''independent analysis'' in the Commission's rules implementing its whistleblower program.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: October 16, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–22961 Filed 10–17–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87303; File No. SR–CBOE–2019–080]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule

October 15, 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, 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the 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''). 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 (the ''migration''). The upcoming migration will also include a migration of the Exchange's billing system to a new billing system. Accordingly, the Exchange proposes to amend certain fees in the Fees Schedule in connection with the migration, effective October 1, 2019.

Split Billing

In connection with the migration of the Exchange's trading platform and billing system on October 7, 2019, for the month of October 2019, the Exchange proposes to issue Trading Permit Holders (''TPHs'') two separate invoices. The first invoice will apply to transaction fees for transactions occurring October 1, 2019 through October 4, 2019.[3] The second invoice will apply to transaction fees for transactions occurring October 7, 2019 through October 31, 2019. The Exchange notes that because it is migrating billing systems, it needs to bill certain programs separately for the period of October 1–4 and October 7–31. Adjustments to transaction fees, such as sliding scales and incentive programs, will be calculated separately for the two time periods. For example, the Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale Adjustment Table, SPX Liquidity Providing Sliding Scale, Volume Incentive Program, the Affiliate Volume Plan, Clearing Trading Permit Holder Proprietary Products Sliding Scale, Clearing Trading Permit Holder VIX Sliding Scale, and the Select Customer Options Reduction (''SCORe'') Program, will all be billed separately for the periods of October 1–4 and October 7–31.[4] For any programs that rely on total volume for the month, rather than percentages, volume from both time periods will be aggregated. For example, the following programs will not be subject to split billing: Clearing Trading Permit Holder Fee Cap, Order Router Subsidy and Complex Order Router Subsidy Programs, Floor Brokerage Fees Discount Scale, Frequent Trader, and QCC Fee Cap. Given the transition of the Exchange's billing to a new system mid-month, the Exchange believes the proposal to split billing for the month of October 2019 is appropriate and ensures a seamless transition with respect to billing upon migration.

Registration Fees

The Exchange also wishes to amend certain application registration-related fees. First the Exchange proposes to amend the Inactive Nominee Status Fee. Currently a quarterly fee of $900 is assessed for any nominee that retains inactive status. To simplify the billing process, the Exchange proposes to assess this fee monthly, instead of quarterly. As such, the Exchange proposes to assess a monthly fee of $300 per month for an Inactive Nominee Status (*i.e.,* the rate of the fee is not changing, merely the timing of billing).

Next the Exchange proposes to amend the Inactive Nominee Status Change fees. Particularly, the Exchange currently assesses a fee each time an inactive nominee swaps places with a nominee on a Trading Permit. The amount of such fee varies depending on what time the request for the swap occurs. Specifically, the Exchange assesses a fee of $55 if the request is submitted prior to 4:00 p.m. CT on the day prior to the effective date of the change; $110 if the request is submitted after 4:00 p.m. Ct on the day prior to the effective date of the change and $220 if the request is submitted after 8:00 a.m. CT on the effective date of change. As the Exchange is modifying its current Trading Permit structure upon migration, the Exchange proposes to waive these fees for the period of October 1–October 4, 2019.[5]

The Exchange also proposes to eliminate the fee assessed for Joint Accounts fee. Currently, the Exchange currently assesses $1,000 per new Joint Account that a TPH reports pursuant to Rule 8.9(c). Post-migration however, the Exchange intends to no longer requiring the reporting of such accounts. As such, the Exchange wishes to eliminate the corresponding fee.

SPX Select Market-Makers

Footnote 49 of the Fees Schedule currently provides that any appointed SPX SMM will receive a monthly waiver of the cost of one Market-Maker Trading Permit and one SPX Tier Appointment provided that the SMM satisfies a heightened quoting standard for that month, which standard is also set forth in Footnote 49 of the Fees Schedule. Specifically an SMM will receive the monthly Trading Permit and SPX Tier Appointment waiver if it (1) provides continuous electronic quotes in 95% of all SPX series 90% of the time in a given month, (2) submits opening quotes that are no wider than the Opening Exchange Prescribed Width (''OEPW'') within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a qualifying quote, on all trading days, to ensure electronic quotes on the open that allow the series to open, (3) submit opening quotes that are no wider than the OEPW quote by 8:00 a.m. (CT) on volatility index derivative settlement days in the SPX series that expire in the month used to calculate the settlement value for expiring volatility index derivatives and (4) within 30 minutes from the initiation of the end-of-month fair value closing rotation, the Exchange disseminates end-of-month closing quotations pursuant to Cboe Options Rule 6.2(.06)(a).[6] SMMs are not currently obligated to satisfy the heightened quoting standards described in the Fees Schedule. Rather, SMMs are eligible to receive a rebate if they satisfy the heightened standards. The Exchange notes however, that with respect to quoting obligations, SMMs must still comply with the continuous quoting obligation and other obligations of Market-Makers and LMMs described in Cboe Options Rules.[7]

The Exchange proposes to amend and simplify the SMM program. As the Exchange will be overhauling its Trading Permit structure, the Exchange first proposes to amend the available incentive under the program. First, the Exchange proposes to provide that if an SMM meets the proposed heightened quoting standard, it will receive a

[3] The Exchange notes that because ORF fees are based on OCC files, ORF fees for the month of October will all be reflected on the October 7 –October 31 invoice.

[4] The Exchange intends to adopt footnote 33 to address split billing and append it to the applicable programs to indicate which programs are subject to split billing.

[5] Changes to the Exchange's Trading Permit structure and corresponding fees will be addressed by a separate rule filing. The Exchange will also submit a separate filing amending these fees, effective October 7, 2019 in connection with migration.

[6] The end-of-month fair value closing rotation is governed by Cboe Options Rule 6.2, Interpretation and Policy .06.

[7] *See e.g.,* Cboe Options Rule 8.7.

monthly rebate of $8,000. The Exchange notes that this amount represents the dollar value of the current rebate (*i.e.,* $5,000 for the free Trading Permit and $3,000 for the free SPX Tier Appointment). In order to receive the proposed rebate, the Exchange proposes to eliminate prongs 2–4 and amend prong 1 to simply require SMMs to provide continuous electronic quotes in at least 99% of the SPX series 90% of the time in a given month.[8] As is the case today, SMMs will still not be obligated to satisfy the heightened quoting standards described in the Fees Schedule. The Exchange believes the program, as amended, will continue to encourage SMMs to provide liquidity in SPX.

Clearing Trading Permit Holder Position Re-Assignment

Currently, the Exchange will rebate assessed transaction fees to a Clearing Trading Permit Holder who, as a result of a trade adjustment on any business day following the original trade, re-assigns a position established by the initial trade to a different Clearing Trading Permit Holder. In such a circumstance, the Exchange will rebate, for the party for whom the position is being re-assigned, that party's transaction fees from the original transaction as well as the transaction in which the position is re-assigned. In all other circumstances, including corrective transactions, in which a transaction is adjusted on any day after the original trade date, regular Exchange fees will be assessed.

The Exchange notes that post-migration it is seeking to limit the amount of rebates it must process post-trade. As such, in an effort to further simplify its billing processes, and as the Exchange no longer wishes to maintain such rebate, the Exchange proposes to eliminate the Clearing Trading Permit Holder Position Re-Assignment Rebate. The Exchange notes only a handful of TPHs submit such request each month and as such believes the impact of the deletion of this rebate to be de minimis. The Exchange also notes that it is under no regulatory requirement to maintain such a rebate.

Sponsored User Inactivity Fee

The Exchange currently assesses a fee of $1,000 per month to any Sponsored User that is not software certified by the Exchange and has not established a production network connection and passed a login test within 90 days of the Exchange's acceptance of its Sponsored User registration status. Such Fee continues to apply until a Sponsored User has completed all of the foregoing requirements or the Sponsored User's registration status is withdrawn. The Exchange notes that it has not assessed this fee in the recent past. Additionally, the Exchange currently only has one Sponsored User who has an established network connection. As such, the Exchange proposes to eliminate the fee in order to simplify its Fees Schedule and eliminate unused and unnecessary fees.

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 Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes providing split billing for the month of October is reasonable as the Exchange is transitioning not only its trading platform on October 7, 2019, but also its billing system. The proposed rule change ensures a seamless transition with respect to the assessment of fees and calculations under various incentive programs, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes amending its inactive nominee fee is reasonable, equitable and not unfairly discriminatory because the Exchange is not changing the amount of the fee assessed but merely changing the timing of the billing (from quarterly to monthly). The proposed change applies uniformly to all TPHs.

The Exchange believes it's reasonable to waive the current inactive nominee swap fees for the period of October 1–October 4, 2019 as the Exchange is modifying its Trading Permit structure in connection with the migration and as TPHs would not be subject to these fees for this period. The Exchanges also notes the proposed waiver would apply to all TPHs.

The Exchange believes the proposal to eliminate the Joint Account fee is reasonable as TPHs no longer will be subject to this fee. Additionally, the Exchange notes that post-migration, the Exchange intends to no longer require reporting of Joint Accounts and as such, the current fee would be rendered obsolete and unnecessary. Removing the fee from the Fees Schedule maintains clarity in the rules and would avoid potential confusion.

The Exchange believes amending the SPX SMM program is reasonable as SMMs will still be eligible to receive a payment in an amount equivalent to the financial benefit they receive today (*i.e.,* a free Trading Permit and SPX Tier Appointment). The Exchange believes the monthly payment continues to be commensurate with the heightened quoting standard, even as amended. The Exchange believes the proposed changes to the heightened quoting standard are reasonable and appropriate as the changes result in a simplified incentive program, while still acting as an incentive for SMMs to provide liquid and active markets in SPX. The Exchange believes it is equitable and not unfairly discriminatory to continue to only offer this financial incentive to the SMMs because it benefits all market participants trading SPX to encourage the SMMs to satisfy the heightened quoting standard, which ensures, and may even provide increased, liquidity, which thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that the SMMs provide a crucial role in providing quotes and the opportunity for market participants to trade SPX, which can lead to increased volume, providing a robust market. The Exchange also notes that SMMs may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (*e.g.,* having to purchase additional logical connectivity). The Exchange also believes the proposed amendments are

[8] For the month of October 2019, the heightened quoting standard will be based on the period of October 7–October 31 only, in light of the migration of the Exchange's billing system.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

equitable and not unfairly discriminatory because they apply to all SMMs uniformly. Additionally, if an SMM does not satisfy the heightened quoting standard for any given month, then it simply will not receive the offered payment for that month.

The Exchange believes it's reasonable to eliminate the Clearing Trading Permit Holder Re-Assignment Rebate because the Exchange is not required to provide such a rebate and it only issues this rebate a couple times a month. The proposed elimination will also apply to all TPHs. The Exchange believes eliminating the Sponsored User Inactivity Fee as it eliminates a fee a Sponsored User may otherwise be potentially subject to in the future. Additionally, the Exchanges notes that it has not assessed this fee in recent history and that it only has one Sponsored User, to whom the fee does not currently apply. As such, the elimination of the Clearing TPH Re-Assignment Rebate and Sponsored User Inactivity Fee are reasonable, equitable and not unfairly discriminatory as they apply to all TPHs uniformly and eliminate unnecessary fees that are not required and who elimination will have a de minimis impact.

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. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will be applied equally to all similarly situated TPHs. The Exchange also operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change continues to reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes enhances market quality to the benefit of all TPHs.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also notes that the proposed rule changes are precipitated by its upcoming migration of the Exchange's trading platform and billing system and not intended to address competitive issues. Rather, the changes are either necessitated by the transition or are designed to simplify the Exchange's billing processes post-migration and eliminate the need to bill for unnecessary and unused fees.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–080 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–2019–080. 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–2019–080 and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22839 Filed 10–18–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0656]

Deerpath Capital II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0656 issued to Deerpath Capital II, L.P. said license is hereby declared null and void.

Dated: October 3, 2019.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2019–22908 Filed 10–18–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0433]

Gemini Investors VI, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Gemini Investors VI, L.P., 20 William Street, Wellesley, MA 02481, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Gemini Investors VI, L.P. proposes to provide equity financing to finance the acquisition of New Era, Inc., 208 Carter Drive, West Chester, PA 19382.

The financing is brought within the purview of § 107.730 of the Regulations because Gemini Investors V, L.P., an Associate of Gemini Investors VI, L.P., owns more than ten percent of New Era, Inc. Also, the proposed investment by Gemini Investors VI, L.P. will be part of a larger pool of funds to cash out existing shareholders, one of which is its Associate Gemini Investors V, L.P. Lastly, Associates of Gemini Investors V, L.P. currently serve on the board of directors of New Era, Inc.

Therefore, this transaction is considered a financing of an Associate and a self-deal pursuant to 13 CFR 107.730 and requires an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Dated: October 10, 2019.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. 2019–22911 Filed 10–18–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 20, 2019.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Melissa Atwood, Director, Denver Finance Center, Small Business Administration, 721 19th Street, 3rd Floor, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Melissa Atwood, Director, Denver Finance Center 303–844–8538 *melissa.atwood@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Government wide requirements in the annual appropriations act, as well as OMB Circular A 123 Appendix B. require agencies to conduct an alternative credit worthiness assessment of new travel applications when the credit score inquiry results in no score. This information is to gather data to make the alternative credit assessment.

Solicitation of Public Comments: SBA is requesting comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: ''Alternative Creditworthiness Assessment.''

Description of Respondents: Personnel that assist in the process of loan applications.

Form Number: 2294.

Annual Responses: 12.

Annual Burden: 2 hrs.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–22903 Filed 10–18–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0485 issued to Opus Equity Partners Opportunity Fund I, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: October 4, 2019.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2019–22907 Filed 10–18–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 10928]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (''the Act''), and delegated pursuant to Department of State Delegation of Authority No. 214 of September 20, 1994, I hereby determine it is reasonably necessary to achieve one or more of the purposes set forth in section 204(b) of the Act (22 U.S.C. 4304(b)) to require all Chinese military personnel assigned to the Embassy of the People's Republic of China or its consular posts in the United States, including PRC military personnel temporarily working in the United States, to provide prior notification of their plans to travel for either official or personal purposes beyond a 25 miles radius of their post of assignment or destination city if present in the United States on a short-term assignment, regardless of their mode of transportation or destination.

The implementation of these requirements is subject to any additional terms and conditions approved by the Director or Deputy Director of the Office of Foreign Missions.

Stephen J. Akard,

Director, Office of Foreign Missions.

[FR Doc. 2019–22898 Filed 10–18–19; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 10929]

Designation and Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (''the Act''), and delegated pursuant to Department of State Delegation of Authority No. 214 of September 20, 1994, I hereby designate all official meetings planned with representatives of state, local, and municipal governments in the United States and its territories involving members of the People's Republic of China's foreign missions in the United States as a benefit under the Act and hereby determine it is reasonably necessary to achieve one or more of the purposes set forth in section 204(b) of the Act (22 U.S.C. 4304(b)) to require all Chinese members of the People's Republic of China's foreign missions in the United States, including its representatives temporarily working in the United States, and accompanying Chinese dependents and members of their households to submit prior notification to the Office of Foreign Missions of:

1. All official meetings with representatives of state, local, and municipal governments in the United States and its territories;

2. All official visits to educational institutions (public or private) in the United States and its territories; and

3. All official visits to research institutions (public or private), including national laboratories, in the United States and its territories.

This Designation and Determination will apply to all Chinese entities that are designated as ''foreign missions'' as defined in the Foreign Missions Act. The implementation of these requirements is subject to any additional terms and conditions approved by the Director or Deputy Director of the Office of Foreign Missions.

Stephen J. Akard,

Director, Office of Foreign Missions.

[FR Doc. 2019–22820 Filed 10–18–19; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0756]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Aging Aircraft Program (Widespread Fatigue Damage)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The ''Aging Aircraft Program (Widespread Fatigue Damage)'' final rule amended FAA regulations pertaining to certification and operation of transport category airplanes to preclude widespread fatigue damage in those airplanes.

DATES: Written comments should be submitted by December 20, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Walter M. Sippel, Federal Aviation Administration, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA 98198.

By Fax: 206–231–3216.

FOR FURTHER INFORMATION CONTACT: Walter M. Sippel by email at: *Walter.Sippel@faa.gov;* phone: 206–231–3216.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0743.

Title: Aging Aircraft Program (Widespread Fatigue Damage).

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: FAA regulations require that type certificate and supplemental type certificate holders use documentation to demonstrate to their FAA Oversight Office that they have complied by establishing a limit of validity of the engineering data that supports the structural maintenance program (hereafter referred to as LOV) for certain airplane models. Operators will submit the LOV to their Principal Maintenance Inspectors to demonstrate that they are compliant.

Respondents: Approximately 30 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 20 hours.

Estimated Total Annual Burden: 167 hours.

Issued in Washington, DC, on October 16, 2019.

Joy Wolf,

Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2019–22878 Filed 10–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional

information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 17, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. RUBIO GONZALEZ, David Nicolas (Latin: RUBIO GONZÁLEZ, David Nicolás), Colombia; DOB 14 Apr 1987; nationality Colombia; Gender Male; Cedula No. 1015399085 (Colombia); Passport PE098803 (Colombia) expires 04 Jun 2024 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of Executive Order 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (E.O. 13850), as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps To Address the National Emergency With Respect to Venezuela,'' (E.O. 13857) for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

2. SAAB MORAN, Amir Luis, Barranquilla, Colombia; Miranda, Venezuela; DOB 29 Jul 1970; citizen Colombia; Gender Male; Cedula No. 72170020 (Colombia); alt. Cedula No. 24978833 (Venezuela); Passport PE135124 (Colombia) expires 23 Jun 2026 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of E.O. 13850, as amended by E.O. 13857, for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

3. SAAB MORAN, Luis Alberto, Colombia; Rome, Italy; DOB 20 Dec 1976; POB Barranquilla, Colombia; citizen Italy; Gender Male; Cedula No. 72224947 (Colombia); Passport YA6688232 (Italy) expires 20 Oct 2024 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of E.O. 13850, as amended by E.O. 13857, for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

Entities

1. SAAB CERTAIN & COMPANIA S. EN C. (a.k.a. SAAB CERTAIN AND COMPANIA S. EN C.; a.k.a. SAAB CERTAIN Y COMPANIA S. EN C.), Cr 43 B No 80—59, Barranquilla, Atlantico, Colombia; NIT # 9000798817 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Alex Nain, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

2. CORPORACION ACS TRADING S.A.S. (Latin: CORPORACIÓN ACS TRADING S.A.S.), Calle 103 A No. 16 90, Apto. 603, Bogota, DC, Colombia; NIT #9004848078 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, RUBIO GONZALEZ, David Nicolas, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

3. DIMACO TECHNOLOGY, S.A., Panama City, Panama; Folio Mercantil No. 844226 (Panama) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, RUBIO GONZALEZ, David Nicolas, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

4. GLOBAL DE TEXTILES ANDINO S.A.S., CR 46 67 5, Barranquilla, Atlantico, Colombia; NIT #9005980294 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, RUBIO GONZALEZ, David Nicolas, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

5. FUNDACION VENEDIG, Panama City, Panama; Identification Number 36102 (Panama) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Amir Luis, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

6. INVERSIONES RODIME S.A., Panama; Folio Mercantil No. 364300 (Panama) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Amir Luis, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

7. SAAFARTEX ZONA FRANCA SAS (a.k.a. COLLECTION CONCEPT S.A.; a.k.a. SAAFARTEX INT. S.A.; a.k.a. SAAFARTEX INTERNATIONAL ZONA FRANCA BARRANQUILLA S.A.; a.k.a. ''COCO S.A.''), CL 70 No 41–114 Of 101, Barranquilla, Atlantico, Colombia; NIT #9002257729 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Amir Luis, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

8. VENEDIG CAPITAL S.A.S. (a.k.a. SAABF & COMPANIA S.C.A.; a.k.a. SAABF AND COMPANIA S.C.A.; a.k.a. SAABF Y COMPANIA S.C.A.), CR 53 No 82–86 Of 410, Barranquilla, Atlantico, Colombia; NIT #9002697181 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Amir Luis, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

9. AGRO XPO S.A.S., Cr 53 No 82–86 Of 410, Barranquilla, Atlantico, Colombia; NIT #9011991477 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

10. ALAMO TRADING S.A., CL 75 No 66–36, Barranquilla, Atlantico, Colombia; NIT #9000904041 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

11. ANTIQUA DEL CARIBE S.A.S., Via 40 No 71 197, Barranquilla, Atlantico, Colombia; NIT #9005387011 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

12. AVANTI GLOBAL GROUP S.A.S., Carrera 48 76 10 PI 3, Barranquilla, Atlantico, Colombia; NIT #9004786647 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

13. GLOBAL ENERGY COMPANY S.A.S., CL 94 No 51 B–43 PI 4 Of 401, Barranquilla, Atlantico, Colombia; NIT #9006520120 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

14. GRUPPO DOMANO S.R.L., Via Robert Musil 8, Roma 00137, Italy; Tax ID No. 15250881008 (Italy) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

15. MANARA S.A.S., Cr 53 No 82–86 Of 410, Barranquilla, Atlantico, Colombia; NIT #9011734898 (Colombia) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

16. TECHNO ENERGY, S.A., Panama City, Panama; Folio Mercantil No. 843504 (Panama) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SAAB MORAN, Luis Alberto, a person whose property and interests in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857.

Dated: September 17, 2019.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2019–22862 Filed 10–18–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8933

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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 IRS is soliciting comments concerning Form 8933, Carbon Dioxide Sequestration Credit.

DATES: Written comments should be received on or before December 20, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carbon Dioxide Sequestration Credit.

OMB Number: 1545–2132.

Form Number: Form 8933.

Abstract: Generally, the credit is allowed to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide. The credit can be claimed on Form 8933 for qualified carbon dioxide captured after October 3, 2008, and before the end of the calendar year in which the Secretary, in consultation with the Administrator of the EPA, certifies that 75,000,000 metric tons of qualified dioxide have been captured and disposed of or used as a tertiary injectant. Authorized under I.R.C. section 45Q.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals or households, and Farms.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours, 9 minutes.

Estimated Total Annual Burden Hours: 215.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 24, 2019.

Philippe Thomas,

Supervisory Tax Analyst.

[FR Doc. 2019–22844 Filed 10–18–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Agency Information Collection Activity Under OMB Review: Application for Accreditation as Service Organization Representative

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of General Counsel (OGC), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 20, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0018'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0018'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5901, 5902, 5904; 38 CFR 14.629, 14.633.

Title: Application for Accreditation as Service Organization Representative.

OMB Control Number: 2900–0018.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Service organizations are required to file an application with VA to establish eligibility for accreditation for representatives of that organization to represent benefit claimants before VA. VA Form 21 is completed by service organizations to establish accreditation for representatives and recertify the qualifications of accredited representatives.

Organizations requesting cancellation of a representative's accreditation based on misconduct, incompetence, or resignation to avoid cancellation of accreditation based upon misconduct or incompetence are required to inform VA of the specific reason for the cancellation request. VA will use the information collected to determine whether service organizations' representatives continue to meet regulatory eligibility requirements to ensure claimants have qualified representatives to assist in the preparation, presentation and prosecution of their claims for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: Vol. 84, No. 143, Thursday, July 25, 2019, pages 35929 and 35930.

Affected Public: Individuals, not-for-profit institutions, and state, local, or tribal governments.

Estimated Annual Burden: 1,013 hours (650 hours for new applicants, 350 hours for recertifications, and 13 hours for accreditation cancellation information responses).

Estimated Average Burden per Respondent: 13 minutes (15 minutes for new applicants, 10 minutes for recertifications, and 60 minutes for accreditation cancellation information responses).

Frequency of Response: One time.

Estimated Number of Respondents: 4,713 (2,600 new applicants, 2,100 recertifications, and 13 accreditation cancellation information responses).

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–22845 Filed 10–18–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0605]

Agency Information Collection Activity Under OMB Review: Application for Accreditation as a Claims Agent or Attorney, Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of General Counsel (OGC), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 20, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0605'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.*

Please refer to ''OMB Control No. 2900–0605'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5901, 5904; 38 CFR 14.629, 14.636.

Title: Application for Accreditation as a Claims Agent or Attorney, Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements.

OMB Control Number: 2900–0605.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Applicants seeking accreditation as claims agents or attorneys to represent benefits claimants before VA must complete VA Form 21a. The applicant is required to file the application with OGC to establish initial eligibility for accreditation. The information requested includes basic identifying information, as well as certain information concerning training and experience, military service, and employment. The information is used to evaluate qualifications, ensure against conflicts of interest, and to establish that statutory and regulatory eligibility requirements, *e.g.,* good character and reputation, are met. If a potential area of concern is identified on the application, additional information may be requested. Applicants who become accredited as agents and attorneys may not lawfully represent claimants without completing and maintaining accreditation requirements. The data is used to determine the applicant's eligibility for accreditation as a claims agent or attorney. The information collected with regard to an attorney or agent's good standing with other courts, bars, and Federal and State agencies and completion of their ongoing CLE requirements is used by OGC in monitoring accredited attorneys and agents to determine whether they continue to have the appropriate character and reputation and that they remain fit to prepare, present, and prosecute VA benefit claims.

The data collected under Filing of Representatives' Fee Agreements is used by OGC to associate the fee agreement with the attorney or agent of record and for potential use in a reasonableness review. The fee agreement information is used by VA's Veterans Benefits Administration (VBA) to associate the fee agreement with the claimant's claims file for potential use in processing as the direct payment of a fee from the claimant's past-due benefits award. The information provided in the fee agreements are used by both VBA and OGC to determine whether they are in compliance with the statutes and regulations governing paid representation. The data collected under Motions for Review of Such Fee Agreements is used when a motion is filed by a claimant or raised sua sponte by VA to determine the reasonableness of an agent or attorney fee from a claimant's award of VA benefits. Also, when a claimant receives an award of benefits and has retained more than one attorney or agent who has been found eligible for direct payment of fees, the data is used to determine each of the attorney's or agent's contribution to and responsibility for the ultimate outcome of the claimant's claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: Vol. 84, No. 143, Thursday, July 25, 2019, pages 35931 and 35932.

Affected Public: Individuals and businesses or other for-profit organizations.

Estimated Annual Burden:

a. *Application for Accreditation as a Claims Agent, VA Form 21a:* 2,137.5 hours (975 hours for initial responses by attorneys, 225 hours for initial responses by non-attorneys, 187.5 hours for follow up responses by non-attorneys, and 750 hours for recertifications by accredited attorneys and agents).

b. *Filing of Representatives' Fee Agreements:* 3,125 hours (750 hours for first time filers and 2,375 hours for repeat filers).

c. *Motions for Review of Such Fee Agreements:* 420 hours.

Estimated Average Burden per Respondent:

a. *Application for Accreditation as a Claims Agent or Attorney, VA Form 21a:* 20 minutes (45 minutes for initial responses by attorneys, 45 minutes for initial responses by non-attorneys, 45 minutes for follow up responses by non-attorneys, and 10 minutes for recertifications by accredited attorneys and agents).

b. *Filing of Representatives' Fee Agreements:* 13 minutes (1 hour for first time filers and 10 minutes for repeat filers).

c. *Motions for Review of Such Fee Agreements:* 2 hours.

Frequency of Response: One time.

Estimated Number of Respondents:

a. *Application for Accreditation as a Claims Agent, VA Form 21a:* 6,350 (1,300 initial responses by attorneys, 300 initial responses by non-attorneys, 250 follow up responses by non-attorneys, and 4,500 recertifications by accredited attorneys and agents).

b. *Filing of Representatives' Fee Agreements:* 15,000 (750 first time filers and 14,250 repeat filers).

c. *Motions for Review of Such Fee Agreements:* 210.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–22843 Filed 10–18–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Monday,

No. 203 October 21, 2019

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0074; FRL–10000–80–OAR]

RIN 2060–AT86

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Organic Liquids Distribution (Non-Gasoline) (OLD) source category. The EPA is proposing amendments to the storage tank and equipment leak requirements as a result of the residual risk and technology review (RTR). The EPA is also proposing amendments to allow terminals the option to implement a fenceline monitoring program in lieu of the enhancements to the storage tank and equipment leak requirements; correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); add requirements for electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and Notification of Compliance Status (NOCS) reports; add operational requirements for flares; and make other minor technical improvements. We estimate that these proposed amendments would reduce emissions of hazardous air pollutants (HAP) from this source category by 386 tons per year (tpy), which represents an approximate 16-percent reduction of HAP emissions from the source category.

DATES:

Comments. Comments must be received on or before December 5, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 20, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before October 28, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/organic-liquids-distribution-national-emission-standards-hazardous.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2018–0074, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2018–0074 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2018–0074.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2018–0074, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include Docket ID No. EPA–HQ–OAR–2018–0074. Comments received may be posted without change to *https://www.regulations.gov/*, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Art Diem, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1185; fax number: (919) 541–0516; and email address: *Diem.Art@epa.gov.* For specific information regarding the risk assessment, contact Mr. Ted Palma, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5470; fax number: (919) 541–0840; and email address: *Palma.Ted@epa.gov.* For questions about monitoring and testing requirements, contact Ms. Gerri Garwood, Sector Policies and Programs Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2406; fax number: (919) 541–4991; and email address: *Garwood.Gerri@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington DC 20460; telephone number: (202) 564–1395; and email address: *Cox.John@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Virginia Hunt at (919) 541–0832 or by email at *Hunt.Virginia@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0074. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2018–0074. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. This

type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2018–0074.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
APCD air pollution control device
API American Petroleum Institute
ASTM American Society for Testing and Materials
ATSDR Agency For Toxic Substances and Disease Registry
Btu/scf British thermal units per standard cubic foot
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CMS continuous monitoring system
EIA Energy Information Administration
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
FTIR Fourier transform infrared spectroscopy
GACT generally available control technology
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.5.5
HF hydrogen fluoride
HI hazard index
HON National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, also known as the hazardous organic NESHAP
HQ hazard quotient
ICR Information Collection Request
IFR internal floating roof
IRIS Integrated Risk Information System
km kilometer
LDAR leak detection and repair
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NHVcz net heating value in the combustion zone gas
NHVvg net heating value of the flare vent gas
NOCS Notification of Compliance Status
OAQPS Office of Air Quality Planning and Standards
OLD Organic Liquids Distribution (Non-Gasoline)
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
PRA Paperwork Reduction Act
PRD pressure relief device
psia pounds per square inch absolute
REL reference exposure level
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
USGS U.S. Geological Survey
UV–DOAS ultraviolet differential optical absorption spectroscopy
VCS voluntary consensus standard
VOC volatile organic compound(s)

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background
A. What is the statutory authority for this action?
B. What is this source category and how does the current NESHAP regulate its HAP emissions?
C. What data collection activities were conducted to support this action?
D. What other relevant background information and data are available?
III. Analytical Procedures and Decision Making
A. How do we consider risk in our decision-making?
B. How do we perform the technology review?
C. How do we estimate post-MACT risk posed by the source category?
IV. Analytical Results and Proposed Decisions

A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3)?
B. What are the results of the risk assessment and analyses?
C. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?
D. What are the results and proposed decisions based on our technology review?
E. What other actions are we proposing?
F. What compliance dates are we proposing?
V. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
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E. What are the benefits?
VI. Request for Comments
VII. Submitting Data Corrections
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030, July, 1992), the OLD source category includes, but is not limited to, those activities associated with the storage and distribution of organic liquids other than gasoline, at sites which serve as distribution points from which organic liquids may be obtained for further use and processing.

The OLD source category involves the distribution of organic liquids into, out of, or within a source. The distribution activities include the storage of organic liquids in storage tanks not subject to other 40 CFR part 63 standards and transfers into or out of the tanks from or to cargo tanks, containers, and pipelines. The OLD NESHAP is codified at 40 CFR part 63, subpart EEEE. Organic liquids are any crude oils downstream of the first point of custody transfer and any non-crude oil liquid that contains at least 5 percent by weight of any combination of the 98 HAP listed in Table 1 of 40 CFR part 63 subpart EEEE. For the purposes of the OLD NESHAP, organic liquids do not include gasoline, kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oil and fuel oil, fuel that is consumed or dispensed on the plant site, hazardous waste, wastewater, ballast water, or any non-crude liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 pound per square inch absolute (psia)). Emission sources controlled by the OLD NESHAP are storage tanks, transfer operations, transport vehicles while being loaded, and equipment leak components (valves, pumps, and sampling connections) that have the potential to leak.

The types of organic liquids and emission sources covered by the OLD NESHAP are frequently found at many types of facilities that are already subject to other NESHAP. If equipment is in organic liquids distribution service and is subject to another 40 CFR part 63 NESHAP, then that equipment is not subject to the corresponding requirements in the OLD NESHAP.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category and NESHAP	North American Industry Classification System (NAICS) Code
Organic Liquids Distribution (Non-Gasoline).	3222, 3241, 3251, 3252, 3259, 3261, 3361, 3362, 3399, 4247, 4861, 4869, 4931, 5622.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/organic-liquids-distribution-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0074).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control

technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this action.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tpy or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT) standards in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *Natural Resources Defense Council* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)[1] of approximately 1-in-10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (*see* 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July, 1992), the OLD source category includes, but is not limited to, those activities associated with the storage and distribution of organic liquids other than gasoline, at sites that serve as distribution points from which organic liquids may be obtained for further use and processing.

The OLD source category involves the distribution of organic liquids into, out of, or within a source. The distribution activities include the storage of organic liquids in storage tanks not subject to other 40 CFR part 63 standards and transfers into or out of the tanks from or to cargo tanks, containers, and pipelines. Organic liquids are any crude oils downstream of the first point of custody transfer and any non-crude oil liquid that contains at least 5 percent by weight of any combination of the 98 HAP listed in Table 1 of 40 CFR part 63, subpart EEEE. For the purposes of the OLD NESHAP, organic liquids do not include gasoline, kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oil and

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

fuel oil, fuel that is consumed or dispensed on the plant site, hazardous waste, wastewater, ballast water, or any non-crude liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 psia). The OLD NESHAP applies only to major sources of HAP (*i.e.,* sources that have the potential to emit 10 tpy of any single HAP or 25 tpy of combined HAP). Facilities subject to this NESHAP fall into two types, either (1) petrochemical terminals primarily in the business of storing and distributing organic liquids or (2) chemical production facilities or other manufacturing facilities that have either a distribution terminal not subject to another major source NESHAP or have a few miscellaneous storage tanks or transfer racks that are not otherwise subject to another major source NESHAP.

Equipment controlled by the OLD NESHAP are storage tanks, transfer operations, transport vehicles while being loaded, and equipment leak components (valves, pumps, and sampling connections) that have the potential to leak. Table 2 to subpart EEEE of part 63 contains the criteria for control of storage tanks and transfer racks. If a storage tank of a certain threshold capacity stores crude oil or a non-crude organic liquid having a threshold sum of partial pressures of HAP, then compliance options are either to (1) route emissions through a closed vent system to a control device that achieves a 95-percent control efficiency or (2) comply with work practice standards of 40 CFR part 63 subpart WW (*i.e.,* operate the tank with a compliant internal floating roof (IFR) or a compliant external floating roof), route emissions through a closed vent system to a fuel gas system of a process, or route emissions through a vapor balancing system that meets requirements specified in 40 CFR 63.2346(a)(4). Storage tanks storing non-crude organic liquids having a sum of partial pressures of HAP of at least 11.1 psia do not have the option to comply using an internal or external floating roof tank. Table 2 to subpart EEEE of part 63 contains the criteria for control of transfer racks, which are based on the facility-wide organic liquid loading volume for organic liquids having threshold HAP content expressed in percent HAP by weight of the organic liquid. For transfer racks required to control HAP emissions, the standards are either to (1) route emissions through a closed vent system to a control device that achieves 98-percent control efficiency or (2) operate a compliant vapor balancing system. Transfer rack systems that fill containers of 55 gallons or greater are required to comply with specific provisions of 40 CFR part 63, subpart PP or operate a vapor balancing system.

The NESHAP requires leak detection and repair for certain equipment components associated with storage tanks and transfer racks subject to this subpart and for certain equipment components associated with pipelines between such storage tanks and transfer racks. The components are specified in the definition of ''equipment leak components'' at 40 CFR 63.2406 and include pumps, valves, and sampling connection systems in organic liquid service. The owner or operator is required to comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H. This requires the use of Method 21 of appendix A–7 to 40 CFR part 60 (''Method 21'') to determine the concentration of any detected leaks and to repair the component if the measured concentration exceeds the definition of a leak within the applicable subpart.

Pressure relief devices on vapor balancing systems are required to be monitored quarterly for leaks. An instrument reading of 500 parts per million (ppm) or greater defines a leak. Leaks must be repaired within 5 days.

The types of organic liquids and emission sources covered by the OLD NESHAP are frequently found at many types of facilities that are already subject to other NESHAP. If equipment is in organic liquids distribution service and is subject to another 40 CFR part 63 NESHAP, then that equipment is not subject to the corresponding requirements in the OLD NESHAP.

C. What data collection activities were conducted to support this action?

The EPA used several sources to develop the list of existing facilities subject to the OLD NESHAP. All facilities in the 2014 National Emissions Inventory (NEI) and the Toxics Release Inventory having a facility source type as petroleum storage facility or with a primary facility NAICS code beginning with 325, representing the chemical manufacturing sector, were queried to create a comprehensive base facility list. We supplemented this list with facility lists from the original OLD NESHAP rule, the Marine Vessel Loading NESHAP, a list of petrochemical storage facilities from the Internal Revenue Service, and from the Office of Enforcement and Compliance Assurance's Enforcement and Compliance History Online (ECHO) tool (*https://echo.epa.gov*). The EPA reviewed title V air permits to determine which facilities on the comprehensive list were subject to the OLD NESHAP. The current facility list consists of 177 facilities subject to the OLD NESHAP.

D. What other relevant background information and data are available?

We are relying on technical reports and memoranda that the EPA developed for flares used as air pollution control devices (APCDs) in the Petroleum Refinery Sector RTR and New Source Performance Standards rulemaking (80 FR 75178, December 1, 2015). These technical reports and memoranda can be found in the Petroleum Refinery Sector Docket for that action, Docket ID No. EPA–HQ–OAR–2010–0682. The Petroleum Refinery Sector Docket contains a number of flare-related technical reports and memoranda documenting numerous analyses the EPA conducted to develop the final suite of operational and monitoring requirements for refinery flares. We are incorporating this docket by reference in this rule. Even though we are incorporating the Petroleum Refinery Sector Docket by reference, for completeness of the rulemaking record for this action and for ease of reference in finding these items, we are including a list of specific technical support documents in Table 1 of the memorandum, *Control Option Impacts for Flares Located in the Organic Liquids Distribution (Non-Gasoline) Source Category,* in this docket for this action.

Also related to the enhancements we are proposing for flares, we are citing the Flare Operational Requirements in the Vopak Terminal Deer Park consent decree, available at *https://www.epa.gov/enforcement/vopak-north-america-inc-clean-air-act-settlement-agreement* and included in the docket for this action.

We are also relying on background information about the fenceline monitoring program established for the Petroleum Refinery Sector rule, Docket ID No. EPA–HQ–OAR–2010–0682. We are incorporating this docket by reference in this rule. Even though we are incorporating the docket by reference, for completeness of the rulemaking record for this action and for ease of reference in finding these items, we are including the following document in the docket for this action memorandum, *Fenceline Monitoring Impact Estimates for Final Rule.*

Lastly, we are incorporating by reference into this action all the information associated with the

development of the current OLD NESHAP standards at Docket ID No. EPA–HQ–OAR–2003–0138. This docket includes the materials from the legacy Docket ID No. A–98–13 associated with the development of the original OLD NESHAP.

III. Analytical Procedures and Decision Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, the first step judgment on acceptability cannot be reduced to any single factor and, thus, the Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information. 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[2] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that the policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will protect the public health. See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk.

The Benzene NESHAP explained that an MIR of approximately one-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors. *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risk with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category. *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability, and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [3]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) conducts facility-wide assessments, which include source category emission

[2] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

[3] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emission standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this action contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the eight primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009,[4] and described in the SAB review report issued in 2010.[5] They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The OLD facility list was developed as described in section II.C of this preamble and currently consists of 177 facilities identified as being subject to the OLD NESHAP. The emissions modeling input files were developed using the EPA's 2014 NEI. The complete OLD facility list is available in Appendix 1 of the memorandum, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

The EPA used the 2014 NEI data for these facilities to create the risk assessment model input files using all available HAP emissions records and other emission release parameters. From the whole facility risk assessment model input file, the EPA identified emission sources within the OLD source category from the 2014 NEI data such as source classification codes (SCCs) and SCC descriptions, emission unit descriptions, and process descriptions to identify emissions that are subject to OLD and those that are not. For example, emission units that were described as chemical production process vents were marked as being out of the source category. For many facilities in the source category, the EPA used information in the title V permit to relate emissions in the 2014 NEI and to assign whether the emissions are within the OLD source category. In several cases, in the absence of definitive information that would place the emissions out of the OLD source category, if the 2014 NEI data indicated

[4] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

[5] U.S. EPA SAB. Review of EPA's draft, *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing*'' May 2010. *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

the emissions were associated with a storage tank, a transfer rack or equipment leaks, the emissions are presumed to be in the OLD source category. For 21 sources, there were no HAP emissions in the 2014 NEI that were able to be attributed to OLD equipment.

The EPA reviewed emissions release point information such as release point location; emission release point type (stack verses fugitive); temperature; and the correlation between stack diameter, velocity, and volumetric flow. In some cases, we corrected release point locations where the original location was outside of the apparent facility boundary. During the process of quality assuring the modeling file input data, for some cases, we obtained specific information from facility contacts. On November 6, 2018, we also posted a draft of the model input file on the EPA's website at *https://www.epa.gov/stationary-sources-air-pollution/organic-liquids-distribution-national-emission-standards-hazardous.* We received feedback from two companies and included those comments in the docket for this action. Except for removing facilities having no OLD applicability, the EPA did not make any of the changes to the modeling file in response to these comments after posting the draft model input file on the EPA's website because none of the changes would impact the conclusions of the source category risk results.

A record of all changes made to the risk assessment model input file throughout the quality assurance process is provided in Appendix 1 of the memorandum, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

For the risk assessment modeling purposes, we modeled 2014 NEI reported actual emissions for the OLD source category. In preparation of this RTR, we did not conduct an information collection of the equipment in this source category. Instead, we relied primarily upon the 2014 NEI emissions data and readily available title V permit information to characterize the actual emissions from the source category. We consider the use of 2014 NEI actual emissions as the best available reasonable approximation of allowable emissions for the risk assessment model.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[6] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[7] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[8] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These values are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer

[6] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[7] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[8] A census block is the smallest geographic area for which census statistics are tabulated.

review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP [9] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. In this proposed rulemaking, as part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[10] we are revising our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* We have been applying this revision in RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point, reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile),[11] and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure. These assumptions represent a reasonable worst-case exposure scenario and, although less conservative than our previous approach, is still sufficiently conservative given that it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated

[9] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[10] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[11] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this action.

for a specified exposure duration.'' [12] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[13] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [14] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For this source category, we used the default acute emissions multiplier of 10 to conservatively estimate maximum hourly rates.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP where acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases for which an acute HQ from the screening step is greater than 1, we assess the site-specific data to ensure that the acute HQ is at an off-site location. For this source category, the data refinements employed consisted of determining the maximum off-site acute HQ for each facility that had an initial HQ greater than 1. These refinements are discussed more fully in the *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source category emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the OLD source category, we identified PB–HAP emissions of arsenic, cadmium, lead, mercury, and polycyclic organic matter (POM). Therefore, we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers. In a Tier 1 screening assessment, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through ingestion exposure. To facilitate this step, we evaluate emissions against previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, these pollutants represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf*). In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to

[12] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *http://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[13] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

[14] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher scenario and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and USGS lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption [15]) and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios [16]). If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[17] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk. For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

5. How do we assess risks considering emissions control options?

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimate risks considering the potential emission reductions that would be achieved by the control options under consideration. In these cases, the expected emission reductions are applied to the specific HAP and emission points in the RTR emissions dataset to develop corresponding estimates of risk and incremental risk reductions.

6. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological

[15] Burger, J. 2002. Daily consumption of wild fish and game: Exposures of high end recreationists. *International Journal of Environmental Health Research* 12:343–354.

[16] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

[17] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the OLD source category emitted any of the environmental HAP. For the OLD source category, we identified emissions of arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), lead compounds, HCl, and HF. Because one or more of the environmental HAP evaluated are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable *(e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

7. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words,

we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For this source category, we conducted the facility-wide assessment using a dataset compiled from the 2014 NEI. We flagged source category records of that NEI dataset as described in section II.C of this preamble. We performed quality assurance and quality control on the whole facility dataset, including the source category records. The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. *The Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

8. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper

bound estimate of risk.[18] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[19] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[20] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[21]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from the previous EPA SAB reviews and other reviews, we are confident that the models used in the

[18] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[19] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[20] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

[21] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3)?

In this action, we are proposing the following pursuant to CAA section 112(d)(2) and (3):[22] (1) Adding monitoring and operational requirements for flares used as an APCD and (2) requesting comment on whether the EPA should add requirements and clarifications for pressure relief devices (PRD). The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2) and (3) are presented below.

1. Flares

The EPA is proposing under CAA section 112(d)(2) and (3) to amend the operating and monitoring requirements for flares used as APCDs in the OLD source category because we have determined that the current requirements for flares are not adequate to ensure the level of destruction efficiency needed to conform with the MACT standards for the OLD source category. A flare is a type of APCD used in the OLD source category to control emissions from a single emission source (*i.e.,* a storage tank or a transfer rack) or multiple emission sources (*i.e.,* a combination of several storage tanks and/or transfer racks). We have determined that 27 flares at 16 OLD facilities would be affected by these proposed operating and monitoring requirements (see the memorandum, *Control Option Impacts for Flares Located in the Organic Liquids Distribution Source Category,* in the docket for this action).

The requirements applicable to flares in the OLD NESHAP are set forth in the General Provisions to 40 CFR part 63 and are cross-referenced in 40 CFR part 63, subpart SS. The OLD NESHAP allows storage tanks and transfer racks to vent through a closed vent system and flare that meet the requirements of 40 CFR part 63, subpart SS. In general, flares used as APCDs at OLD facilities are expected to achieve a minimum destruction efficiency of at least 98 percent by weight, when designed and operated according to the General Provisions. Studies on flare performance, however, indicate that these General Provision requirements are inadequate to ensure proper performance of flares at refineries and other petrochemical facilities (including chemical manufacturing facilities), particularly when either assist steam or assist air is used, but also when no assist is used.[23] The data from the recent

[22] The EPA has authority under CAA section 112(d)(2) and (3) to set MACT standards for previously unregulated emission points. The EPA also retains the discretion to revise a MACT standard under the authority of CAA section 112(d)(2) and (3) (see *Portland Cement Ass'n* v. *EPA,* 665 F.3d 177, 189 (D.C. Cir. 2011), such as when it identifies an error in the original standard. See also *Medical Waste Institute* v. *EPA,* 645 F. 3d at 426 (upholding the EPA action establishing MACT floors, based on post-compliance data, when originally-established floors were improperly established).

[23] Based on review of NEI description fields and a sampling of air permits, we believe the majority of flares at OLD facilities are non-assisted.

studies on flare performance[24] clearly indicate that combustion efficiencies begin to deteriorate at combustion net heating values above 200 British thermal units per standard cubic foot (Btu/scf) and that an operating limit of 200 Btu/scf in the flare vent gas, as currently provided in the General Provisions for unassisted flares, does not ensure that these flares will achieve an average destruction efficiency of 98 percent. Therefore, we believe the proposed amendments described in this section are necessary to ensure that OLD facilities that use flares as APCD meet the MACT standards at all times when controlling HAP emissions. In fact, at least one recent consent decree addresses inefficient flare operations at a large bulk terminal in the OLD source category.[25]

The General Provisions of 40 CFR 63.11(b) specify that flares are (1) steam-assisted, air-assisted, or non-assisted; (2) operated at all times when emissions may be vented to them; (3) designed for and operated with no visible emissions (except for periods not to exceed a total of 5 minutes during any two consecutive hours); and (4) operated with the presence of a pilot flame at all times. These General Provisions also specify both the minimum heat content of gas combusted in the flare and maximum exit velocity at the flare tip. The General Provisions specify monitoring for the presence of the pilot flame and the operation of a flare with no visible emissions. For other operating limits, 40 CFR part 63, subpart SS requires an initial flare compliance assessment to demonstrate compliance but specifies no monitoring requirements to ensure continuous compliance.

In 2012, the EPA compiled information and test data collected on flares and summarized its preliminary findings on operating parameters that affect flare combustion efficiency (see the technical report, *Parameters for Properly Designed and Operated Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0191, which has been incorporated into the docket for this action). The EPA submitted the report, along with a charge statement and a set of charge questions, to an external peer review panel.[26] The panel, consisting of individuals representing a variety of backgrounds and perspectives (*i.e.,* industry, academia, environmental experts, and industrial flare consultants), concurred with the EPA's assessment that the following three primary factors affect flare performance: (1) The flow of the vent gas to the flare; (2) the amount of assist media (*e.g.,* steam or air) added to the flare; and (3) the combustibility of the vent gas/assist media mixture in the combustion zone (*i.e.,* the net heating value, lower flammability limit, and/or combustibles concentration) at the flare tip. However, in response to peer review comments, the EPA performed a validation and usability analysis on all available test data as well as a failure analysis on potential parameters discussed in the technical report as indicators of flare performance. The peer review comments are in the memorandum, *Peer Review of Parameters for Properly Designed and Operated Flares,* available in Docket ID Item No. EPA–HQ–OAR–2010–0682–0193, which has been incorporated into the docket for this action. These analyses resulted in a change to the population of test data the EPA used and helped form the basis for the flare operating limits promulgated in the 2015 Petroleum Refinery Sector final rule at 40 CFR part 63, subpart CC (80 FR 75178). We are also relying on the same analyses and proposing the same operating limits for flares used as APCDs in the OLD source category. The Agency believes, given the results from the various data analyses conducted for the Petroleum Refinery Sector rule (see section II.D of this preamble, which states that the Petroleum Refinery RTR Docket is incorporated by reference into the docket for this action),[27] that the operating limits promulgated for flares used in the Petroleum Refinery Sector are also appropriate and reasonable and will ensure flares used as APCDs in the OLD source category meet the HAP removal efficiency at all times. Therefore, to ensure clarity and consistency in terminology with the Petroleum Refinery Sector rule (80 FR 75178), we are proposing at 40 CFR 63.2380 to directly apply the Petroleum Refinery Sector rule flare definitions and requirements in 40 CFR part 63, subpart CC to flares in the OLD source category with certain clarifications and exemptions as discussed in this section of the preamble.

Currently, the MACT standards in the OLD NESHAP cross-reference the General Provisions at 40 CFR 63.11(b) for the operational requirements for flares used as APCD (through reference of 40 CFR part 63, subpart SS). This proposal specifies all operational and monitoring requirements that are intended to apply to flares used as APCDs in the OLD source category. All of the flare requirements in this proposed rulemaking are intended to ensure compliance with the MACT standards in the OLD NESHAP when using a flare as an APCD.

a. Pilot Flames

This action proposes that flares used as APCDs in the OLD source category operate pilot flame systems continuously when organic HAP emissions are routed to the flare. The OLD NESHAP references the flare requirements in 40 CFR 63.11(b) (through reference of 40 CFR part 63, subpart SS and Table 12 to 40 CFR part 63 subpart EEEE), which specify that a flare used as an APCD should operate with a pilot flame present at all times. Pilot flames are proven to improve flare flame stability, and even short durations of an extinguished pilot could cause a significant reduction in flare destruction efficiency. In this action, we are proposing to remove the cross-reference to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC to include in the OLD NESHAP the existing provisions that flares operate with a pilot flame at all times and be continuously monitored for a pilot flame using a thermocouple or any other equivalent device.

We are also proposing to add a continuous compliance measure that would consider each 15-minute block when there is at least 1 minute where no pilot flame is present when regulated material is routed to the flare as a deviation from the standard. The proposed requirements are set forth in 40 CFR 63.2380 and 40 CFR 63.670(b) and (g). See section IV.A.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance.

We solicit comment on the proposed revisions regarding flare pilot flames.

[24] *Parameters for Properly Designed and Operated Flares,* Docket ID Item No. EPA–HQ–OAR–2010–0682–0191.

[25] See the Flare Operational Requirements in the Vopak Terminal Deer Park consent decree, available at: *https://www.epa.gov/enforcement/vopak-north-america-inc-clean-air-act-settlement-agreement.*

[26] These documents can also be found at *https://www.epa.gov/stationary-sources-air-pollution/petroleum-refinery-sector-risk-and-technology-review-and-new-source.*

[27] See technical memorandum, *Flare Performance Data: Summary of Peer Review Comments and Additional Data Analysis for Steam-Assisted Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0200 for a more detailed discussion of the data quality and analysis. See technical memorandum, *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0206 for a more detailed discussion of the failure analysis. See technical memorandum, *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0748 for additional analyses on flare performance standards based on public comments received on the proposed refinery rule.

b. Visible Emissions

This action proposes that flares used as APCDs in the OLD source category operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when organic HAP emissions are routed to the flare. The OLD NESHAP references 40 CFR 63.11(b) (through reference of 40 CFR part 63, subpart SS and Table 12 to 40 CFR part 63, subpart EEEE), which specify that a flare used as an APCD should operate with visible emissions for no more than 5 minutes in a 2-hour period. Owners or operators of these flares are required to conduct an initial performance demonstration for visible emissions using Method 22 of appendix A–7 to 40 CFR part 60 (''Method 22''). We are proposing to remove the cross-reference to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC to include the limitation on visible emissions. We are also proposing to clarify that the initial 2-hour visible emissions demonstration should be conducted the first-time regulated materials are routed to the flare.

With regard to continuous compliance with the visible emissions limitation, we are proposing daily visible emissions monitoring for whenever regulated material is routed to the flare and visible emissions are observed from the flare. On days the flare receives regulated material, we are proposing that owners or operators of flares monitor visible emissions at a minimum of once per day using an observation period of 5 minutes and Method 22. Additionally, whenever regulated material is routed to the flare and there are visible emissions from the flare, we are proposing that another 5-minute visible emissions observation period be performed using Method 22, even if the required daily visible emissions monitoring has already been performed. If an employee observes visible emissions, then the owner or operator of the flare would perform a 5-minute Method 22 observation to check for compliance upon initial observation or notification of such event. In addition, in lieu of daily visible emissions observations performed using Method 22, we are proposing that owners and operators be allowed to use video surveillance cameras. We believe that video surveillance cameras would be at least as effective as the proposed daily 5-minute visible emissions observations using Method 22. We are also proposing to extend the observation period for a flare to 2 hours whenever visible emissions are observed for greater than 1 continuous minute during any of the required 5-minute observation periods. Refer to 40 CFR 63.2380 and 40 CFR 63.670(c) and (h) for these proposed requirements.

We solicit comment on the proposed revisions regarding visible emissions.

c. Flare Tip Velocity

This action consolidates provisions related to flare tip velocity. The OLD NESHAP references the flare requirements in 40 CFR 63.11(b) (through reference of 40 CFR part 63, subpart SS and Table 12 to 40 CFR part 63, subpart EEEE), which specify maximum flare tip velocities based on flare type (non-assisted, steam-assisted, or air-assisted) and the net heating value of the flare vent gas. These maximum flare tip velocities are required to ensure that the flame does not ''lift off'' the flare (*i.e.,* a condition where a flame separates from the tip of the flare and there is space between the flare tip and the bottom of the flame), which could cause flame instability and/or potentially result in a portion of the flare gas being released without proper combustion. We are proposing to remove the cross-reference to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC to consolidate the specification of maximum flare tip velocity into the OLD NESHAP as a single equation, irrespective of flare type (*i.e.,* steam-assisted, air-assisted, or non-assisted). The proposed flare tip velocity specifications are set forth in 40 CFR 63.2380 and 40 CFR 63.670(d), (i), and (k). We posit that the owner or operator would likely follow the provisions at 40 CFR 63.670(i)(4) and (k)(2)(ii) to determine the flare tip velocity on a 15-minute block average basis, which allows use of a continuous pressure/temperature monitoring system and engineering calculations in lieu of the more intricate monitoring options also specified in 40 CFR part 63, subpart CC. See section IV.A.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance.

Based on analysis conducted for the Petroleum Refinery Sector final rule, the EPA identified air-assisted test runs with high flare tip velocities that had high combustion efficiencies (see technical memorandum, *Petroleum Refinery Sector Rule: Evaluation of Flare Tip Velocity Requirements,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0212). These test runs exceeded the maximum flare tip velocity limits for air-assisted flares using the linear equation in 40 CFR 63.11(b)(8). When these test runs were compared with the test runs for non-assisted and steam-assisted flares, the air-assisted flares appeared to have the same operating envelope as the non-assisted and steam-assisted flares. Therefore, for air-assisted flares used as APCDs in the OLD source category, we are proposing to use of the same equation that non-assisted and steam-assisted flares currently use to establish the flare tip velocity operating limit.

Finally, we are also proposing not to include the special flare tip velocity equation in the General Provisions at 40 CFR 63.11(b)(6)(i)(A) for non-assisted flares with hydrogen content greater than 8 percent. This equation, which was developed based on limited data from a chemical manufacturer, has very limited applicability for flares used as APCDs in the OLD source category because it only provides an alternative for non-assisted flares with large quantities of hydrogen. We believe few, if any, flares in the OLD source category control vent gas with large quantities of hydrogen. Nevertheless, we are proposing to allow owners and operators the use of the existing compliance alternative for hydrogen (*i.e.,* a corrected heat content) that is specified in 40 CFR 63.670 which we believe provides a better way for flares used as APCDs in the OLD source category with high hydrogen content to comply with the rule while ensuring proper destruction performance of the flare (refer to the Petroleum Refinery preamble, 80 FR 75178, for further details about the corrected heat content for hydrogen). Therefore, we are proposing to not include this special flare tip velocity equation as a compliance alternative for non-assisted flares used as APCDs in the OLD source category with hydrogen content greater than 8 percent.

We solicit comment on the proposed revisions regarding flare-tip velocity.

d. Net Heating Value of the Combustion Zone Gas

The current requirements for flares in 40 CFR 63.11(b) specify that the flare vent gas meets a minimum net heating value of 200 Btu/scf for non-assisted flares and 300 Btu/scf for air- and steam-assisted flares. The OLD NESHAP references these provisions (through reference of 40 CFR part 63, subpart SS and Table 12 to 40 CFR part 63, subpart EEEE), but neither the General Provisions nor the OLD NESHAP include specific requirements for monitoring the net heating value of the vent gas. Moreover, recent flare testing results indicate that the minimum net heating value alone does not address instances when the flare may be over-assisted because it only considers the

gas being combusted in the flare and nothing else (*e.g.,* no assist media). However, many industrial flares use steam or air as an assist medium to protect the design of the flare tip, promote turbulence for the mixing, induce air into the flame, and operate with no visible emissions. Using excessive steam or air results in dilution and cooling of flared gases and can lead to operating a flare outside its stable flame envelope, thereby reducing the destruction efficiency of the flare. In extreme cases, over-steaming or excess aeration can snuff out a flame and allow regulated material to be released into the atmosphere without complete combustion. As previously noted, we believe the majority of flares at OLD facilities are non-assisted. However, for flares used as APCDs in the OLD source category that are either steam- or air-assisted, it is critical that we ensure the assist media be accounted for. Recent flare test data have shown that the best way to account for situations of over-assisting is to consider the gas mixture properties at the flare tip in the combustion zone when evaluating the ability to combust efficiently. As discussed in the introduction to this section, the external peer review panel concurred with our assessment that the combustion zone properties at the flare tip are critical parameters to know in determining whether a flare will achieve good combustion. The General Provisions, however, solely rely on the net heating value of the flare vent gas.

In this action, in lieu of requiring compliance with the operating limits for net heating value of the flare vent gas in the General Provisions, we are proposing to cross-reference 40 CFR part 63, subpart CC to include in the OLD NESHAP a single minimum operating limit for the net heating value in the combustion zone gas (NHVcz) of 270 Btu/scf during any 15-minute period for steam-assisted, air-assisted, and non-assisted flares used as APCDs in the OLD source category. The proposed requirements are set forth at 40 CFR 63.2380 and 40 CFR 63.670(e) and (m). The Agency believes, given the results from the various data analyses conducted for the Petroleum Refinery Sector rule, that this NHVcz operating limit promulgated for flares in the Petroleum Refinery Sector source category is also appropriate and reasonable and will ensure flares used as APCDs in the OLD source category meet the HAP destruction efficiencies in the standard at all times when operated in concert with the other proposed flare requirements (*e.g.,* pilot flame, visible emissions, and flare tip velocity requirements) (see the memoranda titled *Petroleum Refinery Sector Rule: Operating Limits for Flares* and *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID Item Nos. EPA–HQ–OAR–2010–0682–0206 and EPA–HQ–OAR–2010–0682–0748, respectively).

In general, refineries are expected to need a flare gas flow monitor and either a gas chromatograph, total hydrocarbon analyzer, or calorimeter to comply with the final suite of operational and monitoring requirements at 40 CFR 63.670 (primarily because refinery flare gas can be highly variable in composition and flaring events can be unpredictable and episodic in nature). However, flares at OLD facilities control a limited amount of flare vent gas streams compared to more numerous and variable waste streams at petroleum refineries. Given that OLD emission sources are storage tanks and transfer racks, the range of organic liquids being distributed through these emissions sources are likely known and have consistent composition and flow. Therefore, due to the more certain nature of gas streams at OLD facilities, we anticipate that owners or operators of flares in the OLD source category would use process knowledge, engineering calculations, and grab samples as their compliance approach specified at 40 CFR 63.670(j)(6). Instead of continuously monitoring composition and net heating value of the flare vent gas (NHVvg), we anticipate owners and operators would be able to characterize the vent gases that could be routed to the flare based on a minimum of seven grab samples (14 daily grab samples for continuously operated flares) and determine the NHVvg that will be used in the equation at 40 CFR 63.670(m)(1) for all flaring events (based on the minimum net heating value of the grab samples) to determine NHVcz. We are also proposing to allow engineering estimates to characterize the amount of gas flared and the amount of assist gas (if applicable) introduced into the system. For example, we believe that the use of fan curves to estimate air assist rates would be acceptable. We anticipate that owners or operators of flares at OLD facilities would be able to use the net heating value determined from the initial sampling phase and measured or estimated flare vent gas and assist gas flow rates, if applicable, to demonstrate compliance with the standards. We believe most, if not all, owners or operators of flares in the OLD source category would be able to use this compliance approach.

Finally, we are proposing that owners or operators of flares in the OLD source category that use grab sampling and engineering calculations to determine compliance must still assess compliance with the NHVcz operating limit on a 15-minute block average using the equation at 40 CFR 63.670(m)(1) and cumulative volumetric flows of flare vent gas, assist steam, and premix assist air. See section IV.A.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance.

We solicit comment on the proposed revisions related to NHVcz.

e. Data Averaging Periods for Flare Gas Operating Limits

Except for the visible emissions operating limits as described in section IV.A.1.b, we are proposing to use a 15-minute block averaging period for each proposed flare operating parameter (*i.e.,* presence of a pilot flame, flare tip velocity, and NHVcz) to ensure that the flare is operated within the appropriate operating conditions. We consider a short averaging time to be the most appropriate for assessing proper flare performance because flare vent gas flow rates and composition can change significantly over short periods of time. Furthermore, because destruction efficiency can fall precipitously when a flare is controlling vent gases below (or outside) the proposed operating limits, short time periods where the operating limits are not met could seriously impact the overall performance of the flare. Refer to the Petroleum Refinery preambles (79 FR 36880 and 80 FR 75178) for further details supporting why we believe a 15-minute averaging period is appropriate. We solicit comment on this proposed revision.

f. Emergency Flaring

We are not proposing the work practice standards for emergency flaring that are currently allowed at 40 CFR 63.670(o) for refinery flares because we do not believe emergency shutdown situations that could occur at a petroleum refinery would exist for the storage and transfer operations covered by the OLD regulations. Should an emergency occur during an organic liquids transfer, the transfer operation could be halted, which in turn would also stop the flow of gas to the flare. Similarly, tank breathing losses are fairly steady and predictable and, except for a *force majeure* situation, would not produce any rapid increases in gas flow to a flare. We solicit comment on this proposed decision.

g. Impacts of the Flare Operating and Monitoring Requirements

The EPA expects that the newly proposed requirements for flares used as APCDs in the OLD source category will affect 27 flares of various flare tip designs (*e.g.,* steam-assisted, air-assisted, and non-assisted flare tips) that receive flare vent gas flow on a regular basis (*i.e.,* other than during periods of SSM).

Costs were estimated for each flare for a given facility, considering the proposed compliance approach discussed in this section of the preamble. The results of the impact estimates are summarized in Table 2 of this preamble. The baseline emission estimate and the emission reductions achieved by the proposed rule were estimated by back-calculating from the NEI-reported volatile organic compounds (VOC) and HAP controlled emissions assuming various levels of control (assuming all flares at OLD facilities operate at a combustion efficiency of either 90 percent, 92 percent, or 95 percent instead of 98 percent). We note that the requirements for flares we are proposing in this action will ensure compliance with the MACT standards. As such, these proposed operational and monitoring requirements for flares have the potential to reduce excess emissions from flares by as much as 64 tpy of HAP and 645 tpy of VOC (assuming a baseline control efficiency of 90 percent) or 24 tpy of HAP and 242 tpy of VOC (assuming a baseline control efficiency of 95 percent). The VOC compounds are non-methane, non-ethane total hydrocarbons. According to the modeling file we used to assess risk (see section III.C.1 of this preamble), there are approximately 39 individual HAP compounds (28 organic HAP compounds and 11 other HAP compounds) included in the emission inventory for flares, but many of these are emitted in trace quantities. A little more than half of the HAP emissions from flares are attributable to 1,3-butadiene, cumene, and vinyl acetate. For more detail on the impact estimates, see the technical memorandum, *Control Option Impacts for Flares Located in the Organic Liquids Distribution Source Category,* in Docket ID No. EPA–HQ–OAR–2018–0074.

TABLE 2—NATIONWIDE COSTS OF PROPOSED AMENDMENTS TO ENSURE PROPER FLARE PERFORMANCE

[2016$]

Control description	Total capital investment (million $)	Total annualized costs (million $/year)
Flare Operational and Monitoring Requirements	0.19	0.36
Total	0.19	0.36

2. Pressure Relief Devices

The acronym ''PRD'' means pressure relief device and is common vernacular to describe a variety of devices that release gas to prevent over-pressurization in a system. A PRD does not release emissions during normal operation but is used only to release unplanned, nonroutine discharges whenever the system exceeds a pressure setting. Typically, the EPA considers PRD releases to result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected causes that require immediate venting of gas from process equipment to avoid safety hazards or equipment damage. At OLD operations, the EPA is aware of PRDs installed on storage tanks, transport vehicles (*i.e.,* cargo tank or tank car), and vapor balancing systems.

For the OLD NESHAP, PRDs are not subject to the emission limits in the rule but are subject to work practice standards. Because the EPA has determined for a number of reasons that it is not practicable to measure emissions from a PRD release in any source category, NESHAP rules prescribe work practices instead of emission limits. When the vapor balancing option is used, the OLD NESHAP work practice requires that no PRD on the storage tank or on the cargo tank or tank car shall open during loading or as a result of diurnal temperature changes (*i.e.,* breathing losses). To avoid breathing losses, the valve pressure must be set to no less than 2.5 psia (unless an owner/operator can justify that a different value is sufficient to prevent breathing losses). In addition, the PRD must be monitored quarterly to identify any leaks to the atmosphere while the vent is in the closed position. A leak is defined as an instrument reading of 500 parts per million by volume (ppmv) or greater, and any leak that is detected must be repaired within 5 days. For OLD storage tank operations that comply using allowable methods in the OLD NESHAP other than vapor balancing, the OLD NESHAP requires venting emissions through a closed vent system to any combination of control devices or fuel gas system or back to process or comply with 40 CFR part 63, subpart WW.

The EPA is proposing to clarify that PRDs on vapor return lines of a vapor balancing system are also subject to the vapor balancing system requirements of 40 CFR 63.2346(a)(4)(iv). We request comments on whether work practices should be adopted for PRDs that are not part of a vapor balancing system and whether work practices similar to those promulgated for petroleum refineries in 40 CFR part 63, subpart CC are necessary and appropriate for OLD operations. We do not believe similar high-pressure events such as those possible on equipment in petroleum refineries are applicable to the storage and transfer operations subject to the OLD NESHAP because we do not expect the kind of conditions that produce high-pressure events at large refinery process equipment (*e.g.,* non-routine evacuation of process equipment) to occur at storage tanks or transfer operations subject to the OLD NESHAP (generally storage and transfer of liquids stored at pressures close to atmospheric pressure). If there are non-vapor balancing system PRDs, we request further information on the nature of these devices, including the following: Whether these PRDs are in heavy liquid service; whether they have a design pressure setting of greater than or less than 2.5 pounds per square inch gauge; whether they release only in response to thermal expansion of fluid; and whether they are pilot-operated and balanced bellows PRDs if the primary release valve associated with the PRD is vented through a control system. Finally, we request comment on whether monitoring devices should be required to be installed and operated to ensure the owner and operator is able to demonstrate continuous compliance with the standard at 40 CFR 63.2346(a)(4)(iv) that no PRD shall open

during loading or as a result of diurnal temperature changes.

B. What are the results of the risk assessment and analyses?

As described in section III.C of this preamble, for the OLD source category, we conducted an inhalation risk assessment for all HAP emitted and multipathway and environmental risk screening assessments on the PB–HAP emitted. We present results of the risk assessment briefly below and in more detail in the document, *Residual Risk Assessment for the Organic Liquids Distribution Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

1. Inhalation Risk Assessment Results

Table 3 of this preamble provides a summary of the results of the inhalation risk assessment for the source category. More detailed information on the risk assessment can be found in the risk document, available in the docket for this action.

TABLE 3—ORGANIC LIQUIDS DISTRIBUTION (NON-GASOLINE) SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]	Population at increased risk of cancer ≥1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]	Maximum screening acute noncancer HQ [4]
157	20	350,000	0.03	0.4	HQ_{REL} = 1 (toluene, formaldehyde, and chloroform).

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum TOSHI. The target organ system with the highest TOSHI for the source category is respiratory.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

As shown in Table 3 of this preamble, the chronic inhalation cancer risk assessment, based on actual emissions could be as high as 20-in-1 million, with 1,3-butadiene from equipment leaks as the major contributor to the risk. The total estimated cancer incidence from this source category is 0.03 excess cancer cases per year, or one excess case every 33 years. About 350,000 people are estimated to have cancer risks above 1-in-1 million from HAP emitted from this source category, with about 3,600 of those people estimated to have cancer risks above 10-in-1 million. The maximum chronic noncancer HI value for the source category could be up to 0.4 (respiratory) driven by emissions of chlorine from equipment leaks, and no one is exposed to TOSHI levels above 1.

For the OLD source category, it was determined that actual emissions data are reasonable estimates of the MACT-allowable emissions. The risk results summarized above, based on actual source category emissions, therefore, also describe the risk results based on allowable emissions.

2. Acute Risk Results

Table 3 of this preamble provides the maximum acute HQ (based on the REL) of 1, driven by actual emissions of toluene, formaldehyde, and chloroform. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures.

As noted previously, for this source category, the primary emission sources of toluene (storage tanks), formaldehyde (unidentified source), and chloroform (equipment leaks) emissions were each modeled with an hourly emissions multiplier of 10 times the annual emissions rate. The maximum acute HQ reflects the highest value estimated to occur outside facility boundaries. As presented in Table 3 of this preamble, no facilities are estimated to have an acute HQ greater than 1.

3. Multipathway Risk Screening Results

Of the 157 facilities included in the assessment, 24 facilities reported emissions of carcinogenic PB–HAP (POM and arsenic) with six facilities exceeding the Tier 1 screening value of 1. For emissions of the non-carcinogenic PB–HAP (cadmium and mercury), eight facilities reported emissions with no facility exceeding the Tier 1 screening value of 1 for cadmium or mercury. One facility's emission rates of POM exceeded the screening value by a factor of 9 and a factor of 3 for arsenic. Due to the theoretical construct of the screening model, these factors are not directly translatable into estimates of risk or HQs for these facilities; rather they indicate that the initial multipathway screening assessment does not rule out the potential for multipathway impacts of concern. For facilities that exceeded the Tier 1 multipathway screening threshold emission rate for one or more PB–HAP, we used additional facility site-specific information to perform a Tier 2 assessment and determine the maximum chronic cancer and noncancer impacts for the source category. Based on the Tier 2 multipathway cancer assessment, POM emissions exceeded the Tier 2 cancer screening value by a factor of 4 for the fisher scenario and 6 for the farmer scenario. Arsenic emissions did not exceed the Tier 2 cancer screening value. POM and arsenic combined exceeded the Tier 2 cancer screening value by a factor of 6 for the farmer scenario and a factor of 4 for the gardener scenario.

An exceedance of a screening threshold emission rate in any of the tiers cannot be equated with a risk value or an HQ (or HI). Rather, it represents a high-end estimate of what the risk or hazard may be. For example, a screening threshold emission rate of 2 for a non-carcinogen can be interpreted to mean that we are confident that the HQ would be lower than 2. Similarly, a Tier 2 screening threshold emission rate of 5 for a carcinogen means that we are confident that the risk is lower than 5-in-1 million. Our confidence comes from the conservative, or health-protective, assumptions encompassed in the screening tiers: We choose inputs from the upper end of the range of possible values for the influential parameters used in the screening tiers, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. Further cancer screening was not warranted based upon the conservative nature of the screen.

Tier 2 noncancer screening threshold emission rates for both mercury and cadmium emissions were below 1. Thus, based on the Tier 2 results presented above, additional screening or site-specific assessments were not deemed necessary.

4. Environmental Risk Screening Results

As described in section III.A of this preamble, we conducted an environmental risk screening assessment for the OLD source category for the following pollutants: Arsenic, cadmium, hydrochloric acid, hydrofluoric acid, lead, mercury (methyl mercury and mercuric chloride), and POM.

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), arsenic, cadmium, and mercury emissions had no exceedances of any of the ecological benchmarks evaluated. POM emissions had a Tier 1 exceedance at one facility for a no-effect level (sediment community) by a maximum screening value of 6.

A Tier 2 screening analysis was performed for POM emissions. In the Tier 2 screening analysis, there were no exceedances of any of the ecological benchmarks evaluated for POM.

For lead, we did not estimate any exceedances of the secondary lead NAAQS. For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

The facility-wide chronic MIR and TOSHI are based on emissions from all sources at the identified facilities (both MACT and non-MACT sources).

The results indicate that 61 facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million, 25 of those facilities have a facility-wide cancer MIR greater than or equal to 10-in-1-million, 10 facilities have a facility-wide cancer MIR greater than or equal to 100-in-1 million, and one facility has a facility-wide cancer MIR greater than or equal to 1,000-in-1 million. There are 21 additional facilities in the facility-wide dataset that are not in the MACT actual dataset. For these facilities, permits or other information show applicability to OLD, but no 2014 NEI information regarding HAP emissions for these facilities reasonably match with any equipment that could be subject to the OLD NESHAP. These facilities are not included in Table 3 of this preamble but are included in the population risk estimates in this paragraph. The maximum facility-wide cancer MIR is 2,000-in-1 million, primarily driven by ethylene oxide from a non-category source. The total estimated cancer incidence from the whole facility is 0.9 excess cancer cases per year, or one excess case in every 1.1 years. Approximately 5,300,000 people are estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at the facilities in this source category. Approximately 1,500,000 of these people are estimated to have cancer risks above 10-in-1 million, with 88,500 people estimated to have cancer risks above 100-in-1 million, and 1,000 people estimated to have cancer risks above 1,000-in-1 million. The maximum facility-wide TOSHI (kidney) for the source category is estimated to be 10, mainly driven by emissions of trichloroethylene from a non-category source. Approximately 1,100 people are exposed to noncancer HI levels above 1, based on facility-wide emissions from the facilities in this source category.

Regarding the facility-wide risks due to ethylene oxide (described above), which are driven by emission sources that are not part of the OLD source category, we intend to evaluate those facility-wide estimated emissions and risks further and may address these in a separate future action, as appropriate. In particular, the EPA is addressing ethylene oxide based on the results of the latest National Air Toxics Assessment (NATA) released in August 2018, which identified the chemical as a potential concern in several areas across the country (NATA is the Agency's nationwide air toxics screening tool, designed to help the EPA and state, local, and tribal air agencies identify areas, pollutants, or types of sources for further examination). The latest NATA estimates that ethylene oxide significantly contributes to potential elevated cancer risks in some census tracts across the U.S. (less than 1 percent of the total number of tracts). These elevated risks are largely driven by an EPA risk value that was updated in late 2016. The EPA will work with industry and state, local, and tribal air agencies as the EPA takes a two-pronged approach to address ethylene oxide emissions: (1) Reviewing and, as appropriate, revising CAA regulations for facilities that emit ethylene oxide—starting with air toxics emissions standards for miscellaneous organic chemical manufacturing facilities and commercial sterilizers; and (2) conducting site-specific risk assessments and, as necessary, implementing emission control strategies for targeted high-risk facilities. The EPA will post updates on its work to address ethylene oxide on its website at: *https://www.epa.gov/ethylene-oxide.*

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the OLD source category across different demographic groups within the populations living near facilities.[28]

The results of the demographic analysis are summarized in Table 4 of this preamble below. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

[28] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

TABLE 4—OLD DEMOGRAPHIC RISK ANALYSIS RESULTS—50 km STUDY AREA RADIUS

		Population with cancer risk greater than or equal to 1-in-1 million	Population with HI greater than 1
	Nationwide	Source Category	
Total Population	317,746,049	350,000	0
	White and Minority by Percent		
White	62	26	0
Minority	38	74	0
	Minority by Percent		
African American	12	13	0
Native American	0.8	0.3	0
Hispanic or Latino (includes white and nonwhite)	18	58	0
Other and Multiracial	7	2	0
	Income by Percent		
Below Poverty Level	14	32	0
Above Poverty Level	86	68	0
	Education by Percent		
Over 25 and without a High School Diploma	14	32	0
Over 25 and with a High School Diploma	86	68	0
	Linguistically Isolated by Percent		
Linguistically Isolated	6	14	0

The results of the OLD source category demographic analysis indicate that emissions from the source category expose approximately 350,000 people to a cancer risk at or above 1-in-1 million and no one with a chronic noncancer TOSHI greater than 1.

Regarding cancer risk, the specific demographic results indicate that the percentage of the population potentially impacted by OLD emissions, as shown in Table 4 of this preamble, is greater than its corresponding nationwide percentage for the following demographics: Minority, African American, Hispanic or Latino, Below Poverty Level, Over 25 and without a High School Diploma, and Linguistically Isolated. The remaining demographic group percentages are the same or less than the corresponding nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors For Populations Living Near Organic Liquids Distribution Source Category Operations,* available in the docket for this action.

C. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section III of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand.'' (54 FR 38045, September 14, 1989). In this proposal, the EPA estimated risks based on actual emissions from OLD operations located at major sources of HAP, and we considered these in determining acceptability.

The estimated inhalation cancer risk to the individual most exposed to actual or allowable emissions from the source category is 20-in-1 million. The estimated incidence of cancer due to inhalation exposures is 0.03 excess cancer cases per year, or one excess case every 33 years. Approximately 350,000 people face an increased cancer risk at or above 1-in-1 million due to inhalation exposure to actual HAP emissions from this source category. The estimated maximum chronic noncancer TOSHI from inhalation exposure for this source category is 0.4. The screening assessment of worst-case inhalation impacts indicates a worst-case maximum acute HQ of 1 for toluene, formaldehyde, and chloroform based on the 1-hour REL for each pollutant.

Potential multipathway human health risks were estimated using a three-tier screening assessment of the PB–HAP emitted by facilities in this source category. The only pollutants with elevated Tier 1 and Tier 2 screening values are POM (cancer). The Tier 2 screening value for POM was 6 which means that we are confident that the cancer risk is lower than 6-in-1 million. For noncancer, the Tier 2 screening value for both cadmium and mercury is less than 1.

In determining whether risks are acceptable for this source category, the EPA considered all available health information and risk estimation uncertainty as described above. The risk results indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are well below 100-in-1 million, which is the presumptive limit of acceptability. In

addition, the highest chronic noncancer TOSHI is well below 1, indicating low likelihood of adverse noncancer effects from inhalation exposures. The maximum acute HQ for all pollutants is 1 based on the REL for toluene, formaldehyde, and chloroform. There are also low risks associated with ingestion, with the highest cancer risk lower than 6-in-1 million and the highest noncancer hazard below 1, based on a Tier 2 multipathway assessment.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III of this preamble, the EPA proposes that the risks are acceptable for this source category.

2. Ample Margin of Safety Analysis

As directed by CAA section 112(f)(2), we conducted an analysis to determine whether the current emissions standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, the EPA considers all health factors evaluated in the risk assessment and evaluates the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in our risk assessment. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any emission reduction measures necessary to provide an ample margin of safety with respect to the risks associated with these emissions.

Our risk analysis indicated the risks from the source category are acceptable for both cancer and noncancer health effects, and in this ample margin of safety analysis, we considered all of the available health information along with the cost and feasibility of available HAP control measures. Under the technology review, we identified more stringent storage tank and leak requirements, and we determined that these requirements are cost effective. However, for this ample margin of safety analysis, we evaluated the estimated change in risks, and while there was some decrease in both the MIR and the number of people exposed to cancer risks above 1-in-1 million, we determined that the current NESHAP already provides an ample margin of safety to protect public health due primarily to the baseline risk levels. We note, however, that we are proposing to adopt the cost-effective measures under the technology review, as discussed in section IV.D of this preamble.

D. What are the results and proposed decisions based on our technology review?

1. Storage Vessels

Storage vessels are used for storing liquid feedstocks, intermediates, or finished products for distribution at OLD facilities. Most storage vessels are vertical cylindrical designs with either a fixed or floating roof. Emissions from storage vessels occur due to tank content expansions (breathing losses) and tank content movements (working losses).

Under the current OLD NESHAP at 40 CFR 63.2346 and Table 2 to subpart EEEE of part 63, the owner or operator of an existing or new storage tank meeting certain capacity and average annual true vapor pressure of organic HAP criteria must reduce the total organic HAP emissions from the storage tank by one of three control options. The first option is to reduce total organic HAP emissions by 95 percent by weight using a closed vent system routed to a (1) flare, (2) non-flare APCD, or (3) fuel gas system or process meeting applicable requirements of 40 CFR part 63, subpart SS. The second option is to comply with vapor balancing requirements. The third option is to either install an IFR with proper seals or install an external floating roof with proper seals and enhanced fitting controls meeting applicable requirements of 40 CFR part 63, subpart WW. Table 5 of this preamble outlines the current rule applicability thresholds for these storage tank control requirements.

TABLE 5—CURRENT OLD NESHAP STORAGE TANK CAPACITY AND AVERAGE TRUE VAPOR PRESSURE THRESHOLDS FOR CONTROL

Existing/new source and tank capacity	Tank contents and average true vapor pressure of total Table 1 to subpart EEEE of part 63 organic HAP
Existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil.
Existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil.
Reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil.
Reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil.
Reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil.
Existing, reconstructed, or new affected source meeting any of the capacity criteria specified above.	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥76.6 kilopascals (11.1 psia).

As part of our technology review for storage vessels, we identified the following emission reduction options: (1) Revising the average true vapor pressure thresholds of the OLD storage tanks for existing sources requiring control to align with those of the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (40 CFR part 63, subpart CC) and National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (''HON,'' 40 CFR part 63, subpart G) where the thresholds are lower and (2) in addition to requirements specified in option 1, requiring leak detection and repair (LDAR) using Method 21 with a 500 ppm leak definition for fittings on fixed roof storage vessels (*e.g.,* access hatches) that are not subject to the 95 percent by weight control requirements.

We identified option 1 as a development in practices, processes, and control technologies because it reflects requirements and applicability thresholds that are widely applicable to existing tanks that are often collocated with OLD sources and which have been found to be cost effective for organic liquid storage tanks. The OLD NESHAP applicability thresholds for new sources are more stringent than other similar rules. Therefore, we are not proposing any changes to the capacity and average true vapor pressure thresholds for new source storage tanks. Table 6 of this preamble lists the proposed capacity and average true vapor pressure thresholds for control. Note that we also propose to clarify that condensate and crude oil are considered to be the same material with respect to OLD applicability (see section IV.E.3 of this preamble for more details on this clarification).

TABLE 6—PROPOSED OLD NESHAP STORAGE TANK CAPACITY AND ANNUAL AVERAGE TRUE VAPOR PRESSURE THRESHOLDS FOR CONTROL UNDER CONTROL OPTION [1]

Existing/new source and tank capacity	Tank contents and average true vapor pressure of total Table 1 to subpart EEEE of part 63 organic HAP
Existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <75.7 cubic meters (20,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Existing affected source with a capacity ≥75.7 cubic meters (20,000 gallons) and <151.4 cubic meters (40,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥13.1 kilopascals (1.9 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate
Existing affected source with a capacity ≥151.4 cubic meters (40,000 gallons) and <189.3 cubic meters (50,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥5.2 kilopascals (0.75 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Existing, reconstructed, or new affected source meeting any of the capacity criteria specified above.	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥76.6 kilopascals (11.1 psia).

Option 2 is an improvement in practices because these monitoring methods have been required by other regulatory agencies since promulgation of the OLD NESHAP to confirm the vapor tightness of tank seals and gaskets to ensure compliance with the standards. Further, we have observed leaks on roof deck fittings through monitoring with Method 21 that could not be found with visual observation techniques. See the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Storage Tanks Located in the Organic Liquids Distribution Source Category,* available in the docket to this action for further background on this control option.

This proposed option would apply to any fixed roof storage tank that is part of an OLD affected source that is not subject to the 95 percent by weight and equivalent controls according to the proposed thresholds above. The proposed requirements of option 2 would apply to new and existing sources for storage tanks having a capacity of 3.8 cubic meters (1,000 gallons) or greater that store organic liquids with an annual average true vapor pressure of 10.3 kilopascals (1.5 psia) or greater.

Table 7 of this preamble presents the nationwide impacts for the two options considered to be cost effective and the expected reduction in modeled emissions from storage tank emission points. We also evaluated other storage tank control options beyond these two, including installation of geodesic domes on external floating roof tanks, during our technology review, but did not find them to be generally cost effective and, therefore, have not discussed them in detail here. Details on the assumptions and methodologies for all options evaluated are provided in the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Storage Tanks Located in the Organic Liquids Distribution Source Category,* available in the docket to this action.

Based on our review of the costs and emission reductions for each of the

options, we consider control options 1 and 2 to be cost-effective strategies for further reducing emissions from storage tanks at OLD facilities and are proposing to revise the OLD NESHAP requirements for storage tanks pursuant to CAA section 112(d)(6). We solicit comment on the proposed revisions related to storage tanks based on technology review under CAA section 112(d)(6).

TABLE 7—NATIONWIDE EMISSIONS REDUCTIONS AND COSTS OF CONTROL OPTIONS CONSIDERED FOR STORAGE TANKS AT OLD SOURCES [1]

[2016$]

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/year)	Total annualized costs with credits ($/year)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	VOC cost effectiveness w/o credits ($/ton)	VOC cost effectiveness with credits ($/ton)	HAP cost effectiveness w/o credits ($/ton)	HAP cost effectiveness with credits ($/ton)
1	2,380,000	309,000	127,000	202	117	1,500	630	2,600	1,100
2	0	30,000	(118,000)	164	95	180	(720)	320	(1,200)

[1] Recovery credits represent the savings in product that would not be lost from tank losses or fitting leaks.

2. Equipment Leaks

Emissions from equipment leaks occur in the form of gases or liquids that escape to the atmosphere through many types of connection points (*e.g.,* threaded fittings) or through the moving parts of certain types of process equipment during normal operation. Equipment regulated by the OLD NESHAP includes pumps, PRDs (as part of a vapor balancing system), sampling collection systems, and valves that operate in organic liquids service for at least 300 hours per year. The OLD NESHAP provides the option for equipment to meet the control requirements of either 40 CFR part 63, subparts TT (National Emission Standards for Equipment Leaks—Control Level 1 Standards), UU (National Emission Standards for Equipment Leaks—Control Level 2 Standards), or H (National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks). The equipment leak requirements vary by equipment (component) type and by requirement (*i.e.,* subpart TT, UU, or H) but generally require LDAR programs using Method 21 to monitor at certain frequencies (*e.g.,* monthly, quarterly, every 2 quarters, annually) and specify leak definitions (*e.g.,* 500 ppm, 1,000 ppm, 10,000 ppm) if the component is in gas or light liquid service. The LDAR provisions for components in heavy liquid service require sensory monitoring and the use of Method 21 to monitor leaks identified through sensory monitoring.

Our technology review for equipment leaks identified two developments in LDAR practices and processes: (1) Adding connectors to the monitored equipment component types at a leak definition of 500 ppm (*i.e.,* requiring connectors to be compliant with either 40 CFR part 63, subparts UU or H) and (2) eliminating the option of 40 CFR part 63, subpart TT for valves, pumps, and sampling connection systems, essentially requiring compliance with 40 CFR part 63, subpart UU or H.

These two proposed practices and processes are already in effect at sources that are often collocated with OLD NESHAP sources, such as in the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR part 63, subpart H). Further, we have found that several OLD sources are permitted using various state LDAR regulations that incorporate equipment leak provisions at the 40 CFR part 63, subpart UU requirement level or above and also require connector monitoring as part of the facility's air permit requirements.

For equipment leaks control option 1, the baseline is that connectors are not controlled using a LDAR program since the current OLD NESHAP does not include them as equipment to be monitored. For control option 2, the impact is lowering the leak definitions for valves and pumps to account for the differences in 40 CFR part 63, subpart UU from the requirements of 40 CFR part 63, subpart TT. That is, valves in light liquid service would drop from a leak definition of 10,000 ppmv to 500 ppmv, and pumps would drop from 10,000 ppmv to 1,000 ppmv. Sampling connection requirements are the same for the two subparts.

Table 8 of this preamble presents the nationwide impacts for the two options considered and the expected reduction in modeled emissions from equipment leak emission points. During our technology review, we also evaluated additional options for controlling equipment leaks, which would have had lower leak definitions for valves and pumps than the two options identified here. Details on the assumptions and methodologies for all options evaluated are provided in the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Equipment Leaks Located in the Organic Liquids Distribution Source Category,* available in the docket to this action.

Based on our review of the costs and emission reductions for each of the options, we consider control option 1 to be a cost-effective strategy for further reducing emissions from equipment leaks at OLD facilities and are proposing to revise the OLD NESHAP for equipment leaks pursuant to CAA section 112(d)(6). We are not proposing option 2 because we consider this option to not be cost effective. We solicit comment on the proposed revisions related to equipment leaks based on technology review under CAA section 112(d)(6).

TABLE 8—NATIONWIDE EMISSIONS REDUCTION AND COSTS OF CONTROL OPTIONS CONSIDERED FOR EQUIPMENT LEAKS AT OLD SOURCES [1]

[2016$]

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/year)	Total annualized costs with credits ($/year)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	VOC cost effectiveness w/o credits ($/ton)	VOC cost effectiveness with credits ($/ton)	HAP cost effectiveness w/o credits ($/ton)	HAP cost effectiveness with credits ($/ton)
1	1,640,000	567,000	490,000	300	174	1,900	1,600	3,300	2,800

TABLE 8—NATIONWIDE EMISSIONS REDUCTION AND COSTS OF CONTROL OPTIONS CONSIDERED FOR EQUIPMENT LEAKS AT OLD SOURCES [1]—Continued

[2016$]

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/year)	Total annualized costs with credits ($/year)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	VOC cost effectiveness w/o credits ($/ton)	VOC cost effectiveness with credits ($/ton)	HAP cost effectiveness w/o credits ($/ton)	HAP cost effectiveness with credits ($/ton)
2	2,509,000	565,000	516,000	54	31	10,500	9,500	18,000	16,500

[1] Recovery credits are the savings in product that would not be lost from equipment due to leaks.

3. Transfer Racks

Transfer racks are process equipment that transfer liquids from storage vessels into cargo tanks (*i.e.,* tank trucks and railcars). Emissions from transfer racks occur as the organic liquid is loaded into the cargo tank, thereby displacing the vapor space in the tank above the liquid's surface. These emissions can be affected primarily by the turbulence (*i.e.,* splashing) during loading, temperature of the liquids, and volume transferred.

The current OLD NESHAP requires control of transfer racks in organic liquid service through a variety of means, but with an equivalent control efficiency of 98 percent. This control efficiency was determined during the NESHAP rulemaking to be achievable by well-designed and operated combustion devices (69 FR 5054, February 3, 2004). We evaluated the thresholds for control in the current rule against the 2012 proposed uniform standards for storage vessels and transfer operations (see Docket ID No. EPA–HQ–2010–0871) and found that the current thresholds for controls are equivalent or more stringent than those in proposed in 2012.

We also considered an option that would apply 98-percent control requirements for transfer racks to large throughput transfer racks transferring organic liquid materials that are 5 percent or less by weight HAP. We analyzed the population of transfer racks and identified potentially affected transfer racks. Considering the costs of control and the HAP emissions for these racks, this option was also found to be cost ineffective. Therefore, the EPA is not proposing to change the emission standard for transfer racks. For more information, see the *Clean Air Act Section 112(d)(6) Technology Review for Transfer Racks Located in the Organic Liquids Distribution Source Category* memorandum in the docket for this action.

4. Fenceline Monitoring Alternative

The EPA is proposing a fenceline monitoring program as an alternative compliance option for certain requirements being proposed in this action. The fenceline monitoring option would be available to existing and new OLD facilities in lieu of implementing certain proposed requirements for storage vessels and equipment leaks. OLD operations located at facilities that are required to implement a fenceline monitoring program under the Petroleum Refinery NESHAP at 40 CFR part 63, subpart CC would not be eligible to use this alternative compliance option. The rationale for excluding petroleum refineries from exercising the fenceline monitoring alternative is because these facilities already implement a fenceline monitoring program for benzene and because only a few refineries have OLD operations, which contribute a small proportion of the refineries overall HAP emissions inventory. We believe petroleum refineries should continue to implement fenceline monitoring under the Petroleum Refinery NESHAP.

We are proposing optional fenceline monitoring as an advancement in monitoring practice because of the significant quantities of HAP emissions originating from OLD operations that are fugitive in nature, and as such, are impractical to directly measure (for example, fixed roof tanks, external floating roof tanks, equipment leaks, uncontrolled transfer operations). Direct measurement of fugitive emissions from sources such as storage vessels and equipment leaks can be costly and difficult, especially if required to be deployed on all OLD sources of fugitive emissions throughout the source category.[29] This is a major reason why fugitive emissions associated with OLD operations are generally estimated using factors and correlations rather than by direct measurement. For example, equipment leak emissions are estimated using emissions factors or correlations between leak rates and concentrations from Method 21 instrument monitoring. Relying on these kinds of approaches introduces uncertainty into the emissions inventory for fugitive emission sources.

As part of the technology review, we evaluated developments in processes, practices, and control technologies for measuring and controlling fugitive emissions from individual emission points at OLD sources. For storage vessels, as discussed in section IV.D.1 of this preamble, we are proposing to lower the vapor pressure threshold for emission control for storage tanks at existing sources having capacities of 20,000 to 50,0000 gallons and we are proposing to require monitoring of components on fixed roof storage tanks. For equipment leaks, as discussed in section IV.D.1 of this preamble, we are proposing to include connectors in the LDAR program.

We are proposing that owners and operators of OLD operations may implement a fenceline monitoring program in lieu of the proposed technology review amendments for storage tanks and equipment leaks discussed above. In summary, if an owner or operator opts to implement the fenceline monitoring alternative standard, then the facility would not need to perform connector monitoring for equipment leaks, would not need to perform annual inspections on storage tank closures, and would not need to install controls for storage tanks between 20,000 and 50,000 gallons pursuant to Table 2b. Instead of complying with these requirements, the facility would need to develop a detailed inventory of allowable HAP emissions from all equipment at the facility, including identification of which equipment are in OLD service;

[29] In general, testing fugitive sources requires methodologies for which the EPA has not developed standard test methods and for which there are few contractors that can perform such testing. While it may be possible to obtain data on some fugitive sources, the testing requires intense planning and analysis by highly qualified experts in order to limit the data uncertainty and isolate the fugitive sources. These techniques often require very expensive equipment to obtain results. Additionally, by their nature, fugitive sources have more variable emissions than point sources, making it more difficult to determine representative testing conditions. Point source emissions occur at all times that the process operates and are routed through a stack where mass emissions may be determined by measuring concentration and flow, whereas equipment such as connectors only exhibit emissions when there is an issue that needs to be addressed.

determine which HAP to monitor based on emissions from OLD equipment; run the HEM–3 model to determine the annual average modeled concentration of each HAP; set an action level based on the modeled concentration of selected HAP; submit the modeling input file and results to the EPA for approval; deploy passive sample tubes on the fenceline of your facility every 14 days using Method 325A of appendix A to 40 CFR part 63 (''Method 325A''); have the passive tubes analyzed for the selected HAP using Method 325B of appendix A to 40 CFR part 63 (''Method 325B''); calculate the difference of the highest recorded concentration minus the lowest recorded concentration (*i.e.,* delta C) for each sample period; calculate a rolling annual average delta C for each selected HAP; report recorded concentrations and calculated delta C values to the EPA electronically; and, if the rolling annual average delta C is greater than the action level established from the modeling effort, then the facility must perform a root cause analysis and take corrective action to bring the annual average delta C to below the action level. Like the petroleum refinery fenceline monitoring results, the EPA plans to make the reported monitored data publicly available. Details about this optional fenceline monitoring program are described in the subsections below: (a) Developments in Monitoring Technology and Practices; (b) Analytes to Monitor; (c) Concentration Action Level; (d) Siting and Sampling Requirements for Fenceline Monitors; (e) Reporting Monitoring Results; (f) Reducing Monitoring Frequency; (g) Corrective Action Requirements; and (h) Costs Associated with Fenceline Monitoring Alternatives.

The EPA is proposing this option for several reasons: (1) There is concern that the uncertainty surrounding estimated fugitive emissions from OLD operations may be underestimating actual fugitive emissions from OLD operations; (2) the proposed fenceline monitoring program would provide owners and operators a flexible alternative to appropriately manage fugitive emissions of HAP from OLD operations if they are significantly greater than estimated values; and (3) the proposed frequency of monitoring time-integrated samples on a 2-week basis would provide an opportunity for owners and operators to detect and manage any spikes in fugitive emissions sooner than they might have been detected from equipment subject to annual or quarterly monitoring in the proposed amendments or from equipment that is not subject to equipment leak monitoring in the proposed rule.

The EPA believes the proposed fenceline monitoring alternative would be equivalent to the proposed technology review revisions it would replace. The EPA is proposing to establish the trigger for root cause analysis and corrective action based on modeled HAP concentrations emitted from OLD equipment and considering the expected concentrations of HAP at the fenceline from all equipment at the facility. The HAP to be monitored are those having the most HAP emissions from OLD equipment at the facility including those that are emitted from equipment that would have been subject to the proposed requirements for storage tanks and equipment leaks had the owner or operator of the facility not opted to implement the alternative fenceline monitoring. If actual annual average delta C is at or below the modeled values considering allowable emissions adjusted to reflect compliance with the connector monitoring and proposed amendments to the storage tank requirements, then fugitive emissions from the facility having OLD operations would be considered equivalent to the level of control that would be required by these proposed amendments. If the actual annual average delta C is above the action level, then the facility must perform root cause analysis and, if the cause is from emissions at the facility, then the facility would be required to reduce emissions to a level so that the annual average delta C is below the action level.

As discussed above, we believe the proposed fenceline monitoring option would achieve an equivalent level of HAP emissions reductions as the proposed amendments to the storage tank and equipment leak requirements that this program would replace and would be appropriate under CAA section 112(d)(6) to propose as an alternative equivalent requirement to address fugitive emissions from OLD sources.

Regarding uncertainty in emissions, emissions of HAP from OLD operations are often fugitive, that is, emissions that are not routed through a stack or cannot reasonably be measured. Emissions from storage tanks that are not routed through a closed vent system to control are usually calculated using equations in Chapter 7 of the EPA's *Compilation of Air Emissions Factors* (AP–42).[30] Equipment leaks are often calculated using presumptive emission factors for different types of equipment (*e.g.,* valves, pump seals, sampling connections, connectors) in specific types of service (gas, light liquid, heavy liquid) using the EPA's *Protocol for Equipment Leak Emission Estimates.*[31] There is uncertainty surrounding these emission factors. Actual emissions may be different if the equipment is operating at different conditions than those used to set the emission factors. A large proportion of HAP emissions from OLD operations are inventoried by calculating emissions using these emission factors and protocols. By monitoring fenceline concentrations of HAP and comparing the annual average concentrations to the concentrations that would be expected from modeling the emissions calculated using emission factors, the owner or operator would be able to determine if the emissions from the facility are close to those that were calculated in the inventory used to generate the action level. In this way, fenceline monitoring is a method that can help evaluate whether the uncertainty surrounding the calculations used to estimate fugitive emissions at a particular facility is a concern.

Regarding the opportunity to detect spikes in fugitive emissions earlier, the 2-week sample time is more frequent than the LDAR requirements in the proposed rule (quarterly, annual) and more frequent than the proposed floating roof inspection requirements (annual for closure devices on fixed roof tanks, annual top-side floating roof inspections, and close-up inspections of floating roof seals when the storage tanks are emptied and degassed). This provides an opportunity to detect problems sooner than they otherwise might be detected. Also, there is an opportunity for the monitors to detect emissions from equipment that would not otherwise be detected with the requirements for storage tanks and equipment leaks in the proposed amendments to this rule. Fenceline monitoring would provide the opportunity to identify any significant increase in emissions (*e.g.,* a large equipment leak or a significant tear in a storage vessel seal) in a more timely manner, which would allow owners or operators to identify and reduce HAP emissions more rapidly than if a source relied solely on the existing monitoring and inspection methods required by the OLD NESHAP. Small or short-term increases in emissions are not likely to raise the fenceline concentration above the action level, so a fenceline

[30] *https://www3.epa.gov/ttn/chief/ap42/ch07/index.html.*

[31] *https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P1006KE4.txt.*

monitoring approach will generally target larger emission sources that have the most impact on the ambient pollutant concentration near the facility.

Further, selection of the HAP to monitor are based on the emissions from OLD operations that would be subject to these proposed amended requirements (connector monitoring, tank closure inspections, and revised storage tank vapor pressure thresholds for control) at the facility. The action level would be set using modeled concentrations of these HAP emissions from all equipment at the facility and would represent an equivalent level of control to the proposed enhancements to the storage tanks and equipment leak requirements. Therefore, we conclude that, over the long term, the HAP emission reductions achieved by complying with the fenceline monitoring alternative would be equivalent to, or better than, compliance with the enhanced standards being proposed here because of the potential for earlier detection of significant emission leaks and the potential to address fugitive emissions that are not being reflected in the HAP emission inventories due to the uncertainty surrounding how those emissions are calculated.

The following proposed requirements would not apply if a source chooses to comply with the fenceline monitoring alternative: (1) Lower threshold (*i.e.,* tank vapor pressure and volume) for requiring emission controls on tanks expressed in proposed Table 2b of 40 CFR part 63 subpart EEEE; (2) inspection of closure devices on fixed roof tanks expressed at proposed 40 CFR 63.2343(e)(4); and (3) LDAR monitoring for connectors expressed at proposed 40 CFR 63.2346(l)(1). The proposed revisions, if finalized, would not change a facility's responsibility to comply with the emissions standards and other requirements of the OLD NESHAP as currently in effect and the amendments to the rule other than the three identified above in this paragraph. We solicit comment on the proposed revisions related to the fenceline monitoring alternative based on technology review under CAA section 112(d)(6).

a. Developments in Monitoring Technology and Practices

The fenceline monitoring alternative is a practicable NESHAP requirement because of developments in monitoring technology. The EPA reviewed the available literature and identified several methods for measuring fenceline emissions. The methods analyzed were (1) Passive diffusive tube monitoring networks; (2) active monitoring station networks; (3) ultraviolet differential optical absorption spectroscopy (UV–DOAS) fenceline monitoring; (4) open-path Fourier transform infrared spectroscopy (FTIR); (5) Differential Absorption Lidar (DIAL) monitoring; and (6) solar occultation flux monitoring. We considered these monitoring methods as developments in practices under CAA section 112(d)(6) for purposes of all fugitive emission sources at OLD operations.

While each of these methods has its own strengths and weaknesses, we conclude that a passive diffusive tube monitoring network is the most appropriate fenceline monitoring technology that has been demonstrated and is applicable to OLD operations. We conclude that DIAL and solar occultation flux can be used for short-term studies, but these methods are not appropriate for continuous monitoring. While active monitoring stations, UV–DOAS, and FTIR are technically feasible, passive diffusive tubes have been demonstrated to be feasible and commercially available with substantially lower capital and operating costs. We, therefore, are proposing to require the use of passive diffusive tubes as the monitoring technology for the fenceline monitoring alternative for OLD operations. Our evaluation of the six alternative fugitive monitoring technologies is summarized in the proposal preamble for the Petroleum Refinery Sector RTR at 79 FR 36880 (June 30, 2014). For this action, we have not evaluated any other fugitive emissions monitoring techniques beyond those described in the Petroleum Refinery Sector RTR. While the discussion in the proposal preamble of the Petroleum Refinery Sector RTR is in the context of emissions from a petroleum refinery, passive tube monitoring is equally applicable to HAP emitted by OLD operations. The method for conducting fenceline monitoring using this technology is prescribed in Methods 325A and 325B. The method is applicable to any VOC that has been properly validated under Method 325B. Table 12.1 of Method 325B lists benzene and 17 additional organic compounds having verified method performance and validated uptake rates for specified sorbents used in the passive sampling tubes. Owners and operators of an OLD operation can obtain approval from the EPA for additional HAP compounds or different sorbents by conducting validation testing described in Addendum A of Method 325B or in one of the following national/international standard methods: ISO 16017–2:2003(E), American Society for Testing and Materials (ASTM) D6196–03 (Reapproved 2009), BS EN 14662–4:2005, or a method reported in the peer-reviewed open literature.

b. Analytes To Monitor

For facilities that opt to implement fenceline monitoring at 40 CFR 63.2348(b)(2), we are proposing to specify how to determine the HAP to monitor and the action level that determines when root cause and corrective action must be taken. There is a wide variety of organic liquids stored at different facilities in the nation. Accordingly, we do not believe there is a single HAP that is suitable to universally represent an accurate indicator of the performance of tank and other fugitive emission control strategies across all OLD facilities. To ensure an effective monitoring framework, we are proposing that a facility that chooses the fenceline monitoring alternative would monitor simultaneously for at least the number of HAP that will represent the HAP emissions from the OLD operations at the facility. We are proposing that each facility would monitor for the organic HAP that has the most annual allowable emissions from OLD operations. If this HAP is emitted from the equipment that would have been subject to the proposed new requirements (*i.e.,* the connectors subject to the equipment leak provisions at proposed 40 CFR 63.2346(l)(1) and the storage tanks that would have been subject to the control criteria at proposed Table 2b of 40 CFR part 63 subpart EEEE or 40 CFR 63.2343(e)(4)), then monitoring that HAP at the fenceline is sufficient. Otherwise, the facility must monitor that HAP as well as additional HAP necessary to ensure that the HAP being emitted from sources that would have been subject to additional control are monitored through the fenceline program, *i.e.,* each piece of OLD equipment that would have been subject to controls emits at least one HAP monitored at the fenceline. We are soliciting comment on whether one of the analytes should be set as benzene, which is a pollutant common to most terminals subject to the OLD NESHAP. We are also soliciting comment on whether different criteria should be established to determine which analytes should be monitored and reported.

c. Concentration Action Level

We are proposing at 40 CFR 63.2348(b)(3), the method by which the facility would determine the action level for each monitored HAP. The action level is compared to the annual

average delta C to determine whether a root cause analysis, and potentially corrective action to reduce emissions, is triggered. The action level would be set for each HAP as an air concentration, expressed in micrograms per cubic meter, equal to the highest modeled fenceline concentration for the selected HAP.

As input to the modeling, each facility would be required to prepare an inventory of their allowable emissions assuming full compliance with the final revised OLD NESHAP developed from this regulatory action. To ensure consistency and equity among affected sources, each facility would follow guidance developed by the EPA for preparing the emissions inventory and conducting modeling using the HEM–3 model, which contains an atmospheric dispersion model and meteorological data. A draft of the proposed guidance is available for review and comment in the docket for this proposed action (see *Draft Guidance on Determination of Analytes and Action Levels for Fenceline Monitoring of Organic Liquids Distribution Sources*).

In order to be eligible for the fenceline monitoring option, we are proposing the monitored HAP's site-specific action level derived from the modeling must be at least 5 times greater than the method detection limit for the HAP. This requirement will ensure that sources are not unreasonably put into a corrective action routine due solely to the relationship between the action level and the method detection limit. For any 2-week sampling period, if the lowest recorded value falls below the method detection limit for an analyte, then for the purposes of calculating the delta C, a zero is used. Also, if all sample results for any 2-week sample period are below the method detection limit, then you must use the method detection limit as the highest sample result for the purposes of calculating the delta C, effectively making delta C equal to the method detection limit. Therefore, if the action level is set to a value too close to the method detection limit, then achieving an annual average delta C at or below the action level could become difficult because only a few detectable readings could bring the annual average delta C above the action level when those readings are averaged with the method level of detection for the other sample periods. Therefore, requiring an action level of at least 5 times greater than the method limit of detection would alleviate this difficulty and prevent cases where root cause analysis and corrective action are required simply due to the way detectable concentrations are averaged with the method limit of detection which is close to the action level. To reduce the likelihood of this occurring, we are setting an appropriate requirement that the method detection limit be well below the action level for the HAP.

We propose that owners or operators of an existing affected OLD operation would conduct modeling and submit the results and proposed action levels to the Administrator no later than 1 year after the effective date of the final rule, then deploy samplers and begin collecting data no later than 2 years after the effective date of the final rule. For new sources, if an owner or operator elects to conduct a fenceline monitoring program, we are proposing that the owner or operator would (1) model and submit for EPA approval action levels within 3 months after establishment of allowable emissions in the title V permit, (2) begin monitoring upon commencement of operation, (3) submit the first report no later than 45 days following the end of the calendar quarter in which 1 full year of monitoring data was collected, and (4) subsequently submit monitoring reports by the end of each subsequent calendar quarter.

d. Siting and Sampling Requirements for Fenceline Monitors

The EPA is proposing at 40 CFR 63.2348(c) specification of the passive monitoring locations. Facilities that use the fenceline monitoring alternative must deploy and operate monitors by following the requirements of Methods 325A and 325B. Method 325A requires deployment of a minimum of 12 monitors around the fenceline, although the minimum number and the placement of monitors depends on the size, shape, and linear distance around the facility, as well as the proximity of emissions sources to the property boundary, as described in the method. Method 325A also specifies the requirements for sample collection, while Method 325B specifies the requirements for sample preparation and analysis.

The EPA is proposing that passive fenceline monitors would be deployed and sampling would commence starting 2 years after the effective date of this final rule. Passive sorbent tubes would be used to collect 2-week time-integrated samples. For each 2-week period, the facility would determine a delta C, calculated as the lowest sorbent tube sample value subtracted from the highest sorbent tube sample value. This approach is intended to subtract out the estimated contribution from background emissions that do not originate from the OLD facility. The delta C for the most recent 26 sampling periods would be averaged to calculate an annual average delta C. The annual average delta C would be determined on a rolling basis, meaning that it is updated with every new sample (*i.e.,* every 2 weeks, a new annual average delta C is determined from the most recent 26 sampling periods). This rolling annual average would be compared against the relevant concentration action level.

e. Reporting Monitoring Results

After 1 full year of monitoring, the fenceline monitoring reports would be submitted electronically via the Compliance and Emissions Data Reporting Interface (CEDRI), to the EPA on a quarterly frequency. Because the concentration action level is compared to an annual average delta C, monitoring data from 1 full year is needed to assess compliance with the requirements of the alternative fenceline compliance option. Therefore, we are proposing that OLD owners and operators would not be required to submit the initial fenceline monitoring report until after 1 full year of data is available. The initial report would be required to be submitted no later than 45 days following the end of the calendar quarter in which 1 full year of monitoring data is obtained. Each subsequent compliance report would include monitoring data collected for the calendar quarter following the data reported in the previous report and would be due no later than 45 days following the end of the calendar quarter covered by the monitoring. For example, if the effective date of this rule is March 27, 2020, then the establishment of the action levels must be submitted to the EPA or the delegated authority by March 27, 2021; fenceline monitoring would begin by March 27, 2022; the first report would include data collected from March 27, 2022, through March 31, 2023; and the first report would be submitted by May 15, 2023. At that point, quarterly reporting would commence; the next report would include data collected from April 1, 2023, through June 30, 2023, and would be submitted by August 14, 2023. See section IV.E.2 of this preamble for further discussion on reporting fenceline monitoring data.

f. Reducing Monitoring Frequency

To reduce the burden of monitoring, we are proposing provisions at 40 CFR 63.2348(e)(3) that would allow OLD owners or operators to reduce the frequency of fenceline monitoring at sampling locations where ambient air concentrations are consistently well below the fenceline concentration action level for all analytes. Specifically,

we are allowing owners or operators to monitor every other 2-week period (*i.e.,* skip period monitoring) if over a 2-year period, each sample collected at a specific monitoring location is at or below one tenth of the action level for each analyte. If every sample collected from that sampling location during the subsequent 2 years is at or below one tenth of the action level, the monitoring frequency may be reduced from every other sampling period to once every sixth sampling period (approximately quarterly). After an additional 2 years, the monitoring can be reduced to once every thirteenth sampling period (semiannually) and finally to annually after another 2 years, provided the samples continue to be at or below one tenth of the action level during all sampling events at that location. If at any time a sample for a monitoring location that is monitored at a reduced frequency returns a concentration greater than one tenth the action level, the owner or operator must return to the original sampling requirements for 1 quarter (monitor every 2 weeks for the next six monitoring periods for that location). If every sample collected during that quarter is at or below one tenth the action level, then the sampling frequency reverts back to the reduced monitoring frequency for that monitoring location; if not, then the sampling frequency reverts back to the original monitoring frequency, with samples being taken every 2-week period.

g. Corrective Action Requirements

If at any time the annual average delta C exceeds the action level for any of the monitored HAP, then a root cause analysis is required to determine the source of the emissions that caused the exceedance and whether corrective action is needed to return monitored delta C concentrations to below the relevant action level. As described previously, the EPA is proposing that the owner or operator analyze the samples and compare the rolling annual average fenceline concentration, adjusted to remove the estimated background emissions, to the concentration action level. This section summarizes the corrective action requirements in this proposed rule.

We are proposing that the calculation of the rolling annual average delta C for each monitored HAP must be completed within 45 days after the completion of each 2-week sampling period. If the rolling annual average delta C exceeds the respective concentration action level for any monitored HAP, the facility must, within 5 days of determining the concentration action level has been exceeded, initiate a root cause analysis to determine the primary cause, and any other contributing cause(s), of the exceedance. The facility must complete the root cause analysis and implement corrective action within 45 days of initiating the root cause analysis. We are not proposing specific controls or corrections that would be required when the concentration action level is exceeded because the cause of an exceedance could vary greatly from facility to facility and episode to episode, since many different sources emit fugitives. Rather, we are proposing to allow facilities to determine, based on their own analysis of their operations, the action that must be taken to reduce air concentrations at the fenceline to levels at or below the concentration action level.

If, upon completion of the corrective action described above, the owner or operator exceeds the action level for the next 2-week sampling period following the completion of a first set of corrective actions, the owner or operator would be required to develop and submit a corrective action plan that would describe the corrective actions completed to date. The plan would include a schedule for implementation of emission reduction measures that the owner or operator can demonstrate as soon as practical. The plan would be submitted to the Administrator within 60 days of an exceedance occurring during the next 2-week sampling period following the completion of the initial round of corrective action. The corrective action plan does not need to be approved by the Administrator. The owner or operator is not deemed out of compliance with the concentration action level, provided that the appropriate corrective action measures are taken according to the time frame detailed in the corrective action plan.

We anticipate that the fenceline monitoring requirements and associated corrective action provisions would provide an alternative compliance option to reduce exposure to HAP that we believe would not pose an unreasonable burden on OLD operations. Assuming the inventories and associated modeling conducted by the OLD operators are accurate, we expect that few, if any, facilities will need to engage in required corrective action. We do, however, expect that facilities may identify ''poor-performing'' sources (*e.g.,* those with unusual leaks) from the fenceline monitoring data and, based on this additional information, will take action to reduce HAP emissions before they otherwise would have been aware of the issue through existing inspection and enforcement measures.

In some instances, a high fenceline concentration may be affected by a non-OLD emission source that is collocated within the property boundary. The likely instances of this situation would be leaks from equipment or storage vessels from processes that are subject to the HON (40 CFR part 63, subparts F, G, H), the Miscellaneous Organic Chemical Manufacturing NESHAP (40 CFR part 63, subpart FFFF), or the NESHAP for Bulk Gasoline Terminals (40 CFR part 63, subpart R). Whenever the action level is exceeded, we are proposing that the OLD owner or operator must take whatever corrective action is needed to reduce the relevant HAP air concentration to below the action level concentration, including corrective actions for any contributing sources that are under common ownership or common control of the OLD operation and that are within the plant site boundary. We conclude that requiring corrective action for all commonly owned or controlled equipment is reasonable because the fenceline alternative is an optional control strategy and would likely be selected if the OLD facility determined that the fenceline alternative provides an economic advantage or potential cost savings or if the facility otherwise wishes to perform fenceline monitoring as a more effective and flexible way to manage fugitive emissions. In a situation where collocated equipment is not under common ownership or control of the OLD owner or operator, then the rule provisions for adjusting for background HAP concentrations, previously discussed in this section of the preamble, would apply.

h. Costs Associated With Fenceline Monitoring Alternatives

The cost for fenceline monitoring is dependent on the sampling frequency and the number of monitoring locations needed based on the size and geometry of the facility. For typical storage terminals subject to the OLD NESHAP, we assume the size of each facility would be less than 750 acres and the number of monitoring sites to be no more than 18 based on the specifications in Methods 325A and 325B. We use the same approach to estimate costs as outlined in the June 2015 technical memorandum, *Fenceline Monitoring Impact Estimates for Final Rule,* from the Petroleum Refinery Sector RTR, also available in the docket for this action. We estimate the first-year installation and equipment costs for the passive tube monitoring system could cost up to $95,370. We estimate that

annualized costs for ongoing monitoring to facilities that choose to implement this alternative compliance option would be up to $35,000 per year per facility, and total annualized costs would be up to $45,000 per year per facility. These figures are expressed in year 2016$.

The primary goal of a fenceline monitoring network is to ensure that owners and operators properly monitor and manage fugitive HAP emissions. Because we are proposing a concentration action level that each facility derives by modeling fenceline HAP concentrations after full compliance with the proposed and existing requirements of the OLD NESHAP, as amended by this proposed action, the fenceline concentration action level would be set at levels that each facility in the category can meet. Therefore, we do not project any additional HAP emission reductions beyond the proposed requirements that the alternative fenceline monitoring compliance option would achieve. However, if an owner or operator has underestimated the fugitive emissions from one or more sources (*e.g.,* a leak develops or a tank seal or fitting fails), then a fenceline monitoring system would likely identify those excess emissions earlier than under current and proposed amended monitoring requirements. The fenceline monitoring system would ensure that HAP emissions in excess of those projected would be addressed, potentially more completely and quickly than the requirements replaced by implementing the fenceline monitoring. We note that any costs for a fugitive monitoring system would be offset, to some extent, by product recovery because addressing these leaks more quickly has the potential to reduce product losses.

E. What other actions are we proposing?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing various other changes to require electronic reporting of emissions test results, and to clarify text or correct typographical errors, grammatical errors, and cross-reference errors. Our analyses and proposed changes related to these issues are discussed below.

1. SSM Requirements

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

a. Proposed Elimination of the SSM Exemption

We are proposing the elimination of the SSM exemption in this rule which appears at 40 CFR 63.2378(b). Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 12 to 40 CFR part 63, subpart EEEE (the General Provisions Applicability Table, hereafter referred to as the ''General Provisions table to subpart EEEE'') as is explained in more detail below. For example, we are proposing at 40 CFR 63.2350(c) to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below. In addition, we are proposing to make the portion of the ''deviation'' definition in 40 CFR 63.2406 that specifically addresses SSM periods no longer applicable beginning 180 days after publication of the final rule in the **Federal Register**. Finally, because 40 CFR part 63, subpart EEEE requires closed vent systems and APCDs to meet certain requirements of 40 CFR part 63, subpart SS, we are proposing at 40 CFR 63.2346(l) to make portions of 40 CFR part 63, subpart SS (those applicable references related to the SSM exemption) no longer applicable.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods.

We are proposing that, emissions from startup and shutdown activities must be included when determining if all the standards are being attained. As currently proposed in 40 CFR 63.2378(e), you must be in compliance with the emission limitations (including operating limits) in this subpart ''at all times,'' except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. Emission reductions for transfer rack operations are typically achieved by routing vapors to an APCD such as a flare, thermal oxidizer, or carbon adsorber. It is common practice in this source category to start an APCD prior to startup of the emissions source it is controlling, so the APCD would be operating before emissions are routed to it. We expect APCDs would be operating during startup and shutdown events in a manner consistent with normal operating periods, and that these APCDs will be operated to maintain and meet the monitoring parameter operating limits set during the performance test. We do not expect startup and shutdown events to affect emissions from storage vessels or equipment leaks. Working and breathing losses from storage vessels are the same regardless of whether the process is operating under normal operating conditions or if it is in a startup or shutdown event. Leak detection programs associated with equipment leaks are in place to detect leaks, and, therefore, it is inconsequential whether the process is operating under normal operating conditions or is in startup or shutdown.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition sudden, infrequent and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the

category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp.,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' ''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an APCD with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the APCD was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from PRDs or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performing sources (80 FR 75178, 75211–14, December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (Definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA's interpretation of the CAA and, in particular, section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

Finally, in keeping with the elimination of the SSM exemption, we are proposing at 40 CFR 63.2346(m) to remove the use of SSM exemption provisions located in subparts referenced by the OLD NESHAP (*i.e.,* 40 CFR part 63, subparts H, SS, and UU) when the owner or operator is demonstrating compliance with the OLD NESHAP.

b. Proposed Revisions Related to the General Provisions Applicability Table

40 CFR 63.2350(d) General duty. We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 4 to a ''no.'' 40 CFR 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.2350(d) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore,

the language the EPA is proposing for 40 CFR 63.2350(d) does not include that language from 40 CFR 63.6(e)(1)(i).

We are also proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 4 to a ''no.'' 40 CFR 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.2350(d).

The proposed language in 40 CFR 63.2350(d) would require that the owner or operator operate and maintain any affected source, including APCD and monitoring equipment, at all times to minimize emissions. For example, in the event of an emission capture system or APCD malfunction for a controlled operation, to comply with the proposed new language in 40 CFR 63.2350(d), the facility would need to cease the controlled operation as quickly as practicable to ensure that excess emissions during emission capture system and APCD malfunctions are minimized.

SSM Plan. We are proposing to revise the General Provisions table to subpart EEEE (table 12) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 4 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

Compliance with standards. We are proposing to revise the General Provisions table to subpart EEEE (table 12) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 4 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* v. *EPA* vacated the exemptions contained in this provision and held that the CAA requires that section 112 standards generally apply continuously. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing to revise standards in this rule to apply at all times.

We are proposing to revise the General Provisions table to subpart EEEE (table 12) entry for 40 CFR 63.6(h)(1) by changing the ''yes'' in column 4 to a ''no.'' The current language of 40 CFR 63.6(h)(1) exempts sources from opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* v. *EPA* vacated the exemptions contained in this provision and held that the CAA requires that some section 112 standards apply continuously. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing to revise standards in this rule to apply at all times.

40 CFR 63.2354(b)(6) Performance testing. We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 4 to a ''no.'' We are also proposing to remove a similar requirement at 40 CFR 63.2354(b)(5). 40 CFR 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.2354(b)(6). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The proposed regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions will not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. Also, the EPA is proposing to add language at 40 CFR 63.2354(b)(6) that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. 40 CFR 63.7(e)(1) requires that the owner or operator make available to the Administrator upon request such records ''as may be necessary to determine the condition of the performance test,'' but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

Monitoring. We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.8(a)(4) by changing the ''yes'' in column 4 to a ''no.'' Refer to section IV.A.1 of this preamble for discussion of this proposed revision.

We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entries for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 4 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.8(d)(3) by changing the ''yes'' in column 4 to a ''no.'' The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add to the rule at 40 CFR 63.2366(c) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under 40 CFR 63.8(d)(2).''

We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 4 to a ''no.'' 40 CFR 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.2390(f). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions require the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.2390(f) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment

based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 4 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.2390(f)(3).

We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 4 to a ''no.'' When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

40 CFR 63.2386 Reporting. We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 4 to a ''no.'' Similarly, we are also proposing that the references to this specific provision (*i.e.,* 40 CFR 63.10(d)(5)) at 40 CFR 63.2386(c)(5) and Table 11 to subpart EEEE would no longer be applicable. 40 CFR 63.10(d)(5) describes the reporting requirements for SSM. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.2386(d)(1)(xiii). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. We are proposing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* organic liquid loading rates and control efficiencies). The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We would no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments would eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) (at 40 CFR 63.2386(c)(5) and item 1.a of Table 11 to subpart EEEE) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

Requirements for flares. We are proposing to revise the General Provisions table to subpart EEEE (Table 12) entry for 40 CFR 63.11(b) by changing the ''yes'' in column 4 to a ''no'' in which 40 CFR 63.11(b) would be no longer applicable beginning 3 years after publication of the final rule in the **Federal Register**. Refer to section IV.A.1 of this preamble for discussion of this proposed revision.

c. Requirements for Safety Devices

We are proposing to remove the safety device opening allowance of 40 CFR 63.2346(i) beginning 3 years after publication of the final rule in the **Federal Register**. Pressure relief device provisions are discussed in more detail in section IV.A.2 of this preamble.

d. Proposed Revisions Related to the Periods of Planned Routine Maintenance of a Control Device and Bypass of Routing Emissions to a Fuel Gas System or Process

Under the current OLD rule, there are two allowances for storage tank and transfer rack emission limits to exceed the standard for up to 240 hours per year: (1) Periods of planned routine maintenance of a control device and (2) bypass of the fuel gas system or process if emissions are routed to these for control. In 2004, the EPA added these allowances in the final rule in response to a comment that suggested that an allowance is needed for planned routine maintenance of control devices when storage tanks cannot be taken out of service.[32] These allowances represent periods of shutdown for the control devices used to comply with the standards, so we are proposing to remove these allowance periods for transfer racks and storage tank working losses to be consistent with our proposal to eliminate other SSM event exemptions discussed earlier in this section of the preamble.

For transfer rack operations and storage tank working losses, most facilities would likely be able to plan transfers to occur when the control device is not shut down for maintenance. The owner or operator of a storage tank or transfer operation also would have the option to continue to transfer organic liquids during the planned routine maintenance of the control device by operating a temporary control device to meet the standards during these periods. We propose to continue to allow storage tank breathing losses to occur during planned routine maintenance of a control device for up to 240 hours per year because these emissions would be significantly less than emptying and degassing a storage tank prior to conducting planned routine maintenance on a control device. We request comment on whether we should allow some period of exceedance for solely tank breathing losses during planned routine maintenance of a control device. See the memorandum, *240-hour Exceedance Allowance Control Analysis,* in the docket for this action for details on alternative control costs and impacts.

We expect this change to result in emission reductions of HAP. However, we do not have enough information to make an accurate estimate of the HAP

[32] See *Response to Comments Document For Promulgated Standards—Organic Liquid Distribution (Non-Gasoline) Industry [A–98–13 V–C–01],* available at Docket ID Item No. EPA–HQ–OAR–2003–0138–0031.

emission reductions, and we are not including any in the environmental impacts, although we expect these HAP emission reductions could be up to 390 tpy based on assumptions about pump rates and number of hours needed for the planned routine maintenance of the control device at each controlled transfer rack. We present the cost impacts of this proposed revision in section V.C of this preamble.

2. Electronic Reporting Requirements

We are proposing that owners and operators of OLD facilities submit electronic copies of required performance test reports, performance evaluation reports, compliance reports, NOCS reports, and fenceline monitoring reports through the EPA's Central Data Exchange (CDX) using CEDRI. A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [33] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, performance evaluation results of continuous monitoring systems measuring relative accuracy test audit pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT. The proposed rule requires that NOCS reports be submitted as a PDF upload in CEDRI.

For compliance reports and fenceline monitoring reports, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. Draft versions of the proposed templates for these reports are available in the docket for this action.[34] We specifically request comment on the content, layout, and overall design of the templates.

Additionally, we have identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. We are providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.2386(i). The situation where an extension may be warranted due to a *force majeure* event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in 40 CFR 63.2386(j). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [35] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [36] developed in response to the White House's Digital Government Strategy.[37] For more information on the benefits of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action.

3. Other Amendments and Corrections

The EPA has noted a situation where compliance assurance may be challenged or possibly compromised due to the current rule's requirements for emission sources not requiring control as specified in 40 CFR 63.2343. In the current provisions, the ''annual average true vapor pressure'' definition contains the determination options, which include some testing methods as options but also allow for standard reference texts. The EPA is proposing to require testing and recordkeeping to confirm the annual average true vapor pressure at least every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to ensure the tank's applicability and confirm that it should not be subject to the 95-percent control requirements of the regulation. We are also proposing that this periodic testing requirement may be met if the OLD responsible official has been provided a certificate of analysis that includes vapor pressure analysis data for the tank's contents by the liquid's supplier within the 5-year period.

The HAP content determination requirements are not expressly stated in the ''organic liquids'' definition, but there are HAP content determination methods listed in 40 CFR 63.2354. The methods include testing and analysis, material safety data sheets, or certified product data sheets. No frequency for making these determinations are specified in the current OLD NESHAP. Similar to the annual true vapor pressure, we are proposing a requirement that the contents of tanks that are claimed to be not subject to the OLD NESHAP because they contain less than 5-percent HAP (and, therefore, do not meet the definition of ''organic liquids'' within the OLD NESHAP)

[33] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[34] See *OLD_Compliance_Report_Draft_Template.xlsx* and *OLD_Fenceline_Report_Draft_Template.xlsx,* which are available in the docket for this action.

[35] The EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[36] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[37] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

should be tested every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to confirm that the tank is not storing ''organic liquids'' and, therefore, is not subject to the rule. We are also proposing that this periodic testing requirement may be met if the OLD responsible official has been provided HAP content analysis data for the tank's contents by the liquid's supplier within the 5-year period.

The EPA is requesting comment on the need for these periodic testing and analysis confirmations and also whether a definition of ''significant change to the tank's contents'' is necessary for implementation purposes.

We are proposing to revise 40 CFR 63.2354(c), which specified the determination of HAP content of an organic liquid, by adding the voluntary consensus standard (VCS), ATSM D6886–18, ''Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography,'' as another acceptable method. We are also proposing to add a sentence at the end of this paragraph that requires analysis by Method B or Method C in section of 4.3 of the VCS, ASTM D6886–18, when organic liquids contain formaldehyde or carbon tetrachloride. The rationale for adding the use of ASTM D8668–18 and its use as a governing method for organic liquids that contain formaldehyde or carbon tetrachloride results from the inability of Method 311 of appendix A to 40 CFR part 63 to detect the presence of these compounds.

We are proposing to amend the definition of the term ''annual average true vapor pressure'' at 40 CFR 63.2406 by replacing one of the acceptable methods for the determination of vapor pressure. We propose to replace the method, ASTM D2879, ''Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,'' with the method, ASTM D6378–18a, ''Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method).'' ASTM D2879, the method in the current OLD NESHAP, requires the use of an isoteniscope and involves heating the sample until it boils, which can result in the loss of volatiles before the vapor pressure is measured. The method we are proposing as a replacement is a newer, automated device method that does not have this step and is expected to produce more accurate vapor pressure measurements for organic liquids regulated in the OLD NESHAP. This method is suitable for a range of vapor to liquid ratios of 4:1 to 1:1. We are also proposing that the use of this method to determine vapor pressure of a liquid for the purposes of this rule sets the vapor to liquid ratio at 4:1. Also, we are proposing to clarify in the definition of the term ''annual average true vapor pressure'' regarding how the American Petroleum Institute (API) Publication 2517, *Evaporative Loss from External Floating-Roof Tanks,* third edition, February 1989 (incorporated by reference, see 40 CFR 63.14) can be used to calculate vapor pressure. API Publication 2517 does not prescribe methods that measure the vapor pressure of a liquid. However, this publication does serve as a standard reference, although, it is somewhat dated. It contains a table of vapor pressures of a few pure substances at temperatures between 40 and 100 degrees Fahrenheit. It also has charts and equations that can calculate true vapor pressure from stock temperature and Reid vapor pressure for crude oils and refined petroleum stocks. AP–42 Chapter 7, which is publicly available, contains similar information regarding the determination of vapor pressure as described in API Publication 2517. For these reasons, we are proposing to remove specific reference to API Publication 2517 in the definition of the term ''annual average true vapor pressure.''

At 40 CFR 63.2354(b)(3) and Table 5 to 40 CFR part 63, subpart EEEE, item 1.a.i.(5), for performance tests on nonflare control devices, we are proposing to clarify that Method 18 of appendix A–6 to 40 CFR part 60 (''Method 18'') and Method 320 of appendix A to 40 CFR part 63 (''Method 320'') are not appropriate for a combustion control device because these methods would not detect the presence of HAP, other than those HAP present at the inlet of the control device, that may be generated from the combustion device. Also, we are specifying that Method 320 is not appropriate if the gas stream contains entrained water droplets.

At 40 CFR 63.2354(b)(4) and Table 5 to 40 CFR part 63, subpart EEEE, item 1.a.i.(5), for performance tests on nonflare control devices, for cases in which formaldehyde is present in the uncontrolled vent stream, we are proposing to allow the use of Method 320 or Method 323 of appendix A to 40 CFR part 63 to measure the removal of formaldehyde by the control device provided there are no entrained water droplets in the gas stream.

At Table 5 to 40 CFR part 63, subpart EEEE, item 1.a.i.(3), we are replacing the specification of Method 3 of appendix A–2 to 40 CFR part 60 with Method 3A of appendix A–2 to 40 CFR part 60 because Method 3A is more accurate.

At 40 CFR 63.2354(b)(3)(ii)(B), we are proposing to clarify that ASTM D6420–99 (Reapproved 2004) may be used as an alternative to Method 18 for target compounds not listed in section 1.1 of ASTM D6420–99 provided that you must demonstrate recovery of the compound in addition to the other conditions stated in the current rule.

At 40 CFR 63.2366(c), we are proposing to add specification of written procedures for the operation of continuous emissions monitoring systems (CEMS). At 40 CFR 63.2366(d), we are proposing to add specification of location of sampling probe for CEMS.

At 40 CFR 63.2406, we are proposing to add a definition of the term condensate and to specify its regulation in this rule in the same way crude oil is regulated at the definition of the term ''organic liquid'' and at Tables 2 and 2b to 40 CFR part 63, subpart EEEE. We are defining the term condensate using the same definition that is used in 40 CFR part 63, subpart HH. We are making this clarification to ensure that condensate (which, like crude oil, is an unrefined reservoir fluid having significant quantities of HAP) is treated in the same manner as crude oil in the OLD NESHAP.

The Energy Information Administration (EIA) collects and reports data regarding crude oil and lease condensate production in EIA Form-914 as combined values and defines crude oil to include lease condensate.[38] EIA defines crude oil in its glossary as ''Crude oil: A mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Depending upon the characteristics of the crude stream, it may also include 1. Small amounts of hydrocarbons that exist in gaseous phase in natural underground reservoirs but are liquid at atmospheric pressure after being recovered from oil well (casing head) gas in lease separators and are subsequently comingled with the crude stream without being separately measured. Lease condensate recovered as a liquid from natural gas wells in lease or field separation facilities and later mixed into the crude stream is also included; 2. Small amounts of

[38] *Monthly Crude Oil and Natural Gas Production, https://www.eia.gov/petroleum/production/.*

nonhydrocarbons produced with the oil, such as sulfur and various metals; 3. Drip gases, and liquid hydrocarbons produced from tar sands, oil sands, gilsonite, and oil shale.'' [39] Therefore, because the current definition of crude oil at 40 CFR 63.2406 defines crude oil to mean any fluid named crude oil and because condensates are a significant part of crude oil production stream and are often sold as fluids called condensate, we are adding the term condensate and using it in the proposed amendments to ensure that unrefined reservoir fluids named as condensate, that have HAP contents with a similar range as crude oils, are being regulated in the same manner as crude oil in the OLD NESHAP.

We are adding the definition of the terms ''pressure relief device'' and ''relief valve'' at 40 CFR 63.2406. The definitions of these terms are the same as those included in the Petroleum Refinery Sector final rule (see 83 FR 60696, November 26, 2018) and currently used at 40 CFR part 63, subpart CC. We are also proposing to revise the term ''pressure relief valve'' to ''relief valve'' at 40 CFR 63.2346(a)(4)(v).

Finally, there are several additional revisions that we are proposing to 40 CFR part 63, subpart EEEE to clarify text or correct typographical errors, grammatical errors, and cross-reference errors. These proposed editorial corrections and clarifications are summarized in Table 9 of this preamble.

TABLE 9—SUMMARY OF PROPOSED EDITORIAL, CLARIFICATION, AND MINOR CORRECTIONS TO 40 CFR PART 63, SUBPART EEEE

Citation(s)	Proposed revision
40 CFR 63.2338(c)	Referencing correction. Change ''paragraphs (c)(1) through (4)'' to ''paragraphs (c)(1) through (3)'' because there is no paragraph (c)(4).
40 CFR 63.2342(d)	Referencing correction. Change ''in § 63.2382(a) and (b)(1) through (3)'' to ''in § 63.2382(a) and (b),'' because there is no paragraph (b)(3).
40 CFR 63.2343(a)	Removing two uses of the extraneous phrase ''identified in paragraph (a) of this section.''
40 CFR 63.2346(a)(4)(v)	Correcting the spelling of the word ''gauge.''
40 CFR 63.2343(c)(1)(iii)	Referencing correction. Change ''paragraph (b) or this section'' to ''paragraph (c) or this section.''
40 CFR 63.2346(a)(4)(ii) and (d)(2); 40 CFR 63.2362(b)(2); 40 CFR 63.2390(c)(2); and item 6 of Table 5 to Subpart EEEE.	Referencing correction for U.S. Department of Transportation transport vehicle requirements from ''pressure test requirements of 49 CFR part 180 for cargo tanks and 49 CFR 173.31 for tank cars'' to ''qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars''.
40 CFR 63.2350(a)	Referencing correction: Change ''in § 63.2338(b)(1) through (4)'' to ''in § 63.2338(b)(1) through (5)'' because the last item in the list was not included.
40 CFR 63.2354(b)(3)(i), (b)(3)(i)(A), (b)(3)(i)(B), (b)(3), (c); 40 CFR 63.2406(b) definition of ''vapor-tight transport vehicle;'' and Table 5 to Subpart EEEE.	Removing the word ''EPA'' from the phrase ''EPA Method'' where the phrase precedes designation of a method published in title 40 of the CFR.
40 CFR 63.2354(c)	Changing the term used for the Occupational Safety and Health Administration's hazard communication standard from ''material safety data sheet (MSDS)'' to ''safety data sheet (SDS).''
40 CFR 63.2366(a)	Spelling out ''continuous monitoring system'' before the acronym ''CMS,'' which is a term defined at 40 CFR 63.2.
40 CFR 63.2406	In the definition of the term, annual average true vapor pressure, removing the word ''standard'' from ''standard conditions'' because the conditions specified in this definition are not standard conditions as defined at 40 CFR 63.2 and used in this subpart.
Table 9 to Subpart EEEE	In item 8, correcting a cross-reference citation from 63.2366(c) to 63.2366(b).
Table 12 to Subpart EEEE	Adding an entry for § 63.7(e)(4), which specifies the Administrator has the authority to require performance testing regardless of specification of performance testing at § 63.7(e)(1)–(3).
	Changing the entry for § 63.10(d)(2), Report of Performance Test Results, from Yes to No. Proposed 40 CFR 63.2386 specifies how and when the performance test results are reported.
	Changing the entry for § 63.10(e)(3)(vi)–(viii), Excess Emissions Report and Summary Report, from Yes to No. This information is required to be submitted at proposed 40 CFR 63.2386.

F. What compliance dates are we proposing?

Amendments to the OLD NESHAP proposed in this rulemaking for adoption under CAA section 112(d)(2) and (3) and CAA section 112(d)(6) are subject to the compliance deadlines outlined in the CAA under section 112(i).

For all of the requirements we are proposing under CAA sections 112(d)(2), (3), and (d)(6), we are proposing all affected sources must comply with all of the amendments no later than 3 years after the effective date of the final rule, or upon startup, whichever is later. For existing sources, CAA section 112(i) provides that the compliance date shall be as expeditiously as practicable, but no later than 3 years after the effective date of the standard. (''Section 112(i)(3)'s three-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112].'' *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 672 (D.C. Cir. 2013)). In determining what compliance period is as expeditious as

[39] EIA Glossary, *https://www.eia.gov/tools/glossary/index.php.*

practicable, we consider the amount of time needed to plan and construct projects and change operating procedures.

We are proposing new monitoring requirements for flares under CAA section 112(d)(2) and (3). We anticipate that these requirements could require engineering evaluations and, possibly in some limited cases, require the installation of new flare monitoring equipment and possibly new control systems to monitor and adjust assist gas (air or steam) addition rates. Installation of new monitoring and control equipment on flares will require the flare to be taken out of service. Depending on the configuration of the flares and flare header system, taking the flare out of service may also require a significant portion of the OLD source to be shut down, especially if the facility is primarily a bulk organic liquids terminal. Therefore, we are proposing that it is necessary to provide 3 years after the effective date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the new operating and monitoring requirements for flares.

Under our technology review for equipment leaks under CAA section 112(d)(6), we are proposing to revise the LDAR requirements to add connectors to the monitored equipment.

Also, as a result of our technology review for storage tanks, we are proposing to lower applicability thresholds for tanks requiring 95-percent HAP control so that more tanks will require control than with the existing OLD NESHAP. Furthermore, we are proposing tank fitting LDAR requirements for fixed roof storage tanks that are below the applicability threshold for 95-percent HAP control. We project some owners and operators would require engineering evaluations, solicitation and review of vendor quotes, contracting and installation of control equipment, which would require affected storage tanks to be out of service while the retrofits with IFR or closed vent systems are being installed. In addition, facilities will need time to read and understand the amended rule requirements and update standard operating procedures. Therefore, we are proposing that it is necessary to provide 3 years after the effective date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the proposed storage tank and equipment leak provisions.

Finally, we are proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan; we are also proposing electronic reporting requirements. We are positing that facilities would need some time to successfully accomplish these revisions, including time to read and understand the amended rule requirements, to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown, as defined in the rule, and make any necessary adjustments, and to convert reporting mechanisms to install necessary hardware and software. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the time frame needed for compliance with the entirety of the revised requirements, the EPA considers a period of 3 years after the effective date of the final rule to be the most expeditious compliance period practicable and, thus, is proposing that existing affected sources be in compliance with all of this regulation's revised requirements within 3 years of the regulation's effective date. For new sources that commence construction or reconstruction after the publication date of this proposed action, we are requiring compliance upon initial startup.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

There are 177 sources currently operating OLD equipment subject to the OLD NESHAP. A complete list of facilities that are currently subject to the OLD NESHAP is available in Appendix 1 of the memorandum, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

EPA projects four new liquids terminals and one major terminal expansion that would be subject to the OLD NESHAP. These new sources are not included in the risk assessment modeling effort but are included in the impacts analysis.

B. What are the air quality impacts?

The risk assessment model input file identifies approximately 2,400 tons HAP emitted per year from equipment regulated by the OLD NESHAP. The predominant HAP compounds include toluene, hexane, methanol, xylenes (mixture of o, m, and p isomers), benzene, styrene, methyl isobutyl ketone, methylene chloride, methyl tert-butyl ether, and ethyl benzene. More information about the baseline emissions in the risk assessment model input file can be found in Appendix 1 of the memorandum, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action. This proposed action would reduce HAP emissions from OLD NESHAP sources. The EPA estimates HAP emission reductions of approximately 386 tpy based on our analysis of the proposed actions described in sections IV.D.1 and 2 in this preamble. More information about the estimated emission reductions of this proposed action can be found in the document, *National Impacts of the 2019 Risk and Technology Review Proposed Rule for the Organic Liquids Distribution (Non-Gasoline) Source Category,* which is available in the docket for this action.

We estimate a resulting reduction of the MIR from 20-in-1 million to about 10-in-1 million. Likewise, population exposed to a cancer risk of greater than or equal to 1-in-1 million would be reduced from 350,000 to about 220,000. While not explicitly calculated, we would expect commensurate reductions in other risks metrics such as incidence, acute risk, multipathway risks, and ecological risks.

C. What are the cost impacts?

We estimate the total capital costs of these proposed amendments to be approximately $4.5 million and the total annualized costs (including recovery credits) to be $1.8 million per year (2016 dollars). We also estimate the present value in 2016 of the costs is $8.4 million at a discount rate of 3 percent and $6.2 million at 7 percent (2016 dollars). Calculated as an equivalent annualized value, which is consistent with the present value of costs in 2016, the costs are $1.8 million at a discount rate of 3 percent and $1.5 million at a discount rate of 7 percent (2016 dollars). The annualized costs include those for operating and maintenance, and recovery credits of approximately $400,000 per year from the reduction in leaks and evaporative emissions from storage tanks. To estimate savings in chemicals not being emitted (*i.e.,* lost) due to the equipment leak control options, we applied a recovery credit of $900 per ton of VOC to the VOC emission reductions in the analyses. The $900 per ton recovery credit has historically been used by the EPA to represent the variety of chemicals that are used as reactants and produced at

synthetic organic chemical manufacturing facilities,[40] however, we recognize that this value is from a 2007 analysis and may be outdated. Therefore, we solicit comment on the availability of more recent information to potentially update the value used in this analysis to estimate the recovery credits. We used an interest rate of 5 percent to annualize the total capital costs. These estimated costs are associated with amendments of the requirements for storage tanks, LDAR, flares, and transfer racks. Table 10 of this preamble shows the estimated costs for each of the equipment types. Detailed information about how we estimated these costs are described in the following documents available in the docket for this action: *National Impacts of the 2019 Risk and Technology Review Proposed Rule for the Organic Liquids Distribution (Non-Gasoline) Source Category,* and *Economic Impact and Small Business Analysis for the Proposed OLD Production Risk and Technology Review (RTR) NESHAP.*

TABLE 10—SUMMARY OF COSTS OF PROPOSED AMENDMENTS BY EQUIPMENT TYPE, IN MILLIONS

[2016$]

Equipment type	Capital cost	Total annualized cost (without annual recovery credits)	Annual recovery credits	Total annualized cost (with annual recovery credits)
Storage tanks	2.68	0.41	0.33	0.08
LDAR—connector monitoring	1.64	0.57	0.08	0.49
Flares	0.19	0.36	N/A	0.36
Transfer racks	0.00	0.88	N/A	0.88
Total	4.51	2.22	0.41	1.81

D. What are the economic impacts?

The EPA conducted economic impact analyses for this proposal, as detailed in the memorandum, *Economic Impact and Small Business Analysis for the Proposed OLD Production Risk and Technology Review (RTR) NESHAP,* which is available in the docket for this action. The economic impacts of the proposal are calculated as the percentage of total annualized costs incurred by affected ultimate parent owners to their revenues. This ratio provides a measure of the direct economic impact to ultimate parent owners of OLD facilities while presuming no impact on consumers. We estimate that none of the ultimate parent owners affected by this proposal will incur total annualized costs of 0.2 percent or greater of their revenues. This estimate reflects the total annualized costs without product recovery as a credit. Thus, these economic impacts are low for affected companies and the industries impacted by this proposal, and there will not be substantial impacts on the markets for affected products. The costs of the proposal are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

E. What are the benefits?

The EPA did not monetize the benefits from the estimated emission reductions of HAP associated with this proposed action. However, we expect this proposed action would result in benefits associated with HAP emission reductions and lower risk of adverse health effects in communities near OLD sources.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk assessment modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/organic-liquids-distribution-national-emission-standards-hazardous.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2018–0074 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are

[40] U.S. EPA. 2007. Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries (*https://www.federalregister.gov/documents/2007/07/09/E7-13203/standards-of-performance-for-equipment-leaks-of-voc-in-the-synthetic-organic-chemicals-manufacturing*). EPA–HQ–OAR–2006–0699.

provided on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/organic-liquids-distribution-national-emission-standards-hazardous.*

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to OMB for review. This action is a significant regulatory action because it is likely to result in a rule that raises novel legal or policy issues. This regulatory action is not likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Any changes made in response to OMB recommendations have been documented in the docket for this action. The EPA has prepared an economic analysis, *Economic Impact and Small Business Analysis for the 2019 Proposed Amendments to the National Emissions Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline),* which is available in the docket for this proposed rule.

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1963.07. You can find a copy of the ICR in the docket for this action, and it is briefly summarized here.

We are proposing amendments that would change the reporting and recordkeeping requirements for OLD operations. The proposed amendments also require electronic reporting of performance test results and reports and compliance reports. The information would be collected to ensure compliance with 40 CFR part 63, subpart EEEE.

Respondents/affected entities: Owners and operators of OLD operations at major sources of HAP are affected by these proposed amendments. These respondents include, but are not limited to, facilities having NAICS codes: 4247 (Petroleum and Petroleum Products Merchant Wholesalers), 4861 (Pipeline Transportation of Crude Oil), and 4931 (Warehousing and Storage).

Respondent's obligation to respond: Mandatory under sections 112 and 114 of the CAA.

Estimated number of respondents: 181 facilities.

Frequency of response: Once or twice per year.

Total estimated burden: 5,967 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $820,212 (per year), which includes $216,154 annualized capital or operation and maintenance costs.

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

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than November 20, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are all small businesses. The Agency has determined that nine small entities are affected by these proposed amendments, which is 9 percent of all affected ultimate parent businesses. These nine small businesses may experience an impact of annualized costs of less than 0.20 percent of their annual revenues. Details of this analysis are presented in the *Economic Impact and Small Business Analysis for the 2019 Proposed Amendments to the National Emissions Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. None of the facilities that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This action's health and risk assessments are contained in contained in sections III.A and C and sections IV.B and C of this preamble and in the *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which includes how risks to infants and children are addressed, and which is available in the docket for this action. The EPA expects that the emission reductions of HAP resulting from this proposed action would improve children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The EPA expects this proposed action would not reduce crude oil supply, fuel production, coal production, natural gas production, or electricity production. We estimate that this proposed action would have minimal impact on the amount of imports or exports of crude oils, condensates, or other organic liquids used in the energy supply industries. Given the minimal impacts on energy supply, distribution, and use as a whole nationally, all of which are under the threshold screening criteria for compliance with this Executive Order established by OMB, no significant adverse energy effects are expected to occur.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the OLD NESHAP through the Enhanced National Standards Systems Network database managed by the American National Standards Institute (ANSI). We also contacted VCS organizations and accessed and searched their databases. We conducted searches for Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 21, 22, 25, 25A, 26, 26A, and 27 of 40 CFR part 60, appendix A and Methods 301, 311, 316, 320, 325A, and 325B of 40 CFR part 63, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of Method 301 of appendix A to 40 CFR part 63 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

No applicable VCSs were identified for Methods 1A, 2A, 2D, 2F, 2G, 21, 22, 27, and 316.

Seven VCSs were identified as an acceptable alternative to EPA test methods for the purposes of this rule:

(1) The VCS ANSI/ASME PTC 19–10–1981 Part 10, ''Flue and Exhaust Gas Analyses,'' is an acceptable alternative to Method 3B manual portion only and not the instrumental portion. Therefore, we are proposing to add this standard as a footnote to item 1.a.i.(3) of Table 5 of 40 CFR part 63, subpart EEEE and incorporate this standard by reference at 40 CFR 63.14(e)(1). ASME PTC 19.10 specifies methods, apparatus, and calculations which are used in conjunction with Performance Test Codes to determine quantitatively, the gaseous constituents of exhausts resulting from stationary combustion sources. The gases covered by this method are oxygen, carbon dioxide, carbon monoxide, nitrogen, sulfur dioxide, sulfur trioxide, nitric oxide, nitrogen dioxide, hydrogen sulfide, and hydrocarbons. Included are instrumental methods as well as (normally, wet chemical) methods. This method is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See *https://wwww.ansi.org* and *https://www.asme.org*.

(2) The VCS ASTM D6420–18, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry.'' This ASTM procedure has been approved by the EPA as an alternative to Method 18 only when the target compounds are all known, and the target compounds are all listed in ASTM D6420 as measurable. ASTM D6420 should not be specified as a total VOC method. Therefore, we are proposing to add this standard as a footnote to Table 5 to 40 CFR part 63, subpart EEEE and incorporate this standard by reference at 40 CFR 63.14(e)(93). We are also proposing to update reference to the older version of this standard (*i.e.,* ASTM D6420–99 (Reapproved 2004) at 40 CFR 63.2354(b)(3) to the new 2018 version and are proposing to remove reference to the old version of this standard at 40 CFR 63.14(e)(90) for use in the OLD NESHAP. ASTM D6420 is a field test method that employs a direct interface gas chromatograph/mass spectrometer (GCMS) to determine the mass concentration of any subset of 36 compounds listed in this method. Mass emission rates are determined by multiplying the mass concentration by the effluent volumetric flow rate. This field test method employs laboratory GCMS techniques and QA/quality control (QC) procedures in common application. This field test method provides data with accuracy and precision similar to most laboratory GCMS instrumentation.

(3) The VCS ASTM D6735–01(2009), ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources Impinger Method,'' is an acceptable alternative to Method 26 or Method 26A from Mineral Calcining Exhaust Sources, which is specified at 40 CFR part 63, subpart SS, which is cited in the OLD NESHAP. For further information about the EPA's proposal to allow the use of this VCS in 40 CFR part 63, subpart SS, see the EPA's Ethylene Production RTR proposed amendments in Docket ID No. EPA–HQ–OAR–2017–0357. It is not being proposed for incorporation by reference in this notice of proposed rulemaking.

(4) The VCS California Air Resources Board (CARB) Method 310, ''Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products'' is an acceptable alternative to Method 311. However, we are not proposing to specify use of this method in the OLD NESHAP because CARB Method 310 is designed to measure the contents of aerosol cans and would not be well suited for organic liquid samples regulated under the OLD NESHAP. It is not being proposed for incorporation by reference in this notice of proposed rulemaking.

(5) The VCS ASTM D6348–12e1, ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy,'' is an acceptable alternative to Method 320. In the September 22, 2008, NTTA summary, ASTM D6348–03(2010) was determined equivalent to Method 320 with caveats. ASTM D6348–12e1 is an extractive FTIR based field test method used to quantify gas phase concentrations of multiple target analytes from stationary source effluent. Because an FTIR analyzer is potentially capable of analyzing hundreds of compounds, this test method is not analyte or source specific. This field test method employs an extractive sampling system to direct stationary source effluent to an FTIR spectrometer for the identification and quantification of gaseous compounds. Concentration results are provided. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from direct measurement of a certified

spike gas cylinder, but still lacks the caveats we placed on the ASTM D6348–01(2010) version. The VCS ASTM D6348–12e1, ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy,'' is an acceptable alternative to Method 320 at this time with caveats requiring inclusion of selected annexes to the standard as mandatory. We are proposing to allow the use of this VCS as an alternative to Method 320 at 40 CFR 63.2354(b)(3) and (4) and at Table 5 to 40 CFR part 63, subpart EEEE under conditions that the test plan preparation and implementation in the Annexes to ASTM D6348–12e1, sections A1 through A8 are mandatory; the percent (%) R must be determined for each target analyte (Equation A5.5); %R must be 70% ≥ R ≤ 130%; if the %R value does not meet this criterion for a target compound, then the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest); and the %R value for each compound must be reported in the test report and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = ((Measured Concentration in Stack))/(%R) × 100.

We are proposing to incorporate this method at 40 CFR 63.14(e)(85) for use in the OLD NESHAP.

(6) The VCS ISO 16017–2:2003, ''Indoor, Ambient and Workplace Air Sampling and Analysis of Volatile Organic Compounds by Sorbent Tube/Thermal Desorption/Capillary Gas Chromatography—Part 2: Diffusive Sampling,'' is an acceptable alternative to Method 325B. This VCS is already incorporated by reference in Method 325B.

(7) The VCS ASTM D6196–03(2009), ''Standard Practice for Selection of Sorbents, Sampling and Thermal Desorption Analysis Procedures for Volatile Organic Compounds in Air,'' is an acceptable alternative to Methods 325A and 325B. This VCS is already incorporated by reference in Method 325B.

Additionally, the EPA proposes to use ASTM D6886–18, ''Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography,'' and ASTM D6378–18a, ''Standard Test Method for Determination of Vapor Pressure (VP_X) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method).'' ASTM D6886–18 is proposed to be used as one acceptable method to determine the percent weight of HAP in organic liquid, especially for liquids that contain a significant amount of carbon tetrachloride or formaldehyde, which are not detected using the Flame Ionization Detector based standard in the governing method currently cited in the OLD NESHAP (*i.e.,* Method 311). ASTM D6378–18a is proposed to be used as a method to determine the vapor pressure of a liquid and whether equipment that stores or transfers such liquid is subject to emission standards of the OLD NESHAP.

The ASTM methods proposed for incorporation by reference are available at ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *https://www.astm.org/*. During the comment period, these methods are available in read-only format at *https://www.astm.org/EPA.htm*.

Finally, the EPA proposes to use EPA–454/B–08–002, ''Quality Assurance Handbook for Air Pollution Measurement Systems. Volume IV: Meteorological Measurements Version 2.0 (Final).'' If an owner or operator of an OLD source opts to implement a fenceline monitoring program proposed at 40 CFR 63.2348 and if the owner or operator opts to collect meteorological data from an on-site meteorological station, then the proposed rule requires the owner or operator to standardize, calibrate, and operate the meteorological station according to the procedures set forth in this document. This document is available in the docket for this action.

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

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

Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of OLD facilities has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and emissions reductions from the proposed revisions will benefit these groups the most.

The documentation for this decision is contained in sections IV.B and C of this preamble, and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Organic Liquids Distribution (Non-Gasoline) Source Category Operations,* which is available in the docket for this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 26, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by:
■ a. In paragraphs (h)(31) and (32), removing the phrase ''63.2406,'' without replacement;
■ b. Revising paragraphs (a), (e)(1) and (h)(85);
■ c. Redesignating paragraphs (h)(100) through (111) as paragraphs (h)(103) through (114), paragraphs (h)(92) through (99) as paragraphs (h)(94) through (101), and paragraphs (h)(89) through (91) as paragraphs (h)(90) through (92), respectively;
■ d. Adding new paragraph (h)(89);
■ e. Revising newly redesignated paragraph (h)(91);
■ f. Adding new paragraph (h)(93);
■ g. Adding new paragraph (h)(102); and
■ h. Revising paragraph (n)(2).

The revisions and additions read as follows:

§ 63.14 Incorporations by reference.

(a) Certain material is incorporated by reference into this part with the

approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC, telephone number 202–566–1744, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

(e) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.1282(d) and (g), 63.1625(b), table 5 to subpart EEEE, 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJJ.

* * * * *

(h) * * *

(85) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for §§ 63.1571(a), 63.2354(b), and table 5 to subpart EEEE.

* * * * *

(89) ASTM D6378–18a, Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method), approved December 1, 2018, IBR approved for §§ 63.2343(b)(5) and 63.2406.

* * * * *

(91) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, Approved October 1, 2004, IBR approved for §§ 63.457(b), 63.485(g), 60.485a(g), 63.772(a), 63.772(e), 63.1282(a) and (d), and table 8 to subpart HHHHHHH.

* * * * *

(93) ASTM D6420–18, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, Approved October 1, 2018, IBR approved for § 63.2354(b), and table 5 to subpart EEEE.

* * * * *

(102) ASTM D6886–18, Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography, approved October 1, 2018, IBR approved for § 63.2354(c).

* * * * *

(n) * * *

(2) EPA–454/B–08–002, Office of Air Quality Planning and Standards (OAQPS), Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Measurements, Version 2.0 (Final), March 24, 2008, IBR approved for §§ 63.658(d), 63.2348(d) and appendix A to this part: Method 325A.

* * * * *

Subpart EEEE—National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

■ 3. Section 63.2338 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.2338 What parts of my plant does this subpart cover?

* * * * *

(c) The equipment listed in paragraphs (c)(1) through (3) of this section and used in the identified operations is excluded from the affected source.

* * * * *

■ 4. Section 63.2342 is amended by revising paragraph (a) introductory text, paragraph (b) introductory text, and adding paragraphs (e) and (f) to read as follows:

§ 63.2342 When do I have to comply with this subpart?

(a) Except as specified in paragraph (e) of this section, if you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1), (2), or (3) of this section, as applicable.

* * * * *

(b) Except as specified in paragraph (e) of this section, if you have an existing affected source, you must comply with this subpart according to the schedule identified in paragraph (b)(1), (2), or (3) of this section, as applicable.

* * * * *

(d) You must meet the notification requirements in §§ 63.2343 and 63.2382(a), as applicable, according to the schedules in § 63.2382(a) and (b)(1) through (2) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

(e) An affected source that commenced construction or reconstruction on or before October 21, 2019, must be in compliance with the requirements listed in paragraphs (e)(1) through (7) of this section upon initial startup or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later. An affected source that commenced construction or reconstruction after October 21, 2019, must be in compliance with the requirements listed in paragraphs (e)(1) through (7) of this section upon initial startup.

(1) The requirements for storage tanks not requiring control specified in § 63.2343(b)(4) through (7).

(2) The requirements for storage tanks at an existing affected source specified in § 63.2346(a)(5) and (6), § 63.2386(d)(3)(iii), § 63.2396(a)(4), Table 2 to this subpart, footnote (2), and Table 2b to this subpart.

(3) The equipment leak requirements specified in § 63.2346(l), Table 4 to this subpart, item 7, and footnote (1), Table 10 to this subpart, item 5.b.i and footnote (1).

(4) The fenceline monitoring requirements specified in § 63.2348, § 63.2386(k), and § 63.2390(i) according to the compliance dates specified in paragraph (f) of this section.

(5) The flare requirements specified in § 63.2346(k), § 63.2382(d)(2)(ix), § 63.2386(d)(5), § 63.2390(h), Table 2 to this subpart, footnote (1), Table 3 to this subpart, item 7.d, Table 8 to this subpart, items 1.a.iii and 2.a.iii, and Table 9 to this subpart, item 7.e.

(6) The requirements specified in § 63.2346(m), § 63.2350(d), § 63.2366(c), § 63.2390(f) and (g), § 63.2386(c)(11) and (12), § 63.2386(d)(1)(xiii) and (f) through (j), § 63.2378(e), Table 9 to this subpart, footnote (1), and Table 10 to this subpart, items 1.a.i and 2.a.ii.

(7) The performance testing requirements specified in § 63.2354(b)(6).

(f) For each OLD operation complying with the requirements in § 63.2348:

(1) An affected source that commenced construction or reconstruction on or before October 21, 2019, must submit modeling results, proposed analytes, and action levels according to the requirements of § 63.2348(b) upon initial startup or [date 1 year after date of publication of final rule in the **Federal Register**], whichever is later. All affected sources that commenced construction or reconstruction after October 21, 2019, must submit modeling results, proposed analytes and action levels according to the requirements of § 63.2348(b) as part of your permit application for the new OLD operations.

(2) An affected source that commenced construction or reconstruction on or before October 21, 2019, must obtain approval of the modeling results, proposed analytes, and action levels submitted in paragraph (f)(1) of this section and be in compliance with all requirements of § 63.2348 upon initial startup or [date 2 years after date of publication of final rule in the **Federal Register**], whichever is later. An affected source that commenced construction or reconstruction after October 21, 2019, must obtain approval of the modeling results, proposed analytes, and action levels submitted in paragraph (f)(1) of this section and must be in compliance with all requirements listed in § 63.2348 by initial startup.

■ 5. Section 63.2343 is amended by:

■ a. Revising the introductory text, paragraph (a), and paragraph (b) introductory text;

■ b. Adding paragraphs (b)(4) through (b)(7);

■ c. Revising paragraph (c)(1)(iii); and

■ d. Adding paragraph (e).

The revisions and additions read as follows:

§ 63.2343 What are my requirements for emission sources not requiring control?

This section establishes the notification, recordkeeping, and reporting requirements for emission sources identified in § 63.2338 that do not require control under this subpart (*i.e.,* under § 63.2346(a) through (e)). Such emission sources are not subject to any other notification, recordkeeping, or reporting sections in this subpart, including § 63.2350(c), except as indicated in paragraphs (a) through (e) of this section.

(a) For each storage tank subject to this subpart having a capacity of less than 18.9 cubic meters (5,000 gallons), you must comply with paragraph (e) of this section. Also, for each storage tank subject to this subpart having a capacity of less than 18.9 cubic meters (5,000 gallons) and for each transfer rack subject to this subpart that only unloads organic liquids (*i.e.,* no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in paragraph (a) of this section is not required to be controlled. The documentation must be kept up-to-date (*i.e.,* all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location. The documentation may consist of identification of the tanks and transfer racks identified in paragraph (a) of this section on a plant site plan or process and instrumentation diagram (P&ID).

(b) Except as specified in paragraph (b)(7) of this section, for each storage tank subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that is not subject to control based on the criteria specified in Table 2 to this subpart, items 1 through 6, you must comply with the requirements specified in paragraphs (b)(1) through (6) of this section.

* * * * *

(4) Beginning no later than the compliance dates specified in § 63.2342(e), you must monitor each potential source of vapor leakage from each fixed roof storage tank and its closure devices for leaks as specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Conduct monitoring using Method 21 of part 60, appendix A–7 of this chapter within 90 days after the initial fill. You must conduct subsequent monitoring no later than 1 year after previous monitoring is performed, provided the fixed roof storage tank contains organic liquid.

(A) Calibrate the instrument before use on the day of its use according to the procedures in Method 21 of 40 CFR part 60, appendix A–7 of this chapter. Calibration gases must be zero air and a mixture of methane in air at a concentration of no greater than 2,000 parts per million.

(B) Perform a calibration drift assessment, at a minimum, at the end of each monitoring day using the same calibration gas that was used to calibrate the instrument before use. Follow the procedures in Section 10.1 of Method 21 of part 60, appendix A–7 to this chapter, except do not adjust the meter readout to correspond to the calibration gas value. Divide the arithmetic difference of the initial and post-test calibration response by the corresponding calibration gas value and multiply by 100 to express the calibration drift as a percentage.

(C) If the calibration drift assessment shows a negative drift of more than 10 percent from the initial calibration response, you must re-monitor all equipment monitored since the last calibration with instrument readings below the appropriate leak definition and above the leak definition multiplied by (100 minus the percent of negative drift/divided by 100).

(ii) An instrument reading of 500 parts per million by volume (ppmv) or greater defines a leak.

(iii) When a leak is identified, you must either complete repairs or completely empty the fixed roof storage tank within 45 days. If a repair cannot be completed or the fixed roof storage tank cannot be completely emptied within 45 days, you may use up to two extensions of up to 30 additional days each. Keep records documenting each decision to use an extension, as specified in paragraphs (b)(4)(iii)(A) through (C) of this section. Not repairing or emptying the fixed roof storage tank within the time frame specified in this paragraph is a deviation. If you do not empty or repair leaks before the end of the second extension period, report the date when the fixed roof storage tank was emptied or repaired in your compliance report.

(A) Records for a first extension must include a description of the defect, documentation that alternative storage capacity was unavailable in the 45-day period after the inspection and a schedule of actions that you took in an effort to either repair or completely empty the fixed roof storage tank during the extension period.

(B) For a second extension, if needed, you must maintain records documenting that alternative storage capacity was unavailable during the first extension period and a schedule of the actions you took to ensure that the fixed roof storage tank was completely emptied or repaired by the end of the second extension period.

(C) Record the date on which the fixed roof storage tank was completely emptied, if applicable.

(5) Beginning no later than the compliance dates specified in § 63.2342(e), you must conduct periodic vapor pressure analyses or obtain vapor pressure analysis data from the organic liquid supplier according to the schedule specified in paragraphs (b)(5)(i) and (ii) of this section to demonstrate that the annual average true vapor pressure of the organic liquid

associated with each storage tank is below control thresholds. For each periodic vapor pressure analysis, you must use ASTM D6378–18a (incorporated by reference, see § 63.14), a vapor to liquid ratio of 4:1, and the actual annual average temperature as defined in this subpart. Maintain records of each periodic annual average true vapor pressure analysis according to the requirements of § 63.2394.

(i) For each existing affected source, and for each new and reconstructed affected source that commences construction or reconstruction after April 2, 2002, and on or before October 21, 2019, you must obtain analysis data or conduct the first periodic vapor pressure analysis on or before [date 3 years after date of publication of final rule in the **Federal Register**] and obtain analysis data or conduct subsequent periodic vapor pressure analyses no later than 60 months thereafter following the previous analysis, or if the contents of storage tank are a different commodity since the previous analysis, whichever occurs first.

(ii) For each new and reconstructed affected source that commences construction or reconstruction after October 21, 2019, you must obtain analysis data or conduct the first periodic vapor pressure analysis no later than 60 months following the initial analysis required by § 63.2358 and obtain analysis data or conduct subsequent periodic vapor pressure analyses no later than 60 months thereafter following the previous analysis, or if the contents of storage tank are a different commodity since the previous analysis, whichever occurs first.

(6) Beginning no later than the compliance dates specified in § 63.2342(e), you must conduct periodic HAP content analyses or obtain HAP content analysis data from the organic liquid supplier according to the schedule specified in paragraphs (b)(6)(i) and (ii) of this section to demonstrate that the HAP content of the organic liquid associated with each storage tank is below control thresholds. For each periodic HAP content analysis, you must use the procedures specified in § 63.2354(c), except you may not use voluntary consensus standards, safety data sheets (SDS), or certified product data sheets. Maintain records of each periodic HAP content analysis according to the requirements of § 63.2394.

(i) For each existing affected source, and for each new and reconstructed affected source that commences construction or reconstruction after April 2, 2002, and on or before October 21, 2019, you must obtain analysis data or conduct the first periodic HAP content analysis on or before [date 3 years after date of publication of final rule in the **Federal Register**] and obtain analysis data or conduct subsequent periodic HAP content analyses no later than 60 months thereafter following the previous analysis, or if the contents of storage tank have changed significantly since the previous analysis, whichever occurs first.

(ii) For each new and reconstructed affected source that commences construction or reconstruction after October 21, 2019, you must obtain analysis data or conduct the first periodic HAP content analysis no later than 60 months following the initial analysis required by § 63.2358 and obtain analysis data or conduct subsequent periodic HAP content analyses no later than 60 months thereafter following the previous analysis, or if the contents of storage tank have changed significantly since the previous analysis, whichever occurs first.

(7) Beginning no later than the compliance dates specified in § 63.2342(e), the conditions specified in paragraphs (b)(7)(i) and (ii) apply.

(i) Except as specified in paragraph (b)(7)(ii) of this section, the requirements specified in paragraphs (b)(1) through (6) of this section apply to the following storage tanks:

(A) Storage tanks at an existing affected source subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that are not subject to control based on the criteria specified in Table 2b of this subpart, items 1 through 3.

(B) Storage tanks at a reconstructed or new affected source subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that are not subject to control based on the criteria specified in Table 2 to this subpart, items 3 through 6.

(ii) If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you are not required to comply with paragraphs (b)(4) and (b)(7)(i) of this section. Instead, you may continue to comply with paragraphs (b)(1) through (3) of this section for each storage tank subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that is not subject to control based on the criteria specified in Table 2 to this subpart, items 1 through 6.

(c) * * *

(1) * * *

(iii) If you are already submitting a Notification of Compliance Status or a first Compliance report under § 63.2386(c), you do not need to submit a separate Notification of Compliance Status or first Compliance report for each transfer rack that meets the conditions identified in paragraph (c) of this section (*i.e.,* a single Notification of Compliance Status or first Compliance report should be submitted).

* * * * *

(e) Beginning no later than the compliance dates specified in § 63.2342(e), for each fixed roof storage tank having a capacity less than 18.9 cubic meters (5,000 gallons) but greater than 3.8 cubic meters (1,000 gallons) storing an organic liquid with an annual average true vapor pressure greater than 10.3 kilopascals (1.5 psia), you must monitor each closure device and potential source of vapor leakage as specified in paragraphs (e)(1) through (3) of this section.

(1) Conduct monitoring using Method 21 of part 60, appendix A–7 of this chapter within 90 days after the initial fill. You must conduct subsequent monitoring no later than 1 year after the previous monitoring is performed, provided the fixed roof storage tank contains organic liquid.

(i) Calibrate the instrument before use on the day of its use according to the procedures in Method 21 of 40 CFR part 60, appendix A–7 of this chapter. Calibration gases must be zero air and a mixture of methane in air at a concentration of no greater than 2,000 parts per million.

(ii) Perform a calibration drift assessment, at a minimum, at the end of each monitoring day using the same calibration gas that was used to calibrate the instrument before use. Follow the procedures in Section 10.1 of Method 21 of part 60, appendix A–7 to this chapter, except do not adjust the meter readout to correspond to the calibration gas value. Divide the arithmetic difference of the initial and post-test calibration response by the corresponding calibration gas value and multiply by 100 to express the calibration drift as a percentage.

(iii) If the calibration drift assessment shows a negative drift of more than 10 percent, you must re-monitor all equipment monitored since the last calibration.

(2) An instrument reading of 500 ppmv or greater defines a leak.

(3) When a leak is identified, you must either complete repairs or completely empty the fixed roof storage tank within 45 days. If a repair cannot be completed or the fixed roof storage tank cannot be completely emptied within 45 days, you may use up to two extensions of up to 30 additional days

each. Keep records documenting each decision to use an extension, as specified in paragraphs (e)(3)(i) through (iii) of this section. Not repairing or emptying the fixed roof storage tank within the time frame specified in this paragraph is a deviation. If you do not empty or repair leaks before the end of the second extension period, report the date when the fixed roof storage tank was emptied or repaired in your compliance report.

(i) Records for a first extension must include a description of the defect, documentation that alternative storage capacity was unavailable in the 45-day period after the inspection and a schedule of actions that you took in an effort to either repair or completely empty the fixed roof storage tank during the extension period.

(ii) For a second extension, if needed, you must maintain records documenting that alternative storage capacity was unavailable during the first extension period and a schedule of the actions you took to ensure that the fixed roof storage tank was completely emptied or repaired by the end of the second extension period.

(iii) Record the date on which the fixed roof storage tank was completely emptied, if applicable.

■ 6. Section 63.2346 is amended by:

■ a. Revising paragraph (a) introductory text, paragraphs (a)(1), (a)(2), (a)(4)(ii), (a)(4)(iv), paragraph (a)(4)(v) introductory text, and paragraph (a)(4)(v)(A);

■ b. Adding paragraphs (a)(5) and (a)(6);

■ c. Revising paragraphs (b)(1), (b)(2), (c), (d)(2), (e), (f) and (i); and

■ d. Adding paragraphs (k), (l), and (m).

The revisions and additions read as follows:

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) *Storage tanks.* Except as specified in paragraph (a)(5) and (m) of this section, for each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, items 1 through 5, you must comply with paragraph (a)(1), (2), (3), or (4) of this section. For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, item 6, you must comply with paragraph (a)(1), (2), or (4) of this section.

(1) Meet the emission limits specified in Table 2 or 2b to this subpart and comply with paragraph (m) of this section and the applicable requirements specified in 40 CFR part 63, subpart SS, for meeting emission limits, except substitute the term ''storage tank'' at each occurrence of the term ''storage vessel'' in subpart SS.

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS. If you comply with this paragraph, then you must also comply with the requirements specified in paragraph (m) of this section.

* * * * *

(4) * * *

(ii) Transport vehicles must have a current certification in accordance with the United States Department of Transportation (U.S. DOT) qualification and maintenance requirements of 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

* * * * *

(iv) No pressure relief device on the storage tank, on the vapor return line, or on the cargo tank or tank car, shall open during loading or as a result of diurnal temperature changes (breathing losses).

(v) Pressure relief devices must be set to no less than 2.5 pounds per square inch gauge (psig) at all times to prevent breathing losses. Pressure relief devices may be set at values less than 2.5 psig if the owner or operator provides rationale in the notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times. The owner or operator shall comply with paragraphs (a)(4)(v)(A) through (C) of this section for each relief valve.

(A) The relief valve shall be monitored quarterly using the method described in § 63.180(b).

* * * * *

(5) Except as specified in paragraph (a)(6) of this section, beginning no later than the compliance dates specified in § 63.2342(e), the tank capacity criteria, liquid vapor pressure criteria, and emission limits specified for storage tanks at an existing affected source in Table 2 of this subpart, item 1 no longer apply. Instead, for each storage tank at an existing affected source storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2b to this subpart, items 1 through 3, you must comply with paragraph (a)(1), (2), (3), or (4) of this section.

(6) If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you are not required to comply with paragraph (a)(5) of this section. Instead, you may continue to comply with the tank capacity and liquid vapor pressure criteria and the emission limits specified for storage tanks at an existing affected source in Table 2 of this subpart, item 1.

(b) * * *

(1) Meet the emission limits specified in Table 2 to this subpart and comply with paragraph (m) of this section and the applicable requirements for transfer racks specified in 40 CFR part 63, subpart SS, for meeting emission limits.

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS. If you comply with this paragraph, then you must also comply with the requirements specified in paragraph (m) of this section.

* * * * *

(c) *Equipment leak components.* Except as specified in paragraph (l) of this section, for each pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, you must comply with paragraph (m) of this section and the applicable requirements under 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H. Pumps, valves, and sampling connectors that are insulated to provide protection against persistent sub-freezing temperatures are subject to the ''difficult to monitor'' provisions in the applicable subpart selected by the owner or operator. This paragraph only applies if the affected source has at least one storage tank or transfer rack that meets the applicability criteria for control in Table 2 or 2b to this subpart.

(d) * * *

(2) Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

(e) *Operating limits.* For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from the loading of organic liquids are routed to the control device. Except as specified in paragraph (k) of this section, for each storage tank and low throughput transfer rack, you must comply with paragraph (m) of this section and the requirements for monitored parameters as specified in 40 CFR part 63, subpart SS, for storage vessels and, during the loading of organic liquids, for low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

(f) *Surrogate for organic HAP.* For noncombustion devices, if you elect to

demonstrate compliance with a percent reduction requirement in Table 2 or 2b to this subpart using total organic compounds (TOC) rather than organic HAP, you must first demonstrate, subject to the approval of the Administrator, that TOC is an appropriate surrogate for organic HAP in your case; that is, for your storage tank(s) and/or transfer rack(s), the percent destruction of organic HAP is equal to or higher than the percent destruction of TOC. This demonstration must be conducted prior to or during the initial compliance test.

* * * * *

(i) *Safety device.* Opening of a safety device is allowed at any time that it is required to avoid unsafe operating conditions. Beginning no later than [date 3 years after date of publication of final rule in the **Federal Register**], this paragraph no longer applies.

* * * * *

(k) *Flares.* Beginning no later than the compliance dates specified in § 63.2342(e), for each storage tank and low throughput transfer rack, if you vent emissions through a closed vent system to a flare then you must comply with the requirements specified in § 63.2380 instead of the requirements in § 63.987 and the provisions regarding flare compliance assessments at § 63.997(a), (b), and (c).

(l) *Equipment leak components.* Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (c) of this section no longer applies. Instead, you must comply with paragraph (l)(1) or (2) of this section.

(1) Except as specified in paragraph (l)(2) of this section, for each connector, pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, you must comply with paragraph (m) of this section and the applicable requirements under 40 CFR part 63, subpart UU (control level 2), or subpart H. Connectors, pumps, valves, and sampling connectors that are insulated to provide protection against persistent sub-freezing temperatures are subject to the ''difficult to monitor'' provisions in the applicable subpart selected by the owner or operator. This paragraph only applies if the affected source has at least one storage tank or transfer rack that meets the applicability criteria for control in Table 2 or 2b to this subpart.

(2) If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you may choose to comply with this paragraph instead of paragraph (l)(1) of this section. For each pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, you must comply with paragraph (m) of this section and the applicable requirements under 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H. Pumps, valves, and sampling connectors that are insulated to provide protection against persistent sub-freezing temperatures are subject to the ''difficult to monitor'' provisions in the applicable subpart selected by the owner or operator. This paragraph only applies if the affected source has at least one storage tank or transfer rack that meets the applicability criteria for control in Table 2 or 2b to this subpart.

(m) *Start-up, shutdown, and malfunction.* Beginning no later than the compliance dates specified in § 63.2342(e), the referenced provisions specified in paragraphs (m)(1) through (19) of this section do not apply when demonstrating compliance with 40 CFR part 63, subpart H, subpart SS, and subpart UU.

(1) The second sentence of § 63.181(d)(5)(i) of subpart H.

(2) § 63.983(a)(5) of subpart SS.

(3) The phrase ''except during periods of start-up, shutdown, and malfunction as specified in the referencing subpart'' in § 63.984(a) of subpart SS.

(4) The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in § 63.985(a) of subpart SS.

(5) The phrase ''other than start-ups, shutdowns, or malfunctions'' in § 63.994(c)(1)(ii)(D) of subpart SS.

(6) § 63.996(c)(2)(ii) of subpart SS.

(7) § 63.997(e)(1)(i) of subpart SS.

(8) The term ''breakdowns'' from § 63.998(b)(2)(i) of subpart SS.

(9) § 63.998(b)(2)(iii) of subpart SS.

(10) The phrase ''other than periods of start-ups, shutdowns or malfunctions'' from § 63.998(b)(5)(i)(A) of subpart SS.

(11) The phrase ''other than periods of start-ups, shutdowns or malfunctions'' from § 63.998(b)(5)(i)(C) of subpart SS.

(12) The phrase '', except as provided in paragraphs (b)(6)(i)(A) and (B) of this section'' from § 63.998(b)(6)(i) of subpart SS.

(13) The second sentence of § 63.998(b)(6)(ii) of subpart SS.

(14) § 63.998(c)(1)(ii)(D), (E), (F), and (G) of subpart SS.

(15) § 63.998(d)(1)(ii) of subpart SS.

(16) § 63.998(d)(3)(i) and (ii) of subpart SS.

(17) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1026(e)(1)(ii)(A) of subpart UU.

(18) The phrase ''(except during periods of startup, shutdown, or malfunction)'' from § 63.1028(e)(1)(i)(A) of subpart UU.

(19) The phrase ''(except during periods of startup, shutdown, or malfunction)'' from § 63.1031(b)(1) of subpart UU.

■ 7. Section 63.2348 is added to read as follows:

§ 63.2348 What fenceline monitoring requirements must I meet?

(a) If you own or operate a facility that is not required to conduct fenceline monitoring pursuant to § 63.658, then you may opt to conduct fenceline monitoring pursuant to this section. Beginning no later than the compliance dates specified in § 63.2342(f), if you choose to comply with the requirements specified in § 63.2343(b)(7)(ii) and § 63.2346(a)(6) and (l)(2), then you must conduct sampling along the facility property boundary and analyze the samples in accordance with Methods 325A and 325B of appendix A of this part and paragraphs (b) through (k) of this section.

(b) You must determine your target analytes for monitoring and site-specific action level for each analyte as specified in paragraphs (b)(1) through (5) of this section.

(1) You must use EPA's Guidance on Determination of Analytes and Action Levels for Fenceline Monitoring of Organic Liquids Distribution Sources to develop your HAP emissions inventory and conduct your modeling. The HAP emissions inventory is set at allowable emissions from all equipment at the source under common control of the owner and operator of the OLD operation. For this modeling effort, modeled allowable emissions from storage tanks and equipment leaks must be adjusted to take into account the requirements at §§ 63.2343(b)(4), 63.2346(a)(5), and (l)(1) for the purpose of setting the analytes and action level of the fenceline monitoring program.

(2) You must determine at least one target analyte as prescribed in paragraphs (b)(2)(i) through (iv) of this section.

(i) Each analyte must have an available uptake rate at Table 12.1 of Method 325B of appendix A to this part or must have an uptake rate for the selected sorbent validated using Addendum A of Method 325B of appendix A to this part.

(ii) A HAP cannot be used to meet the fenceline monitoring requirements of this section unless the corresponding action level is at least five times the method detection limit for the HAP.

(iii) The first analyte is the Table 1 HAP with the most allowable emissions from OLD operations at the facility on an annual basis. If this HAP is emitted from all equipment that would have

been subject to the requirements at §§ 63.2343(b)(4), 63.2346(a)(5), and (l)(1) had you not opted to implement fenceline monitoring according to this section, then no other analytes are required to be monitored. If this HAP is not emitted from all equipment that would have been subject to the requirements at §§ 63.2343(b)(4), 63.2346(a)(5), and (l)(1) had you not opted to implement fenceline monitoring according to this section, then you must monitor additional analytes as outlined in paragraph (b)(2)(iv) of this section.

(iv) You must select additional analytes from Table 1 that best represent emissions of HAP from all OLD operations that do not emit the HAP selected in paragraph (b)(2)(iii) of this section and that would have been subject to the storage tank and connector monitoring requirements at §§ 63.2343(b)(4), 63.2346(a)(5), and (l)(1) had you not opted to implement fenceline monitoring according to this section. Select the Table 1 HAP having the most allowable emissions from this set of equipment. If the HAP selected in this step is not emitted from all the OLD equipment in this step, then repeat this step until at least one selected HAP is emitted from this set of equipment.

(3) The action level for each analyte selected in paragraph (b)(2) of this section is set as the highest modeled concentration of all fenceline user-defined receptors in the model results, expressed in micrograms per cubic meter, and rounded to two significant figures.

(4) You must submit the modeling results and proposed analytes and action levels to the Administrator no later than the date specified in § 63.2342(f)(1).

(5) You must determine revised analytes or action levels when your title V permit is renewed; when other permit amendments decrease allowable emissions of any target analyte by more than 10 percent below emissions described in the modeling effort used to establish the current analytes and action levels; or upon issuance of a permit modification that results in the conditions of paragraph (b)(2) of this section no longer being met. You may choose to revise analytes or action levels at other times when changes at the source occur that would result in different modeling results. You must submit your revised modeling results and new proposed analytes and action levels to the Administrator no later than 3 months after any permit renewal or amendment triggering model revisions has been issued.

(i) If a revised action level is determined for a currently monitored analyte, for the first year, the action level shall be calculated for each sample period as a weighted average of the previous action level and the new action level. After 26 sampling periods, the new action level takes effect. Beginning with the first biweekly sampling period following approval by the Administrator of the revised modeling, determine your weighted action level according to the following equation:

$$Weighted\ Action\ Level = \frac{(N_1 \times AL_1) + (N_2 \times AL_2)}{26}$$

Where:

N_1 = number of samples during the rolling annual period prior to change of action level

N_2 = number of samples during the rolling annual period since the change in action level

AL_1 = prior action level, μg/m^3

AL_2 = new action level, μg/m^3

26 = number of samples in an annual period

(ii) If revised modeling results eliminate an analyte that is currently being monitored, then once monitoring of that analyte stops, you are no longer subject to the requirement in paragraph (f) of this section to determine whether the action level has been exceeded. If the action level for the analyte hasn't been exceeded, you are no longer required to monitor that analyte starting in the biweekly period that begins following approval by the Administrator of the revised modeling. If the action level for the analyte has been exceeded, you must be below the action level for the analyte for one full year (26 sampling periods) before you stop monitoring for that analyte.

(iii) If revised modeling results establish a new analyte to be monitored, you must begin monitoring for the new analyte in the first biweekly period that begins following approval by the Administrator of the revised modeling. You are not subject to the requirement in paragraph (f) of this section to determine whether the action level has been exceeded prior to collecting a full year (26 sampling periods) of monitoring data for the new analyte.

(c) You must determine passive monitor locations in accordance with Section 8.2 of Method 325A of appendix A to this part.

(1) As it pertains to this subpart, known sources of VOCs, as used in Section 8.2.1.3 in Method 325A of appendix A to this part for siting passive monitors, means any part of the affected source as defined in § 63.2338(b). For this subpart, an additional monitor is not required if the only emission sources within 50 meters of the monitoring boundary are equipment leak sources satisfying all of the conditions in paragraphs (c)(1)(i) through (iv) of this section.

(i) The equipment leak sources in organic liquids service within 50 meters of the monitoring boundary are limited to valves, pumps, connectors, and sampling connections. If compressors, pressure relief devices, or agitators in organic liquids service are present within 50 meters of the monitoring boundary, the additional passive monitoring location specified in Section 8.2.1.3 in Method 325A of appendix A to this part must be used.

(ii) All equipment leak sources in in organic liquids service, including valves, pumps, connectors, and sampling connections must be monitored using Method 21 of 40 CFR part 60, appendix A–7 no less frequently than quarterly with no provisions for skip period monitoring, or according to the provisions of § 63.11(c) Alternative Work practice for monitoring equipment for leaks. For the purpose of this provision, a leak is detected if the instrument reading equals or exceeds the applicable limits in paragraphs (c)(1)(ii)(A) through (E) of this section:

(A) For valves, pumps or connectors at an existing source, an instrument reading of 10,000 ppmv.

(B) For valves or connectors at a new source, an instrument reading of 500 ppmv.

(C) For pumps at a new source, an instrument reading of 2,000 ppmv.

(D) For sampling connections, an instrument reading of 500 ppmv above background.

(E) For equipment monitored according to the Alternative Work practice for monitoring equipment for leaks, the leak definitions contained in § 63.11(c)(6)(i) through (iii).

(iii) All equipment leak sources in organic liquids service must be inspected using visual, audible,

olfactory, or any other detection method at least monthly. A leak is detected if the inspection identifies a potential leak to the atmosphere or if there are indications of liquids dripping.

(iv) All leaks identified by the monitoring or inspections specified in paragraphs (c)(1)(ii) or (iii) of this section must be repaired no later than 15 calendar days after it is detected with no provisions for delay of repair. If a repair is not completed within 15 calendar days, the additional passive monitor specified in Section 8.2.1.3 in Method 325A of appendix A to this part must be used.

(2) You may collect one or more background samples if you believe that an offsite upwind source may influence the sampler measurements. If you elect to collect one or more background samples, you must develop and submit a site-specific monitoring plan for approval according to the requirements in paragraph (i) of this section. Upon approval of the site-specific monitoring plan, the background sampler(s) should be operated co-currently with the routine samplers.

(3) If there are 19 or fewer monitoring locations, you must collect at least one co-located duplicate sample per sampling period and at least one field blank per sampling period. If there are 20 or more monitoring locations, you must collect at least two co-located duplicate samples per sampling period and at least one field blank per sampling period. The co-located duplicates may be collected at any of the perimeter sampling locations.

(4) You must follow the procedure in Section 9.6 of Method 325B of appendix A to this part to determine the detection limit of the analytes for each sampler used to collect samples, background samples (if you elect to do so), co-located samples and blanks.

(d) You must collect and record meteorological data according to the applicable requirements in paragraphs (d)(1) through (3) of this section.

(1) If a near-field source correction is used as provided in paragraph (i)(2) of this section or if an alternative test method is used that provides time-resolved measurements, you must:

(i) Use an on-site meteorological station in accordance with Section 8.3 of Method 325A of appendix A to this part.

(ii) Collect and record hourly average meteorological data, including temperature, barometric pressure, wind speed, and wind direction and calculate daily unit vector wind direction and daily sigma theta.

(2) For cases other than those specified in paragraph (d)(1) of this section, you must collect and record sampling period average temperature and barometric pressure using either an on-site meteorological station in accordance with Section 8.3.1 through 8.3.3 of Method 325A of appendix A to this part or, alternatively, using data from the closest National Weather Service (NWS) meteorological station provided the NWS meteorological station is within 40 kilometers (25 miles) of the plant site.

(3) If an on-site meteorological station is used, you must follow the calibration and standardization procedures for meteorological measurements in EPA–454/B–08–002 (incorporated by reference—see § 63.14).

(e) You must use a sampling period and sampling frequency as specified in paragraphs (e)(1) through (3) of this section.

(1) *Sampling period.* A 14-day sampling period must be used, unless a shorter sampling period is determined to be necessary under paragraph (g) or (i) of this section. A sampling period is defined as the period during which a sampling tube is deployed at a specific sampling location with the diffusive sampling end cap in-place and does not include the time required to analyze the sample. For the purpose of this subpart, a 14-day sampling period may be no shorter than 13 calendar days and no longer than 15 calendar days, but the routine sampling period must be 14 calendar days.

(2) *Base sampling frequency.* Except as provided in paragraph (e)(3) of this section, the frequency of sample collection must be once each contiguous 14-day sampling period, such that the beginning of the next 14-day sampling period begins immediately upon the completion of the previous 14-day sampling period.

(3) *Alternative sampling frequency for burden reduction.* When an individual monitor consistently achieves results at or below one tenth of the corresponding action level for all monitored analytes, you may elect to use the applicable minimum sampling frequency specified in paragraphs (e)(3)(i) through (v) of this section for that monitoring site. When calculating the biweekly concentration difference (Δc) for the monitoring period when using this alternative for burden reduction, substitute zero for the sample result for the monitoring site for any period where a sample is not taken.

(i) If every sample at a monitoring site is at or below one tenth of the corresponding action level for all monitored analytes for 2 years (52 consecutive samples), every other sampling period can be skipped for that monitoring site, *i.e.,* sampling will occur approximately once per month.

(ii) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(i) of this section is at or below one tenth of the corresponding action level for all monitored analytes for 2 years (*i.e.,* 26 consecutive ''monthly'' samples), five 14-day sampling periods can be skipped for that monitoring site following each period of sampling, *i.e.,* sampling will occur approximately once per quarter.

(iii) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(ii) of this section is at or below one tenth of the corresponding action level for all monitored analytes for 2 years (*i.e.,* 8 consecutive quarterly samples), twelve 14-day sampling periods can be skipped for that monitoring site following each period of sampling, *i.e.,* sampling will occur twice a year.

(iv) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(iii) of this section is at or below one tenth of the corresponding action level for all monitored analytes for 2 years (*i.e.,* 4 consecutive semiannual samples), only one sample per year is required for that monitoring site. For yearly sampling, samples must occur at least 10 months but no more than 14 months apart.

(v) If at any time a sample for a monitoring site that is monitored at the frequency specified in paragraphs (e)(3)(i) through (iv) of this section returns a result that is above one tenth of the corresponding action level for any analyte, the sampling site must return to the original sampling requirements of contiguous 14-day sampling periods with no skip periods for one quarter (six 14-day sampling periods). If every sample collected during this quarter is at or below one tenth of the corresponding action level for all monitored analytes, you may revert back to the reduced monitoring schedule applicable for that monitoring site prior to the sample reading exceeding one tenth of the action level. If any sample collected during this quarter is above one tenth of the corresponding action level for any analyte, that monitoring site must return to the original sampling requirements of contiguous 14-day sampling periods with no skip periods for a minimum of 2 years. The burden reduction requirements can be used again for that monitoring site once the requirements of paragraph (e)(3)(i) of this section are met again, *i.e.,* after 52 contiguous 14-day samples with no results above one tenth of the corresponding action level for all monitored analytes.

(f) Within 45 days of completion of each sampling period, you must determine whether the results are above or below the corresponding action level for each analyte as follows:

(1) You must determine the facility impact on the analyte concentration difference (Δc) for each analyte for each 14-day sampling period according to either paragraph (f)(1)(i) or (ii) of this section, as applicable.

(i) Except when near-field source correction is used as provided in paragraph (i) of this section, for each analyte, you must determine the highest and lowest sample results from the sample pool and calculate Δc as the difference in these concentrations. Co-located samples must be averaged together for the purposes of determining the analyte concentration for that sampling location, and, if applicable, for determining Δc. You must adhere to the following procedures when one or more samples for the sampling period are below the method detection limit for an analyte:

(A) If the lowest value of an analyte is below detection, you must use zero as the lowest sample result when calculating Δc.

(B) If all sample results for a particular analyte are below the method detection limit, you must use the method detection limit as the highest sample result and zero as the lowest sample result when calculating Δc.

(ii) When near-field source correction is used as provided in paragraph (i) of this section, you must determine Δc using the calculation protocols outlined in the approved site-specific monitoring plan and in paragraph (i) of this section.

(2) For each analyte, you must calculate the annual average Δc based on the average of the 26 most recent 14-day sampling periods. You must update this annual average value after receiving the results of each subsequent 14-day sampling period.

(3) If the annual average Δc value for an analyte is less than or equal to the corresponding action level determined in paragraph (b) of this section, the concentration is below the action level. If the annual average Δc value for any analyte is greater than the corresponding action level determined in paragraph (b) of this section, then you must conduct a root cause analysis and corrective action in accordance with paragraph (g) of this section.

(g) Within 5 days of determining that the action level for any analyte has been exceeded for any annual average Δc and no longer than 50 days after completion of the sampling period in which the action level was first exceeded, you must initiate a root cause analysis to determine the cause of such exceedance and to determine appropriate corrective action, such as those described in paragraphs (g)(1) through (4) of this section. The root cause analysis and initial corrective action analysis must be completed and initial corrective actions taken no later than 45 days after determining there is an exceedance. Root cause analysis and corrective action may include, but is not limited to:

(1) Leak inspection using Method 21 of part 60, appendix A–7 of this chapter and repairing any leaks found.

(2) Leak inspection using optical gas imaging and repairing any leaks found.

(3) Visual inspection to determine the cause of the high emissions and implementing repairs to reduce the level of emissions.

(4) Employing progressively more frequent sampling, analysis and meteorology (*e.g.,* using shorter sampling periods for Methods 325A and 325B of appendix A of this part, or using active sampling techniques).

(h) If, upon completion of the corrective action analysis and corrective actions such as those described in paragraph (g) of this section, the Δc value for the next 14-day sampling period for which the sampling start time begins after the completion of the corrective actions is greater than the action level for the same analyte that previously exceed the action level or if all corrective action measures identified require more than 45 days to implement, you must develop a corrective action plan that describes the corrective action(s) completed to date, additional measures that you propose to employ to reduce fenceline concentrations below the action level, and a schedule for completion of these measures. You must submit the corrective action plan to the Administrator within 60 days after receiving the analytical results indicating that the Δc value for the 14-day sampling period following the completion of the initial corrective action is greater than the action level or, if no initial corrective actions were identified, no later than 60 days following the completion of the corrective action analysis required in paragraph (g) of this section.

(i) You may request approval from the Administrator for a site-specific monitoring plan to account for offsite upwind sources according to the requirements in paragraphs (i)(1) through (4) of this section.

(1) You must prepare and submit a site-specific monitoring plan and receive approval of the site-specific monitoring plan prior to using the near-field source alternative calculation for determining Δc provided in paragraph (i)(2) of this section. The site-specific monitoring plan must include, at a minimum, the elements specified in paragraphs (i)(1)(i) through (v) of this section. The procedures in Section 12 of Method 325A of appendix A of this part are not required, but may be used, if applicable, when determining near-field source contributions.

(i) Identification of the near-field source or sources.

(ii) Location of the additional monitoring stations that must be used to determine the uniform background concentration and the near-field source concentration contribution.

(iii) Identification of the fenceline monitoring locations impacted by the near-field source. If more than one near-field source is present, identify the near-field source or sources that are expected to contribute to the concentration at that monitoring location.

(iv) A description of (including sample calculations illustrating) the planned data reduction and calculations to determine the near-field source concentration contribution for each monitoring location.

(v) If more frequent monitoring or a monitoring station other than a passive diffusive tube monitoring station is proposed, provide a detailed description of the measurement methods, measurement frequency, and recording frequency for determining the uniform background or near-field source concentration contribution. Uniform background and near-field source concentration contributions must be determined by a real-time or semi-continuous measurement technique that can be reconciled with the measurements taken using the passive diffusive tubes.

(2) When an approved site-specific monitoring plan is used, for each analyte covered by the site-specific monitoring plan, you must determine Δc for comparison with the corresponding action level using the requirements specified in paragraphs (i)(2)(i) through (iii) of this section.

(i) For each monitoring location, calculate Δc_i using the following equation.

$$\Delta c_i = MFC_i - NFS_i - UB$$

Where:

Δc_i = The fenceline concentration, corrected for background, at measurement location i, micrograms per cubic meter (μg/m³).

MFC_i = The measured fenceline concentration at measurement location i, μg/m³.

NFS_i = The near-field source contributing concentration at measurement location i determined using the additional

measurements and calculation procedures included in the site-specific monitoring plan, μg/m³. For monitoring locations that are not included in the site-specific monitoring plan as impacted by a near-field source, use NFSi = 0 μg/m³.

UB = The uniform background concentration determined using the additional measurements included in the site-specific monitoring plan, μg/m³. If no additional measurements are specified in the site-specific monitoring plan for determining the uniform background concentration, use UB = 0 μg/m³.

(ii) When one or more samples for the sampling period are below the method detection limit for an analyte, adhere to the following procedures:

(A) If the analyte concentration at the monitoring location used for the uniform background concentration is below the method detection limit, you must use zero for UB for that monitoring period.

(B) If the analyte concentration at the monitoring location(s) used to determine the near-field source contributing concentration is below the method detection limit, you must use zero for the monitoring location concentration when calculating NFSi for that monitoring period.

(C) If a fenceline monitoring location sample result is below the method detection limit, you must use the method detection limit as the sample result.

(iii) Determine Δc for the monitoring period as the maximum value of Δci from all of the fenceline monitoring locations for that monitoring period.

(3) The site-specific monitoring plan must be submitted and approved as described in paragraphs (i)(3)(i) through (iv) of this section.

(i) The site-specific monitoring plan must be submitted to the Administrator for approval.

(ii) The site-specific monitoring plan must also be submitted to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Organic Liquids Distribution Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Electronic copies in lieu of hard copies may also be submitted to *oldrtr@epa.gov.*

(iii) The Administrator must approve or disapprove the plan in 90 days. The plan is considered approved if the Administrator either approves the plan in writing or fails to disapprove the plan in writing. The 90-day period must begin when the Administrator receives the plan.

(iv) If the Administrator finds any deficiencies in the site-specific monitoring plan and disapproves the plan in writing, you may revise and resubmit the site-specific monitoring plan following the requirements in paragraphs (i)(3)(i) and (ii) of this section. The 90-day period starts over with the resubmission of the revised monitoring plan.

(4) The approval by the Administrator of a site-specific monitoring plan will be based on the completeness, accuracy and reasonableness of the request for a site-specific monitoring plan. Factors that the Administrator will consider in reviewing the request for a site-specific monitoring plan include, but are not limited to, those described in paragraphs (i)(4)(i) through (vii) of this section.

(i) The identification of the near-field source or sources.

(ii) The monitoring location selected to determine the uniform background concentration or an indication that no uniform background concentration monitor will be used.

(iii) The location(s) selected for additional monitoring to determine the near-field source concentration contribution.

(iv) The identification of the fenceline monitoring locations impacted by the near-field source or sources.

(v) The appropriateness of the planned data reduction and calculations to determine the near-field source concentration contribution for each monitoring location.

(vi) If more frequent monitoring is proposed, the adequacy of the description of the measurement and recording frequency proposed and the adequacy of the rationale for using the alternative monitoring frequency.

(vii) The appropriateness of the measurement technique selected for determining the uniform background and near-field source concentration contributions.

(j) You must comply with the applicable recordkeeping requirements in § 63.2390(i) and reporting requirements in § 63.2386(k).

(k) As outlined in § 63.7(f), you may submit a request for an alternative test method. At a minimum, the request must follow the requirements outlined in paragraphs (k)(1) through (7) of this section.

(1) The alternative method may be used in lieu of all or a partial number of passive samplers required in Method 325A of appendix A of this part.

(2) The alternative method must be validated for each analyte according to Method 301 in appendix A of this part or contain performance-based procedures and indicators to ensure self-validation.

(3) The method detection limit must nominally be no greater than one fifth of the action level for each analyte. The alternate test method must describe the procedures used to provide field verification of the detection limit.

(4) The spatial coverage must be equal to or better than the spatial coverage provided in Method 325A of appendix A of this part.

(i) For path average concentration open-path instruments, the physical path length of the measurement must be no more than a passive sample footprint (the spacing that would be provided by the sorbent traps when following Method 325A). For example, if Method 325A requires spacing monitors A and B 610 meters (2,000 feet) apart, then the physical path length limit for the measurement at that portion of the fenceline must be no more than 610 meters (2,000 feet).

(ii) For range resolved open-path instrument or approach, the instrument or approach must be able to resolve an average concentration over each passive sampler footprint within the path length of the instrument.

(iii) The extra samplers required in Sections 8.2.1.3 of Method 325A may be omitted when they fall within the path length of an open-path instrument.

(5) At a minimum, non-integrating alternative test methods must provide a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(6) For alternative test methods capable of real time measurements (less than a 5-minute sampling and analysis cycle), the alternative test method may allow for elimination of data points corresponding to outside emission sources for purpose of calculation of the high point for the two week average. The alternative test method approach must have wind speed, direction and stability class of the same time resolution and within the footprint of the instrument.

(7) For purposes of averaging data points to determine the Δc for the 14-day average high sample result, all results measured under the method detection limit must use the method detection limit. For purposes of averaging data points for the 14-day average low sample result, all results measured under the method detection limit must use zero.

■ 8. Section 63.2350 is revised to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, operating limits, and work practice standards in this subpart at all times when the equipment identified in § 63.2338(b)(1) through (5) is in OLD operation.

(b) Except as specified in paragraph (d) of this section, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) Except for emission sources not required to be controlled as specified in § 63.2343, you must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3). Beginning no later than [date 3 years after date of publication of final rule in the **Federal Register**], this paragraph no longer applies; however, for historical compliance purposes, a copy of the plan must be retained and available on-site for five years after [date 3 years after date of publication of final rule in the **Federal Register**].

(d) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (b) of this section no longer applies. Instead, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 9. Section 63.2354 is amended by:

■ a. Revising paragraphs (a)(2), (a)(3), (b)(1), (b)(3)(i), and (b)(3)(ii);

■ b. Adding paragraph (b)(3)(iii);

■ c. Revising paragraphs (b)(4) and (b)(5);

■ d. Adding paragraph (b)(6);

■ e. Revising paragraph (c); and

■ f. Adding paragraph (d).

The revisions and additions read as follows:

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

(a) * * *

(2) For each design evaluation you conduct, you must use the procedures specified in 40 CFR part 63, subpart SS. You must also comply with the requirements specified in § 63.2346(m).

(3) For each performance evaluation of a continuous emission monitoring system (CEMS) you conduct, you must follow the requirements in § 63.8(e) and paragraph (d) of this section. For CEMS installed after the compliance date specified in § 63.2342(e), conduct a performance evaluation of each CEMS within 180 days of installation of the monitoring system.

(b)(1) Except as specified in paragraph (b)(6) of this section, for nonflare control devices, you must conduct each performance test according to the requirements in § 63.7(e)(1), and either § 63.988(b), § 63.990(b), or § 63.995(b), using the procedures specified in § 63.997(e).

* * * * *

(3)(i) In addition to Method 25 or 25A of 40 CFR part 60, appendix A–7, to determine compliance with the TOC emission limit, you may use Method 18 of 40 CFR part 60, appendix A–6 or Method 320 of appendix A to this part to determine compliance with the total organic HAP emission limit. You may not use Method 18 or Method 320 of appendix A to this part if the control device is a combustion device, and you must not use Method 320 of appendix A to this part if the gas stream contains entrained water droplets. All compounds quantified by Method 320 of appendix A to this part must be validated according to Section 13.0 of Method 320 of appendix A to this part. As an alternative to Method 18, for determining compliance with the total organic HAP emission limit, you may use ASTM D6420–18 (incorporated by reference, see § 63.14), under the conditions specified in paragraph (b)(3)(ii) of this section.

(A) If you use Method 18 of 40 CFR part 60, appendix A–6 or Method 320 of appendix A to this part to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (*i.e.,* uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in Method 18. In conducting the performance test, you must analyze samples collected simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(B) If you use Method 18 of 40 CFR part 60, appendix A–6 or Method 320 of appendix A to this part, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected as specified in Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(ii) You may use ASTM D6420–18 (incorporated by reference, see § 63.14), to determine compliance with the total organic HAP emission limit if the target concentration for each HAP is between 150 parts per billion by volume and 100 ppmv and either of the conditions specified in paragraph (b)(2)(ii)(A) or (B) of this section exists. For target compounds not listed in Section 1.1 of ASTM D6420–18 and not amenable to detection by mass spectrometry, you may not use ASTM D6420–18.

(A) The target compounds are those listed in Section 1.1 of ASTM D6420–18 (incorporated by reference, see § 63.14); or

(B) For target compounds not listed in Section 1.1 of ASTM D6420–18 (incorporated by reference, see § 63.14), but potentially detected by mass spectrometry, you must demonstrate recovery of the compound and the additional system continuing calibration check after each run, as detailed in ASTM D6420–18, Section 10.5.3, must be followed, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water-soluble.

(iii) You may use ASTM D6348–12e1 (incorporated by reference, see § 63.14) instead of Method 320 of appendix A to this part under the conditions specified in footnote 4 of table 5 to this subpart.

(4) If a principal component of the uncontrolled or inlet gas stream to the control device is formaldehyde, you must use Method 316, Method 320, or Method 323 of appendix A to this part for measuring the formaldehyde, except you must not use Method 320 or Method 323 of appendix A to this part if the gas stream contains entrained water droplets. If you use Method 320 of appendix A to this part, formaldehyde must be validated according to Section 13.0 of Method 320 of appendix A to this part. You must

measure formaldehyde either at the inlet and outlet of the control device to determine control efficiency or at the outlet of a combustion device for determining compliance with the emission concentration limit. You may use ASTM D6348–12e1 (incorporated by reference, see § 63.14) instead of Method 320 of appendix A to this part under the conditions specified in footnote 4 of table 5 to this subpart.

(5) Except as specified in paragraph (b)(6) of this section, you may not conduct performance tests during periods of SSM, as specified in § 63.7(e)(1).

(6) Beginning no later than the compliance dates specified in § 63.2342(e), paragraphs (b)(1) and (5) of this section no longer apply. Instead, you must conduct each performance test according to the requirements in paragraphs (b)(6)(A) and (B) of this section.

(A) In lieu of the requirements specified in § 63.7(e)(1), you must conduct performance tests under such conditions as the Administrator specifies based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(B) Pursuant to paragraph (b)(6)(A) of this section, you must conduct each performance test according to the requirements in either § 63.988(b), § 63.990(b), or § 63.995(b), using the procedures specified in § 63.997(e). You must also comply with the requirements specified in § 63.2346(m).

(c) To determine the HAP content of the organic liquid, you may use Method 311 of appendix A to this part, ASTM D6886–18 (incorporated by reference, see § 63.14), or other method approved by the Administrator. If you use ASTM D6886–18 to determine the HAP content, you must use either Method B or Method B in conjunction with Method C, as described in section 4.3 of ASTM D6886–18. In addition, you may use other means, such as voluntary consensus standards, safety data sheets (SDS), or certified product data sheets, to determine the HAP content of the organic liquid. If the method you select to determine the HAP content provides HAP content ranges, you must use the upper end of each HAP content range in determining the total HAP content of the organic liquid. The EPA may require you to test the HAP content of an organic liquid using Method 311 of appendix A to this part or other method approved by the Administrator. For liquids that contain any amount of formaldehyde or carbon tetrachloride, you may not use Method 311 of appendix A to this part. If the results of the Method 311 of appendix A to this part (or any other approved method) are different from the HAP content determined by another means, the Method 311 of appendix A to this part (or approved method) results will govern. For liquids that contain any amount of formaldehyde or carbon tetrachloride, if the results of ASTM D6886–18 using method B or C in section 4.3 (or any other approved method) are different from the HAP content determined by another means, ASTM D6886–18 using method B or C in section 4 (or approved method) results will govern.

(d) Each VOC CEMS must be installed, operated, and maintained according to the requirements of one of the following performance specifications located in 40 CFR part 60, appendix B: Performance Specification 8, Performance Specification 8A, Performance Specification 9, or Performance Specification 15. You must also comply with the requirements of procedure 1 of 40 CFR part 60, appendix F, for CEMS using Performance Specification 8 or 8A.

(1) For CEMS using Performance Specification 9 or 15, determine the target analyte(s) for calibration using either process knowledge or the screening procedures of Method 18 of 40 CFR part 60, appendix A–6.

(2) For CEMS using Performance Specification 8A, conduct the relative accuracy test audits required under Procedure 1 of 40 CFR part 60, appendix F in accordance with Performance Specification 8, Sections 8 and 11. The relative accuracy must meet the criteria of Performance Speciation 8, Section 13.2.

(3) For CEMS using Performance Specification 8 or 8A, calibrate the instrument on methane and report the results as carbon (C1). Use Method 25A of 40 CFR part 60, appendix A–7 as the reference method for the relative accuracy tests.

(4) If you are required to monitor oxygen in order to conduct concentration corrections, you must use Performance Specification 3 of 40 CFR part 60, appendix B, to certify your oxygen CEMS, and you must comply with procedure 1 of 40 CFR part 60, appendix F. Use Method 3A of 40 CFR part 60, appendix A–2, as the reference method when conducting a relative accuracy test audit.

■ 10. Section 63.2358 is amended by adding paragraph (b)(3) to read as follows:

§ 63.2358 By what date must I conduct performance tests and other initial compliance demonstrations?

* * * * *

(b) * * *

(3) For storage tanks and transfer racks at existing affected sources that commenced construction or reconstruction on or before October 21, 2019, you must demonstrate initial compliance with the emission limitations listed in Table 2b to this subpart within 180 days of either the initial startup or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later, except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a.ii. in Table 2b to this subpart and item 1.a. in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than [date 10 years after date of publication of final rule in the **Federal Register**].

(ii) For storage tanks complying with item 1.a.ii. in Table 2b of this subpart and item 1.b. or 1.c. in Table 4 of this subpart, you must comply within 180 days after [date 3 years after date of publication of final rule in the **Federal Register**].

* * * * *

■ 11. Section 63.2362 is amended by revising paragraph (b)(2) to read as follows:

§ 63.2362 When must I conduct subsequent performance tests?

* * * * *

(b)(1) * * *

(2) For transport vehicles that you own that do not have vapor collection equipment, you must maintain current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

■ 12. Section 63.2366 is revised to read as follows:

§ 63.2366 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain a continuous monitoring system (CMS) on each control device

required in order to comply with this subpart. If you use a continuous parameter monitoring system (CPMS) (as defined in § 63.981), you must comply with § 63.2346(m) and the applicable requirements for CPMS in 40 CFR part 63, subpart SS, for the control device being used. If you use a CEMS, you must install, operate, and maintain the CEMS according to the requirements in § 63.8 and paragraph (d) of this section, except as specified in paragraph (c) of this section.

(b) For nonflare control devices controlling storage tanks and low throughput transfer racks, you must submit a monitoring plan according to the requirements in 40 CFR part 63, subpart SS, for monitoring plans. You must also comply with the requirements specified in § 63.2346(m).

(c) Beginning no later than the compliance dates specified in § 63.2342(e), you must keep the written procedures required by § 63.8(d)(2) on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2). In addition to the information required in § 63.8(d)(2), your written procedures for CEMS must include the information in paragraphs (c)(1) through (6) of this section:

(1) Description of CEMS installation location.

(2) Description of the monitoring equipment, including the manufacturer and model number for all monitoring equipment components and the span of the analyzer.

(3) Routine quality control and assurance procedures.

(4) Conditions that would trigger a CEMS performance evaluation, which must include, at a minimum, a newly installed CEMS; a process change that is expected to affect the performance of the CEMS; and the Administrator's request for a performance evaluation under section 114 of the Clean Air Act.

(5) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and (e)(1).

(d) For each CEMS, you must locate the sampling probe or other interface at a measurement location such that you obtain representative measurements of emissions from the regulated source and comply with the applicable requirements specified in § 63.2354(d).

■ 13. Section 63.2370 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you as specified in Tables 6 and 7 to this subpart.

* * * * *

(c) You must submit the results of the initial compliance determination in the Notification of Compliance Status according to the requirements in § 63.2382(d). If the initial compliance determination includes a performance test and the results are submitted electronically via the Compliance and Emissions Data Reporting Interface (CEDRI) in accordance with § 63.2386(g), the unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

■ 14. Section 63.2374 is amended by revising paragraph (a) to read as follows:

§ 63.2374 When do I monitor and collect data to demonstrate continuous compliance and how do I use the collected data?

(a) You must monitor and collect data according to 40 CFR part 63, subpart SS, and paragraphs (b) and (c) of this section. You must also comply with the requirements specified in § 63.2346(m).

* * * * *

■ 15. Section 63.2378 is revised to read as follows:

§ 63.2378 How do I demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limitation, operating limit, and work practice standard in Tables 2 through 4 to this subpart that applies to you according to the methods specified in 40 CFR part 63, subpart SS, and in Tables 8 through 10 to this subpart, as applicable. You must also comply with the requirements specified in § 63.2346(m).

(b) Except as specified in paragraph (e) of this section, you must follow the requirements in § 63.6(e)(1) and (3) during periods of startup, shutdown, malfunction, or nonoperation of the affected source or any part thereof. In addition, the provisions of paragraphs (b)(1) through (3) of this section apply.

(1) The emission limitations in this subpart apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart apply during periods of SSM, except as provided in paragraphs (b)(2) and (3) of this section. However, if a SSM, or period of nonoperation of one portion of the affected source does not affect the ability of a particular emission source to comply with the emission limitations to which it is subject, then that emission source is still required to comply with the applicable emission limitations of this subpart during the startup, shutdown, malfunction, or period of nonoperation.

(2) The owner or operator must not shut down control devices or monitoring systems that are required or utilized for achieving compliance with this subpart during periods of SSM while emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (b)(2) does not apply if the item of equipment is malfunctioning. This paragraph (b)(2) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous SSM of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous SSM of the affected source of portion thereof, the owner or operator must provide documentation supporting such a claim in the next Compliance report required in Table 11 to this subpart, item 1. Once approved by the Administrator, the provision for ceasing to collect, during a SSM, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the SSM plan.

(3) During SSM, you must implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph (b)(3), the term ''excess

emissions'' means emissions greater than those allowed by the emission limits that apply during normal operational periods. The measures to be taken must be identified in the SSM plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

(c) Except as specified in paragraph (e) of this section, periods of planned routine maintenance of a control device used to control storage tanks or transfer racks, during which the control device does not meet the emission limits in Table 2 to this subpart, must not exceed 240 hours per year.

(d) Except as specified in paragraph (e) of this section, if you elect to route emissions from storage tanks or transfer racks to a fuel gas system or to a process, as allowed by § 63.982(d), to comply with the emission limits in Table 2 to this subpart, the total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except SSM or product changeovers of flexible operation units and periods when a storage tank has been emptied and degassed), must not exceed 240 hours.

(e) Beginning no later than the compliance dates specified in § 63.2342(e), paragraphs (b) through (d) of this section no longer apply. Instead, you must be in compliance with each emission limitation, operating limit, and work practice standard specified in paragraph (a) of this section at all times, except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The use of a bypass line at any time on a closed vent system to divert a vent stream to the atmosphere or to a control device not meeting the requirements specified in paragraph (a) of this section is an emissions standards deviation. Equipment subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4 are not subject to this paragraph (e). If you are subject to the bypass monitoring requirements of § 63.983(a)(3) of subpart SS, then you must continue to comply with the requirements in § 63.983(a)(3) of subpart SS and the recordkeeping and reporting requirements in § 63.998(d)(1)(ii) and § 63.999(c)(2) of subpart SS, in addition to § 63.2346(m), the recordkeeping requirements specified in § 63.2390(g), and the reporting requirements specified in § 63.2386(c)(12).

(f) The CEMS data must be reduced to daily averages computed using valid data consistent with the data availability requirements specified in § 63.999(c)(6)(i)(B) through (D), except monitoring data also are sufficient to constitute a valid hour of data if measured values are available for at least two of the 15-minute periods during an hour when calibration, quality assurance, or maintenance activities are being performed. In computing daily averages to determine compliance with this subpart, you must exclude monitoring data recorded during CEMS breakdowns, out of control periods, repairs, maintenance periods, calibration checks, or other quality assurance activities.

■ 16. Section 63.2380 is added to read as follows:

§ 63.2380 What are my requirements for certain flares?

(a) Beginning no later than the compliance dates specified in § 63.2342(e), if you reduce organic HAP emissions by venting emissions through a closed vent system to a steam-assisted, air-assisted, or non-assisted flare to control emissions from a storage tank, low throughput transfer rack, or high throughput transfer rack, then the flare requirements specified in § 63.11(b); 40 CFR part 63, subpart SS; the provisions specified in items 7.a through 7.d of Table 3; Table 8 to this subpart; and the provisions specified in items 1.a.iii and 2.a.iii, and items 7.a through 7.d.2 of Table 9 to this subpart no longer apply. Instead, you must meet the applicable requirements for flares as specified in §§ 63.670 and 63.671 of subpart CC, including the provisions in Tables 12 and 13 to subpart CC of this part, except as specified in paragraphs (b) through (k) of this section. For purposes of compliance with this paragraph, the following terms are defined in § 63.641 of subpart CC: Assist air, assist steam, center steam, combustion zone, combustion zone gas, flare, flare purge gas, flare supplemental gas, flare sweep gas, flare vent gas, lower steam, net heating value, perimeter assist air, pilot gas, premix assist air, total steam, and upper steam.

(b) The following phrases in § 63.670(c) of subpart CC do not apply:

(1) ''[S]pecify the smokeless design capacity of each flare and''; and

(2) ''[A]nd the flare vent gas flow rate is less than the smokeless design capacity of the flare''.

(c) The phrase ''and the flare vent gas flow rate is less than the smokeless design capacity of the flare'' in § 63.670(d) of subpart CC does not apply.

(d) § 63.670(o) does not apply.

(e) Substitute ''affected source'' for each occurrence of ''petroleum refinery.''

(f) Each occurrence of ''refinery'' does not apply.

(g) You may elect to comply with the alternative means of emissions limitation requirements specified in § 63.670(r) of subpart CC in lieu of the requirements in § 63.670(d) through (f) of subpart CC, as applicable. However, instead of complying with § 63.670(r)(3)(iii) of subpart CC, you must also submit the alternative means of emissions limitation request to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Organic Liquids Distribution Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Electronic copies in lieu of hard copies may also be submitted to *oldrtr@epa.gov.*

(h) If you choose to determine compositional analysis for net heating value with a continuous process mass spectrometer, then you must comply with the requirements specified in paragraphs (h)(1) through (7) of this section.

(1) You must meet the requirements in § 63.671(e)(2) of subpart CC. You may augment the minimum list of calibration gas components found in § 63.671(e)(2) of subpart CC with compounds found during a pre-survey or known to be in the gas through process knowledge.

(2) Calibration gas cylinders must be certified to an accuracy of 2 percent and traceable to National Institute of Standards and Technology (NIST) standards.

(3) For unknown gas components that have similar analytical mass fragments to calibration compounds, you may report the unknowns as an increase in the overlapped calibration gas compound. For unknown compounds that produce mass fragments that do not overlap calibration compounds, you may use the response factor for the nearest molecular weight hydrocarbon in the calibration mix to quantify the unknown component's NHVvg.

(4) You may use the response factor for n-pentane to quantify any unknown components detected with a higher molecular weight than n-pentane.

(5) You must perform an initial calibration to identify mass fragment overlap and response factors for the target compounds.

(6) You must meet applicable requirements in Performance

Specification 9 of appendix B to 40 CFR part 60 for continuous monitoring system acceptance including, but not limited to, performing an initial multi-point calibration check at three concentrations following the procedure in Section 10.1 and performing the periodic calibration requirements listed for gas chromatographs in Table 13 of 40 CFR part 63, subpart CC, for the process mass spectrometer. You may use the alternative sampling line temperature allowed under Net Heating Value by Gas Chromatograph in Table 13 of 40 CFR part 63, subpart CC.

(7) The average instrument calibration error (CE) for each calibration compound at any calibration concentration must not differ by more than 10 percent from the certified cylinder gas value. The CE for each component in the calibration blend must be calculated using the following equation:

$$CE = \frac{C_m - C_a}{C_a} x\ 100$$

Where:

Cm = Average instrument response (ppm)

Ca = Certified cylinder gas value (ppm)

(i) If you use a gas chromatograph or mass spectrometer for compositional analysis for net heating value, then you may choose to use the CE of NHV measured versus the cylinder tag value NHV as the measure of agreement for daily calibration and quarterly audits in lieu of determining the compound-specific CE. The CE for NHV at any calibration level must not differ by more than 10 percent from the certified cylinder gas value. The CE for must be calculated using the following equation:

$$CE = \frac{NHV_{measured} - NHV_a}{NHV_a} x\ 100$$

Where:

NHVmeasured = Average instrument response (Btu/scf)

NHVa = Certified cylinder gas value (Btu/scf)

(j) Instead of complying with § 63.670(p) of subpart CC, you must keep the flare monitoring records specified in § 63.2390(h).

(k) Instead of complying with § 63.670(q) of subpart CC, you must comply with the reporting requirements specified in § 63.2382(d)(2)(ix) and § 63.2386(d)(5).

■ 17. Section 63.2382 is amended by revising paragraphs (a), (d)(1), (d)(2) introductory text, (d)(2)(ii), (d)(2)(vi), (d)(2)(vii), and adding (d)(2)(ix) and (d)(3) to read as follows:

§ 63.2382 What notifications must I submit and when and what information should be submitted?

(a) You must submit each notification in subpart SS of this part, Table 12 to this subpart, and paragraphs (b) through (d) of this section that applies to you. You must submit these notifications according to the schedule in Table 12 to this subpart and as specified in paragraphs (b) through (d) of this section. You must also comply with the requirements specified in § 63.2346(m).

* * * * *

(d)(1) *Notification of Compliance Status.* If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Table 5, 6, or 7 to this subpart, you must submit a Notification of Compliance Status.

(2) The Notification of Compliance Status must include the information required in § 63.999(b) and in paragraphs (d)(2)(i) through (ix) of this section.

* * * * *

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to Tables 6 and 7 to this subpart. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures. If performance test results are submitted electronically via CEDRI in accordance with § 63.2386(g), the unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

* * * * *

(vi) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4, and all connectors subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 7.

(vii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 3.a, include a statement to that effect and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 psig.

* * * * *

(ix) For flares subject to the requirements of § 63.2380, you must also submit the information in this paragraph in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for flare monitoring. In lieu of the information required in § 63.987(b) of subpart SS, the Notification of Compliance Status must include flare design (*e.g.,* steam-assisted, air-assisted, or non-assisted); all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the initial visible emissions demonstration required by § 63.670(h) of subpart CC, as applicable; and all periods during the compliance determination when the pilot flame is absent.

(3) Beginning no later than the compliance dates specified in § 63.2342(e), you must submit all subsequent Notification of Compliance Status reports to the EPA via CEDRI, which can be accessed through EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), then submit a complete report, including information

claimed to be CBI, to the EPA. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (C404–02), Attention: Organic Liquids Distribution Sector Lead, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described earlier in this paragraph. You may assert a claim of EPA system outage or force majeure for failure to timely comply with this reporting requirement provided you meet the requirements outlined in § 63.2386(i) or (j), as applicable.

■ 18. Section 63.2386 is amended by:

■ a. Revising paragraphs (a), paragraph (b) introductory text, paragraph (c) introductory text, paragraphs (c)(2), (c)(3), (c)(5), paragraph (c)(8) introductory text and paragraph (c)(9);

■ b. Adding paragraphs (c)(11) and (c)(12);

■ c. Revising paragraph (d) introductory text, paragraph (d)(1) introductory text, paragraphs (d)(1)(i) through (d)(1)(vii), (d)(1)(ix), and (d)(1)(x);

■ d. Adding paragraphs (d)(1)(xiii) through (d)(1)(xv);

■ e. Revising paragraphs (d)(2)(i), (d)(2)(iv), (d)(3)(i) and (d)(3)(ii);

■ f. Adding paragraphs (d)(3)(iii) and (d)(5);

■ g. Revising paragraph (e); and

■ h. Adding paragraphs (f) through (k).

The revisions and additions read as follows:

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

(a) You must submit each report in subpart SS of this part, Table 11 to this subpart, Table 12 to this subpart, and in paragraphs (c) through (k) of this section that applies to you. You must also comply with the requirements specified in § 63.2346(m).

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to Table 11 to this subpart and by the dates shown in paragraphs (b)(1) through (3) of this section, by the dates shown in subpart SS of this part, and by the dates shown in Table 12 to this subpart, whichever are applicable.

* * * * *

(c) *First Compliance report.* The first Compliance report must contain the information specified in paragraphs (c)(1) through (12) of this section, as well as the information specified in paragraph (d) of this section.

* * * * *

(2) Statement by a responsible official, including the official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete. If your report is submitted via CEDRI, the certifier's electronic signature during the submission process replaces this requirement.

(3) Date of report and beginning and ending dates of the reporting period. You are no longer required to provide the date of report when the report is submitted via CEDRI.

* * * * *

(5) Except as specified in paragraph (c)(11) of this section, if you had a SSM during the reporting period and you took actions consistent with your SSM plan, the Compliance report must include the information described in § 63.10(d)(5)(i).

* * * * *

(8) Except as specified in paragraph (c)(12) of this section, for closed vent systems and control devices used to control emissions, the information specified in paragraphs (c)(8)(i) and (ii) of this section for those planned routine maintenance activities that would require the control device to not meet the applicable emission limit.

* * * * *

(9) A listing of all transport vehicles into which organic liquids were loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, during the previous 6 months for which vapor tightness documentation as required in § 63.2390(c) was not on file at the facility.

* * * * *

(11) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (c)(5) of this section no longer applies.

(12) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (c)(8) of this section no longer applies. Instead, for bypass lines subject to the requirements § 63.2378(e), the compliance report must include the start date, start time, duration in hours, estimate of the volume of gas in standard cubic feet (scf), the concentration of organic HAP in the gas in ppmv and the resulting mass emissions of organic HAP in pounds that bypass a control device. For periods when the flow indicator is not operating, report the start date, start time, and duration in hours.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (9) and paragraph (c)(12) of this section and, where applicable, the information in paragraphs (d)(1) through (5) of this section.

(1) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to comply with an emission limitation in this subpart, or for each CMS that was inoperative or out of control during the reporting period, you must include in the Compliance report the applicable information in paragraphs (d)(1)(i) through (xv) of this section. This includes periods of SSM.

(i) The date and time that each malfunction started and stopped, and the nature and cause of the malfunction (if known).

(ii) The start date, start time, and duration in hours for each period that each CMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The start date, start time, and duration in hours for each period that the CMS that was out of control.

(iv) Except as specified in paragraph (d)(1)(xiii) of this section, the date and time that each deviation started and stopped, and whether each deviation occurred during a period of SSM, or during another period.

(v) The total duration in hours of all deviations for each CMS during the reporting period, and the total duration as a percentage of the total emission source operating time during that reporting period.

(vi) Except as specified in paragraph (d)(1)(xiii) of this section, a breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) The total duration in hours of CMS downtime for each CMS during the reporting period, and the total duration of CMS downtime as a percentage of the total emission source operating time during that reporting period.

* * * * *

(ix) A brief description of the emission source(s) at which the CMS deviation(s) occurred or at which the CMS was inoperative or out of control.

(x) The equipment manufacturer(s) and model number(s) of the CMS and the pollutant or parameter monitored.

* * * * *

(xiii) Beginning no later than the compliance dates specified in § 63.2342(e), paragraphs (d)(1)(iv) and (vi) of this section no longer apply. For

each instance, report the start date, start time, and duration in hours of each failure. For each failure, the report must include a list of the affected sources or equipment, an estimate of the quantity in pounds of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, and the cause of the deviation (including unknown cause, if applicable), as applicable, and the corrective action taken.

(xiv) Corrective actions taken for a CMS that was inoperative or out of control.

(xv) Total process operating time during the reporting period.

(2) * * *

(i) Except as specified in paragraph (d)(2)(iv) of this section, for each storage tank and transfer rack subject to control requirements, include periods of planned routine maintenance during which the control device did not comply with the applicable emission limits in Table 2 to this subpart.

* * * * *

(iv) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (d)(2)(i) of this section no longer applies.

(3) (i) Except as specified in paragraph (d)(3)(iii) of this section, a listing of any storage tank that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 1 through 6, since the filing of the last Compliance report.

(ii) A listing of any transfer rack that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 7 through 10, since the filing of the last Compliance report.

(iii) Beginning no later than the compliance dates specified in § 63.2342(e), the emission limits specified in Table 2 to this subpart for storage tanks at an existing affected source no longer apply as specified in § 63.2346(a)(5). Instead, beginning no later than the compliance dates specified in § 63.2342(e), you must include a listing of any storage tanks at an existing affected source that became subject to controls based on the criteria for control specified in Table 2b to this subpart, items 1 through 3, since the filing of the last Compliance report. If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you are not required to comply with this paragraph.

* * * * *

(5) Beginning no later than the compliance dates specified in 63.2342(e), for each flare subject to the requirements in § 63.2380, the compliance report must include the items specified in paragraphs (d)(5)(i) through (iii) of this section in lieu of the information required in § 63.999(c)(3) of subpart SS.

(i) Records as specified in § 63.2390(h)(1) for each 15-minute block during which there was at least one minute when regulated material is routed to a flare and no pilot flame is present. Include the start and stop time and date of each 15-minute block.

(ii) Visible emission records as specified in § 63.2390(h)(2)(iv) for each period of 2 consecutive hours during which visible emissions exceeded a total of 5 minutes.

(iii) The periods specified in § 63.2390(h)(6). Indicate the date and start and end time for the period, and the net heating value operating parameter(s) determined following the methods in § 63.670(k) through (n) of subpart CC as applicable.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 11 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission limitation in this subpart, we will consider submission of the Compliance report as satisfying any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report will not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the applicable title V permitting authority.

(f) Beginning no later than the compliance dates specified in § 63.2342(e), you must submit all Compliance reports to the EPA via CEDRI, which can be accessed through EPA's CDX (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (C404–02), Attention: Organic Liquids Distribution Sector Lead, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described earlier in this paragraph. You may assert a claim of EPA system outage or force majeure for failure to timely comply with this reporting requirement provided you meet the requirements outlined in paragraph (i) or (j) of this section, as applicable.

(g) Beginning no later than the compliance dates specified in § 63.2342(e), you must start submitting performance test reports in accordance with this paragraph. Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *CBI.* If you claim some of the information submitted under paragraph (g)(1) or (2) of this section is CBI, then you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described in paragraphs (g)(1) and (2) of this section.

(h) Beginning no later than the compliance dates specified in § 63.2342(e), you must start submitting performance evaluation reports in accordance with this paragraph. Within 60 days after the date of completing each CMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *CBI.* If you claim some of the information submitted under paragraph (h)(1) or (2) of this section is CBI, then you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (h)(1) and (2) of this section.

(i) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (i)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(j) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (j)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this paragraph, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

(k) For each OLD operation complying with the requirements in § 63.2348, you must submit the following information:

(1) A notification to the Administrator that you are exercising the option to implement fenceline monitoring according to the requirements in § 63.2348.

(2) A report to the Administrator containing the information required at § 63.2348(b), including the model input file, the model results, the selected analytes, and the action level for each analyte. The report must be submitted no later than the date specified in § 63.2342(f)(1).

(3) Monitoring data must be submitted quarterly to EPA's CEDRI (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*).) using the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart according to paragraphs (k)(3)(i) and (ii) of this section:

(i) The first quarterly report must be submitted once you have obtained 12 months of data. The first quarterly report must cover the period beginning on the compliance date that is specified in § 63.2342(f)(2) and ending on March 31, June 30, September 30 or December 31, whichever date is the first date that occurs after you have obtained 12 months of data (*i.e.,* the first quarterly report will contain between 12 and 15 months of data). Each subsequent quarterly report must cover one of the following reporting periods: Quarter 1 from January 1 through March 31; Quarter 2 from April 1 through June 30; Quarter 3 from July 1 through September 30; and Quarter 4 from October 1 through December 31. Each quarterly report must be electronically submitted no later than 45 calendar days following the end of the reporting period.

(ii) Report contents. Each report must contain the following information:

(A) Facility name and address.

(B) Year and reporting quarter (*i.e.,* Quarter 1, Quarter 2, Quarter 3, or Quarter 4).

(C) For the first reporting period and for any reporting period in which a passive monitor is added or moved, for each passive monitor: The latitude and longitude location coordinates; the sampler name; and identification of the type of sampler (*i.e.,* regular monitor, extra monitor, duplicate, field blank, inactive). You must determine the coordinates using an instrument with an accuracy of at least 3 meters. Coordinates must be in decimal degrees with at least five decimal places.

(D) The beginning and ending dates for each sampling period.

(E) Individual sample results for each analyte reported in units of $\mu g/m^3$ for each monitor for each sampling period that ends during the reporting period. Results must be reported with at least two significant figures. Results below the method detection limit must be flagged as below the detection limit and reported at the method detection limit.

(F) Data flags that indicate each monitor that was skipped for the sampling period, if you use an alternative sampling frequency under § 63.2348(e)(3).

(G) Data flags for each outlier determined in accordance with Section 9.2 of Method 325A of appendix A of this part. For each outlier, you must submit the individual sample result of the outlier, as well as the evidence used to conclude that the result is an outlier.

(H) The biweekly concentration difference (Δc) for each analyte for each sampling period and the annual average Δc for each analyte for each sampling period.

■ 19. Section 63.2390 is amended by:

■ a. Revising paragraphs (b)(1) and (b)(2);

■ b. Adding paragraph (b)(3);

■ c. Revising paragraphs (c) introductory text, (c)(2), (c)(3) and (d); and

■ d. Adding paragraphs (f) through (i).

The revisions and additions read as follows:

§ 63.2390 What records must I keep?

* * * * *

(b) * * *

(1) Except as specified in paragraph (h) of this section for flares, you must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans. You must also comply with the requirements specified in § 63.2346(m).

(2) Except as specified in paragraph (h) of this section for flares, you must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you. You must also comply with the requirements specified in § 63.2346(m).

(3) In addition to the information required in § 63.998(c), the manufacturer's specifications or your written procedures must include a schedule for calibrations, preventative maintenance procedures, a schedule for preventative maintenance, and corrective actions to be taken if a calibration fails.

(c) For each transport vehicle into which organic liquids are loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must keep the applicable records in paragraphs (c)(1) and (2) of this section or alternatively the verification records in paragraph (c)(3) of this section.

* * * * *

(2) For transport vehicles without vapor collection equipment, current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

(3) In lieu of keeping the records specified in paragraph (c)(1) or (2) of this section, as applicable, the owner or operator shall record that the verification of U.S. DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing, required in Table 5 to this subpart, item 2, has been performed. Various methods for the record of verification can be used, such as: A check-off on a log sheet, a list of U.S. DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on site that do not have the appropriate documentation.

(d) You must keep records of the total actual annual facility-level organic liquid loading volume as defined in § 63.2406 through transfer racks to document the applicability, or lack thereof, of the emission limitations in Table 2 to this subpart, items 7 through 10.

* * * * *

(f) Beginning no later than the compliance dates specified in § 63.2342(e), for each deviation from an emission limitation, operating limit, and work practice standard specified in paragraph (a) of this section, you must keep a record of the information specified in paragraph (f)(1) through (3) of this section.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time and duration of each failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.2350(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(g) Beginning no later than the compliance dates specified in § 63.2342(e), for each flow event from a bypass line subject to the requirements in § 63.2378(e), you must maintain records sufficient to determine whether or not the detected flow included flow requiring control. For each flow event from a bypass line requiring control that is released either directly to the atmosphere or to a control device not meeting the requirements specified in § 63.2378(a), you must include an

estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting emissions of organic HAP that bypassed the control device using process knowledge and engineering estimates.

(h) Beginning no later than the compliance dates specified in § 63.2342(e), for each flare subject to the requirements in § 63.2380, you must keep records specified in paragraphs (h)(1) through (10) of this section in lieu of the information required in § 63.998(a)(1) of subpart SS.

(1) Retain records of the output of the monitoring device used to detect the presence of a pilot flame as required in § 63.670(b) of subpart CC for a minimum of 2 years. Retain records of each 15-minute block during which there was at least one minute that no pilot flame is present when regulated material is routed to a flare for a minimum of 5 years.

(2) Retain records of daily visible emissions observations or video surveillance images required in § 63.670(h) of subpart CC as specified in paragraphs (h)(2)(i) through (iv) of this section, as applicable, for a minimum of 3 years.

(i) To determine when visible emissions observations are required, the record must identify all periods when regulated material is vented to the flare.

(ii) If visible emissions observations are performed using Method 22 at 40 CFR part 60, appendix A–7, then the record must identify whether the visible emissions observation was performed, the results of each observation, total duration of observed visible emissions, and whether it was a 5-minute or 2-hour observation. Record the date and start and end time of each visible emissions observation.

(iii) If a video surveillance camera is used, then the record must include all video surveillance images recorded, with time and date stamps.

(iv) For each 2-hour period for which visible emissions are observed for more than 5 minutes in 2 consecutive hours, then the record must include the date and start and end time of the 2-hour period and an estimate of the cumulative number of minutes in the 2-hour period for which emissions were visible.

(3) The 15-minute block average cumulative flows for flare vent gas and, if applicable, total steam, perimeter assist air, and premix assist air specified to be monitored under § 63.670(i) of subpart CC, along with the date and time interval for the 15-minute block. If multiple monitoring locations are used to determine cumulative vent gas flow, total steam, perimeter assist air, and premix assist air, then retain records of the 15-minute block average flows for each monitoring location for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years. If pressure and temperature monitoring is used, then retain records of the 15-minute block average temperature, pressure, and molecular weight of the flare vent gas or assist gas stream for each measurement location used to determine the 15-minute block average cumulative flows for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years.

(4) The flare vent gas compositions specified to be monitored under § 63.670(j) of subpart CC. Retain records of individual component concentrations from each compositional analysis for a minimum of 2 years. If an NHVvg analyzer is used, retain records of the 15-minute block average values for a minimum of 5 years.

(5) Each 15-minute block average operating parameter calculated following the methods specified in § 63.670(k) through (n) of subpart CC, as applicable.

(6) All periods during which operating values are outside of the applicable operating limits specified in § 63.670(d) through (f) of subpart CC when regulated material is being routed to the flare.

(7) All periods during which you do not perform flare monitoring according to the procedures in § 63.670(g) through (j) of subpart CC.

(8) Records of periods when there is flow of vent gas to the flare, but when there is no flow of regulated material to the flare, including the start and stop time and dates of periods of no regulated material flow.

(9) The monitoring plan required in § 63.2366(c).

(10) Records described in § 63.10(b)(2)(vi) and (xi).

(i) Beginning no later than the compliance dates specified in 63.2342(f), for each OLD operation complying with the requirements in § 63.2348, you must keep the records specified in paragraphs (i)(1) through (10) of this section on an ongoing basis.

(1) Coordinates of all passive monitors, including replicate samplers and field blanks, and if applicable, the meteorological station. You must determine the coordinates using an instrument with an accuracy of at least 3 meters. The coordinates must be in decimal degrees with at least five decimal places.

(2) The start and stop times and dates for each sample, as well as the tube identifying information.

(3) Sampling period average temperature and barometric pressure measurements.

(4) For each outlier determined in accordance with Section 9.2 of Method 325A of appendix A of this part, the sampler location of and the concentration of the outlier and the evidence used to conclude that the result is an outlier.

(5) For samples that will be adjusted for a background, the location of and the concentration measured simultaneously by the background sampler, and the perimeter samplers to which it applies.

(6) Individual sample results, the calculated Δc for each analyte for each sampling period and the two samples used to determine it, whether background correction was used, and the annual average Δc calculated after each sampling period.

(7) Method detection limit for each sample, including co-located samples and blanks.

(8) Documentation of corrective action taken each time the action level was exceeded.

(9) Other records as required by Methods 325A and 325B of appendix A of this part.

(10) If a near-field source correction is used as provided in § 63.2348(i), records of hourly meteorological data, including temperature, barometric pressure, wind speed and wind direction, calculated daily unit vector wind direction and daily sigma theta, and other records specified in the site-specific monitoring plan.

■ 20. Section 63.2396 is amended by:

■ a. Revising paragraph (a)(3);

■ b. Adding paragraph (a)(4); and

■ c. Revising paragraphs (c)(1), (c)(2), and (e)(2).

The revisions and addition read as follows:

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) * * *

(3) Except as specified in paragraph (a)(4) of this section, as an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to the OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks meeting the applicability criteria for control in Table 2 to this subpart.

(4) Beginning no later than the compliance dates specified in § 63.2342(e), the applicability criteria

for control specified in Table 2 to this subpart for storage tanks at an existing affected source no longer apply as specified in § 63.2346(a)(5). Instead, beginning no later than the compliance dates specified in § 63.2342(e), as an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to an existing OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks at an existing affected source meeting the applicability criteria for control in Table 2b to this subpart. If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you are not required to comply with this paragraph.

* * * * *

(c) * * *

(1) After the compliance dates specified in § 63.2342, if you have connectors, pumps, valves, or sampling connections that are subject to a 40 CFR part 60 subpart, and those connectors, pumps, valves, and sampling connections are in OLD operation and in organic liquids service, as defined in this subpart, you must comply with the provisions of each subpart for those equipment leak components.

(2) After the compliance dates specified in § 63.2342, if you have connectors, pumps, valves, or sampling connections subject to 40 CFR part 63, subpart GGG, and those connectors, pumps, valves, and sampling connections are in OLD operation and in organic liquids service, as defined in this subpart, you may elect to comply with the provisions of this subpart for all such equipment leak components. You must identify in the Notification of Compliance Status required by § 63.2382(b) the provisions with which you will comply.

* * * * *

(e) * * *

(2) *Equipment leak components.* After the compliance dates specified in § 63.2342, if you are applying the applicable recordkeeping and reporting requirements of another 40 CFR part 63 subpart to the connectors, valves, pumps, and sampling connection systems associated with a transfer rack subject to this subpart that only unloads organic liquids directly to or via pipeline to a non-tank process unit component or to a storage tank subject to the other 40 CFR part 63 subpart, the owner or operator must be in compliance with the recordkeeping and reporting requirements of this subpart EEEE. If complying with the recordkeeping and reporting requirements of the other subpart satisfies the recordkeeping and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the recordkeeping and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the recordkeeping and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

■ 21. Section 63.2402 is amended by revising paragraph (b) introductory text and adding paragraphs (b)(5) and (b)(6) to read as follows:

§ 63.2402 Who implements and enforces this subpart?

* * * * *

(b) In delegating implementation and enforcement authority for this subpart to a State, local, or eligible tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (6) of this section are retained by the EPA Administrator and are not delegated to the State, local, or eligible tribal agency.

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

(6) Approval of a site-specific monitoring plan for fenceline monitoring at § 63.2348(i).

■ 22. Section 63.2406 is amended, in alphabetical order, by:

■ a. Revising the definition of ''Annual average true vapor pressure'';

■ b. Adding the definition of ''Condensate'';

■ c. Revising the definitions of ''Deviation'' and ''Equipment Leak component'';

■ d. Adding the definition of ''Force majeure event'';

■ e. Revising the definition of ''Organic liquid'';

■ f. Adding the definitions of ''Pressure relief device'' and ''Relief valve''; and

■ g. Revising the definition of ''Vapor-tight transport vehicle''.

The revisions and additions read as follows:

§ 63.2406 What definitions apply to this subpart?

* * * * *

Annual average true vapor pressure means the equilibrium partial pressure exerted by the total Table 1 organic HAP in the stored or transferred organic liquid. For the purpose of determining if a liquid meets the definition of an organic liquid, the vapor pressure is determined using conditions of 77 degrees Fahrenheit and 29.92 inches of mercury. For the purpose of determining whether an organic liquid meets the applicability criteria in Table 2, items 1 through 6, to this subpart or Table 2b, items 1 through 3, use the actual annual average temperature as defined in this subpart. The vapor pressure value in either of these cases is determined:

(1) Using standard reference texts;

(2) By ASTM D6378–18a (incorporated by reference, see § 63.14) using a vapor to liquid ratio of 4:1; or

(3) Using any other method that the EPA approves.

* * * * *

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions as specified in § 63.2. Only those condensates downstream of the first point of custody transfer after the production field are considered condensates in this subpart.

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or portion thereof, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Before [date 180 days after date of publication of final rule in the **Federal Register**], fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during SSM. On and after [date 180 days after date of publication of final rule in the **Federal Register**], this paragraph no longer applies.

* * * * *

Equipment leak component means each pump, valve, and sampling connection system used in organic liquids service at an OLD operation. Beginning no later than the compliance dates specified in § 63.2342(e), connectors are also considered an equipment leak component. Valve types include control, globe, gate, plug, and ball. Relief and check valves are excluded.

Force majeure event means a release of HAP, either directly to the

atmosphere from a safety device or discharged via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the OLD operation (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the OLD operation that impacts the OLD operation's ability to operate.

* * * * *

Organic liquid means:

(1) Any non-crude oil liquid, non-condensate liquid, or liquid mixture that contains 5 percent by weight or greater of the organic HAP listed in Table 1 to this subpart, as determined using the procedures specified in § 63.2354(c).

(2) Any crude oils or condensates downstream of the first point of custody transfer.

(3) Organic liquids for purposes of this subpart do not include the following liquids:

(i) Gasoline (including aviation gasoline), kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils;

(ii) Any fuel consumed or dispensed on the plant site directly to users (such as fuels for fleet refueling or for refueling marine vessels that support the operation of the plant);

(iii) Hazardous waste;

(iv) Wastewater;

(v) Ballast water; or

(vi) Any non-crude oil or non-condensate liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 psia).

* * * * *

Pressure relief device means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices.

* * * * *

Relief valve means a type of pressure relief device that is designed to re-close after the pressure relief.

* * * * *

Vapor-tight transport vehicle means a transport vehicle that has been demonstrated to be vapor-tight. To be considered vapor-tight, a transport vehicle equipped with vapor collection equipment must undergo a pressure change of no more than 250 pascals (1 inch of water) within 5 minutes after it is pressurized to 4,500 pascals (18 inches of water). This capability must be demonstrated annually using the procedures specified in Method 27 of 40 CFR part 60, appendix A. For all other transport vehicles, vapor tightness is demonstrated by performing the U.S. DOT pressure test procedures for tank cars and cargo tanks.

* * * * *

■ 23. Table 2 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 2 TO SUBPART EEEE OF PART 63—EMISSION LIMITS

If you own or operate . . .	And if . . .	Then you must . . . [1]
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons) [2].	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS and § 63.2346(m); OR ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a, 1.b, or 1.c for tanks storing liquids described in that table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
2. A storage tank at an existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia)..	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
3. A storage tank at a reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
4. A storage tank at a reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
5. A storage tank at a reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.

TABLE 2 TO SUBPART EEEE OF PART 63—EMISSION LIMITS—Continued

If you own or operate . . .	And if . . .	Then you must . . .[1]
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2 of this subpart, items 1 through 5.	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS and § 63.2346(m); OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.a, for tanks storing the liquids described in that table.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons and less than 10 million gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 98 percent by weight and is being loaded into a transport vehicle.	i. For all such loading arms at the rack, reduce emissions of total organic HAP (or, upon approval, TOC) from the loading of organic liquids either by venting the emissions that occur during loading through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS and § 63.2346(m), achieving at least 98 weight-percent HAP reduction, OR, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3 of Table 4 to this subpart.
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is ≥10 million gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25 percent by weight and is being loaded into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.

[1] Beginning no later than the compliance dates specified in § 63.2342(e), for each storage tank and low throughput transfer rack, if you vent emissions through a closed vent system to a flare then you must comply with the requirements specified in § 63.2346(k).

[2] Beginning no later than the compliance dates specified in § 63.2342(e), the tank capacity criteria, liquid vapor pressure criteria, and emission limits specified for storage tanks at an existing affected source in Table 2 of this subpart, item 1 no longer apply. Instead, you must comply with the requirements as specified in § 63.2346(a)(5) and Table 2b of this subpart. If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you are not required to comply with Table 2b of this subpart as specified in § 63.2346(a)(6). Instead, you may continue to comply with the tank capacity and liquid vapor pressure criteria and the emission limits specified for storage tanks at an existing affected source in Table 2 of this subpart, item 1.

■ 24. Subpart EEEE of Part 63 is amended by adding Table 2b to read as follows:

TABLE 2B TO SUBPART EEEE OF PART 63—EMISSION LIMITS FOR STORAGE TANKS AT CERTAIN EXISTING AFFECTED SOURCES

As stated in § 63.2346(a)(5), beginning no later than the compliance dates specified in § 63.2342(e), the requirements in this Table 2b of this subpart apply to storage tanks at an existing affected source in lieu of the requirements in Table 2 of this subpart, item 1 for storage tanks at an existing affected source. As stated in § 63.2346(a)(6), if you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you may continue to comply with the requirements in Table 2 of this subpart, item 1 for storage tanks at an existing affected source instead of the requirements in this Table 2b of this subpart.

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <75.7 cubic meters (20,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to a flare meeting the requirements of § 63.983 and § 63.2380, or by venting emissions through a closed vent system to any combination of nonflare control devices meeting the applicable requirements of 40 CFR part 63, subpart SS and § 63.2346(m); OR ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a, 1.b, or 1.c for tanks storing liquids described in that table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
2. A storage tank at an existing affected source with a capacity ≥75.7 cubic meters (20,000 gallons) and <151.4 cubic meters (40,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥13.1 kilopascals (1.9 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
3. A storage tank at an existing affected source with a capacity ≥151.4 cubic meters (40,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥5.2 kilopascals (0.75 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.

■ 25. Table 3 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 3 TO SUBPART EEEE OF PART 63—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

As stated in § 63.2346(e), you must comply with the operating limits for existing, reconstructed, or new affected sources as follows:

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	Maintain the daily average fire box or combustion zone temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.

TABLE 3 TO SUBPART EEEE OF PART 63—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

As stated in § 63.2346(e), you must comply with the operating limits for existing, reconstructed, or new affected sources as follows:

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the condenser exit less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Except as specified in item 7.d of this table, comply with the equipment and operating requirements in § 63.987(a); AND b. Except as specified in item 7.d of this table, conduct an initial flare compliance assessment in accordance with § 63.987(b); AND c. Except as specified in item 7.d of this table, install and operate monitoring equipment as specified in § 63.987(c). d. Beginning no later than the compliance dates specified in § 63.2342(e), comply with the requirements in § 63.2380 instead of the requirements in § 63.987 and the provisions regarding flare compliance assessments at § 63.997(a), (b), and (c).
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(b), and monitor the control device in accordance with that plan.

■ 26. Table 4 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 4 TO SUBPART EEEE OF PART 63—WORK PRACTICE STANDARDS

As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5 or Table 2b to this subpart, items 1 through 3.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2) requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5 or the emission limit in Table 2b to this subpart, items 1 through 3; OR b. Comply with the requirements in §§ 63.2346(m) and 63.984 for routing emissions to a fuel gas system or back to a process; OR c. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
2. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, item 6.	a. Comply with the requirements in §§ 63.2346(m) and 63.984 for routing emissions to a fuel gas system or back to a process; OR b. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.

TABLE 4 TO SUBPART EEEE OF PART 63—WORK PRACTICE STANDARDS—Continued

As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .

For each . . .	You must . . .
3. Transfer rack subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. If the option of a vapor balancing system is selected, install and, during the loading of organic liquids, operate a system that meets the requirements in Table 7 to this subpart, item 3.b.i and item 3.b.ii, as applicable; OR b. Comply with the requirements in §§ 63.2346(m) and 63.984 during the loading of organic liquids, for routing emissions to a fuel gas system or back to a process.
4. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with § 63.2346(m) and the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
5. Transport vehicles equipped with vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.
6. Transport vehicles equipped without vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.
7. Connector that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Beginning no later than the compliance dates specified in § 63.2342(e), comply with § 63.2346(m) and the requirements for connectors in 40 CFR part 63, subpart UU (control level 2), or subpart H.[1]

[1] If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you are not required to comply with item 7 of this table.

■ 27. Table 5 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 5 TO SUBPART EEEE OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 10, and each existing affected source using a nonflare control device to comply with an emission limit in Table 2b to this subpart, items 1 through 3.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR.	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) Method 1 or 1A in appendix A–1 of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) the outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) Method 2, 2A, 2C, 2D, or 2F in appendix A–1 of 40 CFR part 60, or Method 2G in appendix A–2 of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(3) Method 3A or 3B in appendix A–2 of 40 CFR part 60, as appropriate[1].	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(4) Method 4 in appendix A–3 of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(5) Method 25 or 25A in appendix A–7 of 40 CFR part 60, as appropriate. Method 316, Method 320,[4] or Method 323 in appendix A of 40 CFR part 63 if you must measure formaldehyde. You may not use Methods 320[2 4] or 323 for formaldehyde if the gas stream contains entrained water droplets..	(A) TOC and formaldehyde emissions, from any control device.	(i) The organic HAP used for the calibration gas for Method 25A in appendix A–7 of 40 CFR part 60 must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which TOC emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.

TABLE 5 TO SUBPART EEEE OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—Continued

As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(6) Method 18 [3] in appendix A–6 of 40 CFR part 60 or Method 320 [2 4] in appendix A of 40 CFR part 63, as appropriate. Method 316, Method 320,[2 4] or Method 323 in appendix A of 40 CFR part 63 for measuring formaldehyde. You may not use Methods 320 or 323 if the gas stream contains entrained water droplets.	(A) Total organic HAP and formaldehyde emissions, from non-combustion control devices.	(i) During the performance test, you must establish the operating parameter limits within which total organic HAP emissions are reduced by the required weight-percent.
	b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device.	§ 63.985(b)(1)(i)			During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent for storage tanks or 98 weight-percent for transfer racks, or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
2. Each transport vehicle that you own that is equipped with vapor collection equipment and is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test..		Method 27 in appendix A of 40 CFR part 60.	Vapor tightness	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

[1] The manual method in ANSI/ASME PTC 19.10–1981 (Part 10) (incorporated by reference, see § 63.14) may be used instead of Method 3B in appendix A–2 of 40 CFR part 60 to determine oxygen concentration.

[2] All compounds quantified by Method 320 in appendix A to this part must be validated according to Section 13.0 of Method 320.

[3] ASTM D6420–18 (incorporated by reference, see § 63.14) may be used instead of Method 18 in appendix A–6 of 40 CFR part 60 to determine total HAP emissions, but if you use ASTM D6420–18, you must use it under the conditions specified in § 63.2354(b)(3)(ii).

[4] ASTM D6348–12e1, (incorporated by reference, see § 63.14) may be used instead of Method 320 of appendix A to this part under the following conditions: The test plan preparation and implementation in the Annexes to ASTM D 6348–12e1, Sections A1 through A8 are mandatory; the percent (%) R must be determined for each target analyte (Equation A5.5); %R must be 70% ≥ R ≤ 130%; if the %R value does not meet this criterion for a target compound, then the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest); and the %R value for each compound must be reported in the test report and all field measurements must be corrected with the calculated %R value for that compound by using the following equation: Reported Results = ((Measured Concentration in Stack))/(%R) × 100

■ 28. Table 6 to subpart EEEE of Part 63 is amended by revising the rows for items 1 and 2 to read as follows:

TABLE 6 TO SUBPART EEEE OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITS

As stated in §§ 63.2370(a) and 63.2382(b), you must show initial compliance with the emission limits for existing, reconstructed, or new affected sources as follows:

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6, or Table 2b to this subpart, items 1 through 3.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option for nonflare combustion devices to an exhaust concentration ≤20 ppmv.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	Reduce total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids by at least 98 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.

■ 29. Table 7 to subpart EEEE of Part 63 is amended by revising the rows for items 1, 3, and 4 to read as follows:

TABLE 7 TO SUBPART EEEE OF PART 63—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2, or Table 2b to this subpart, items 1 through 3.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c).
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. You meet the requirements in § 63.2346(a)(4).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof before the initial filling of the storage tank, and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. See item 1.c.i of this table.
3. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 5 and item 6.	i. You comply with the provisions specified in Table 4 to this subpart, item 5 or item 6, as applicable.
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header. ii. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into containers directly (*e.g.,* no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.
	c. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
4. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service ≥300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 4 and item 7.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

■ 30. Table 8 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 8 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6 or Table 2b to this subpart, items 1 through 3.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378, except as specified in item 1.a.iii of this table; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit. iii. Beginning no later than the compliance dates specified in § 63.2342(e), if you use a flare, you must demonstrate continuous compliance by performing CMS monitoring and collecting data according to requirements in § 63.2380.

TABLE 8 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Reduce total organic HAP (or, upon approval, TOC) emissions during the loading of organic liquids from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378 during the loading of organic liquids, except as specified in item 2.a.iii of this table; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit during the loading of organic liquids. iii. Beginning no later than the compliance dates specified in § 63.2342(e), if you use a flare, you must demonstrate continuous compliance by performing CMS monitoring and collecting data according to requirements in § 63.2380.

■ 31. Table 9 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 9 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the operating limits for existing, reconstructed, or new affected sources according to the following table:

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average fire box or combustion zone, as applicable, temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit..	i. Continuously monitoring and recording fire box or combustion zone, as applicable, temperature every 15 minutes and maintaining the daily average fire box temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND.	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998. [1]
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND.	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR.	i. Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]

TABLE 9 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the operating limits for existing, reconstructed, or new affected sources according to the following table:

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND. Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.[1]
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR.	i. Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR.	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND. Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test; AND. Achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iv. Keeping the applicable records required in § 63.998.[1]
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR.	i. Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]

TABLE 9 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the operating limits for existing, reconstructed, or new affected sources according to the following table:

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND.	i. Replacing the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	ii. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		iii. Keeping the applicable records required in § 63.998.[1]
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Except as specified in item 7.e of this table, maintain a pilot flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)); AND.	i. Continuously operating a device that detects the presence of the pilot flame; AND
		ii. Keeping the applicable records required in § 63.998. [1]
	b. Except as specified in item 7.e of this table, maintain a flare flame at all times that vapors are being vented to the flare (§ 63.11(b)(5)); AND.	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND
		ii. Keeping the applicable records required in § 63.998. [1]
	c. Except as specified in item 7.e of this table, operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)); AND EITHER.	i. Operating the flare with no visible emissions exceeding the amount allowed; AND
		ii. Keeping the applicable records required in § 63.998. [1]
	d.1. Except as specified in item 7.e of this table, operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(7) and (8) and with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii); OR.	i. Operating the flare within the applicable exit velocity limits; AND
		ii. Operating the flare with the gas heating value greater than the applicable minimum value; AND
		iii. Keeping the applicable records required in § 63.998.[1]
	d.2. Except as specified in item 7.e of this table, adhere to the requirements in § 63.11(b)(6)(i).	i. Operating the flare within the applicable limits in 63.11(b)(6)(i); AND
		ii. Keeping the applicable records required in § 63.998.[1]
	e. Beginning no later than the compliance dates specified in § 63.2342(e), comply with the requirements in § 63.2380 instead of the requirements in § 63.11(b)..	i. Operating the flare with the applicable limits in § 63.2380; AND
		ii. Keeping the applicable records required in § 63.2390(h).
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(b), and monitor the control device in accordance with that plan..	Submitting a monitoring plan and monitoring the control device according to that plan.

[1] Beginning no later than the compliance dates specified in § 63.2342(e), the referenced provisions specified in § 63.2346(m) do not apply.

■ 32. Table 10 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 10 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

As stated in §§ 63.2378(a) and (b) and 63.2386(c)(6), you must show continuous compliance with the work practice standards for existing, reconstructed, or new affected sources according to the following table:

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity, and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5, or Table 2b to this subpart, items 1 through 3.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR once per year (§ 63.1063(d)(2)); AND
		ii. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d)(1), and (e)); AND
		iii. Keeping the tank records required in § 63.1065.

TABLE 10 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

As stated in §§ 63.2378(a) and (b) and 63.2386(c)(6), you must show continuous compliance with the work practice standards for existing, reconstructed, or new affected sources according to the following table:

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5, or Table 2b to this subpart, items 1 through 3.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in § 63.1065.
3. IFR or EFR tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5, or Table 2b to this subpart, items 1 through 3.	a. Repair the conditions causing storage tank inspection failures (§ 63.1063(e)).	i. Repairing conditions causing inspection failures: before refilling the storage tank with organic liquid, or within 45 days (or up to 105 days with extensions) for a tank containing organic liquid; AND ii. Keeping the tank records required in § 63.1065(b).
4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4 and item 7. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.
	c. Route emissions to a fuel gas system or back to a process.	i. Continuing to meet the requirements specified in § 63.984(b).
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. For equipment leak components other than connectors, comply with § 63.2346(m) and the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with the subpart selected from the list in item 5.a of this table.
	b. In addition to item 5.a of this table, beginning no later than the compliance dates specified in § 63.2342(e), comply with § 63.2346(m) and the requirements for connectors in 40 CFR part 63, subpart UU or H [1].	i. Carrying out a leak detection and repair program in accordance with the subpart selected from the list in item 5.b of this table.
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6, or Table 2b to this subpart, items 1 through 3.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b).
	b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to connectors, pumps, valves, and sampling connections, quarterly during the loading of a storage tank using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4 and item 7. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required.

[1] If you choose to meet the fenceline monitoring requirements specified in § 63.2348, then you do not need to comply with item 5.b of this table.

■ 33. Table 11 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 11 TO SUBPART EEEE OF PART 63—REQUIREMENTS FOR REPORTS

As stated in § 63.2386(a), (b), and (f), you must submit compliance reports and startup, shutdown, and malfunction reports according to the following table:

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report or Periodic Report	a. The information specified in § 63.2386(c), (d), (e). If you had a SSM during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i) except as specified in item 1.e of this table; AND.	Semiannually, and it must be postmarked or electronically submitted by January 31 or July 31, in accordance with § 63.2386(b).
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for connectors, pumps, valves, and sampling connections; AND.	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c); AND	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: Notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a of this table.
	e. Beginning no later than the compliance dates specified in § 63.2342(e), the requirement to include the information in § 63.10(d)(5)(i) no longer applies.	
2. Immediate SSM report if you had a SSM that resulted in an applicable emission standard in the relevant standard being exceeded, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii)	i. Except as specified in item 2.a.ii of this table, by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)). ii. Beginning no later than the compliance dates specified in § 63.2342(e), item 2.a.i of this table no longer applies.

■ 34. Table 12 to subpart EEEE of Part 63 is revised to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.1	Applicability	Initial applicability determination; Applicability after standard established; Permit requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; Circumvention, Severability	Yes.
§ 63.5	Construction/Reconstruction	Applicability; Applications; Approvals	Yes.
§ 63.6(a)	Compliance with Standards/O&M Applicability.	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in this subpart or by equivalent time period (*e.g.,* 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)(i)	Operation & Maintenance	Operate to minimize emissions at all times	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2350(d) for general duty requirement.

TABLE 12 TO SUBPART EEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.6(e)(1)(ii)	Operation & Maintenance	Correct malfunctions as soon as practicable	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.6(e)(1)(iii)	Operation & Maintenance	Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved]		
§ 63.6(e)(3)	SSM Plan	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]; however, (1) the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply and (2) § 63.6(e)(3) does not apply to emissions sources not requiring control. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Opacity/Visible Emission Standards.	You must comply with opacity and visible emission standards at all times except during SSM.	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.6(h)(2)–(9)	Opacity/Visible Emission Standards.	Requirements for compliance with opacity and visible emission standards.	No; except as it applies to flares for which Method 22 observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If you have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2354(b)(6).
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes; however, for transfer racks per §§ 63.987(b)(3)(i)(A)–(B) and 63.997(e)(1)(v)(A)–(B) provide exceptions to the requirement for test runs to be at least 1 hour each.
§ 63.7(e)(4)	Authority to Require Testing	Administrator has authority to require testing under CAA section 114 regardless of § 63.7 (e)(1)–(3).	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status; keep data for 5 years.	Yes, except this subpart specifies how and when the performance test and performance evaluation results are reported.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]; however, flare monitoring requirements in § 63.987(c) also apply before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2380.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the standard; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan..	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.8(c)(1)(ii)	CMS malfunction not in SSM plan.	Keep the necessary parts for routine repairs if CMS malfunctions.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Develop a written SSM plan for CMS	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	CMS Requirements	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes; however, COMS are not applicable.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements. Out-of-control periods.	Yes, but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS.
§ 63.8(d)(1)–(2)	CMS Quality Control	Requirements for CMS quality control	Yes, but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS.
§ 63.8(d)(3)	CMS Quality Control	Must keep quality control plan on record for 5 years; keep old versions.	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**], but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2366(c).
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Yes, but only applies for CEMS, except this subpart specifies how and when the performance evaluation results are reported.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes, but 40 CFR part 63, subpart SS also provides procedures for approval of CPMS.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that cannot be used in average.	Yes; however, COMS are not applicable.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate (BACT/LAER).	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes; however, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/visible emissions, which are due 30 days after; when to submit to Federal vs. State authority.	Yes; however, (1) there are no opacity standards and (2) all initial Notification of Compliance Status, including all performance test data, are to be submitted at the same time, either within 240 days after the compliance date or within 60 days after the last performance test demonstrating compliance has been completed, whichever occurs first.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	No. These changes will be reported in the first and subsequent compliance reports.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)	Records Related to Startup and Shutdown.	Occurrence of each for operations (process equipment).	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.10(b)(2)(ii)	Recordkeeping Relevant to Malfunction Periods and CMS.	Occurrence of each malfunction of air pollution equipment.	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2390(f).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Maintenance on air pollution control equipment	Yes.
§ 63.10(b)(2)(iv)	Recordkeeping Relevant to SSM Periods and CMS.	Actions during SSM	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.10(b)(2)(v)	Recordkeeping Relevant to SSM Periods and CMS.	Actions during SSM	No.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)(1)–(14)	Records	Additional records for CMS	Yes.
§ 63.10(c)(15)	Records	Additional records for CMS	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**].
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	No. This subpart specifies how and when the performance test results are reported.
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	What to report and when	Yes.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]. No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2386(d)(1)(xiii).
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; 2–3 copies of COMS performance evaluation.	Yes, except this subpart specifies how and when the performance evaluation results are reported; however, COMS are not applicable.

TABLE 12 TO SUBPART EEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	Yes; however, note that the title of the report is the compliance report; deviations include excess emissions and parameter exceedances.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions or parameter monitoring exceedance (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS (now called deviations); requires all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	No. This subpart specifies the reported information for deviations within the compliance reports.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data.	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11(b)	Flares	Requirements for flares	Yes, before [date 3 years after date of publication of final rule in the **Federal Register**]; § 63.987 requirements apply, and the section references § 63.11(b). No, beginning on and after [date 3 years after date of publication of final rule in the **Federal Register**]. See § 63.2380.
§ 63.11(c), (d), and (e)	Control and work practice requirements.	Alternative work practice for equipment leaks	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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