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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0718; Product Identifier 2019–NM–128–AD; Amendment 39–19771; AD 2019–21–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. This AD was prompted by reports that non-approved passenger oxygen containers (POCs) may have been installed on the affected airplanes. This AD requires a one-time special detailed inspection (SDI) of each POC, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective November 21, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 21, 2019.

The FAA must receive comments on this AD by December 23, 2019.

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

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

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0718.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0718; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0176, dated July 19, 2019 (''EASA AD 2019–0176'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes.

This AD was prompted by reports that non-approved POCs may have been installed on the affected airplanes. The FAA is issuing this AD to address possible non-approved POC installation, which could lead to reduced available oxygen capacity, possibly resulting in injury to airplane occupants following a depressurization event. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0176 describes procedures for performing a one-time SDI of each POC and, depending on findings, replacement with a serviceable part.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in the EASA AD described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to

use this process. As a result, EASA AD 2019–0176 will be incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with EASA AD 2019–0176 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0176 that is required for compliance with EASA AD 2019–0176 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0718, after the FAA final rule is published.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of these products, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0718; Product Identifier 2019–NM–128–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA will provide the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	(*)	$170 *

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–21–05 Airbus SAS: Amendment 39–19771; Docket No. FAA–2019–0718; Product Identifier 2019–NM–128–AD.

(a) Effective Date

This AD becomes effective November 21, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0176, dated July 19, 2019 (''EASA AD 2019–0176'').

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports that non-approved passenger oxygen containers (POCs) may have been installed on the affected airplanes. The FAA is issuing this AD to address possible non-approved POC installation, which could lead to reduced available oxygen capacity, possibly resulting in injury to airplane occupants following a depressurization event.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0176.

(h) Exceptions to EASA AD 2019–0176

(1) Where EASA AD 2019–0176 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0176 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0176 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0176, dated July 19, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0176, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0176 may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0718.

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

Issued in Des Moines, Washington, on October 18, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24160 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0724; Product Identifier 2019–NM–134–AD; Amendment 39–19773; AD 2019–21–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a report of cracked external lugs of the aluminum cargo door latch fittings in the lower part of the forward and aft cargo doors. This AD requires repetitive detailed inspections of the external lugs of the aluminum cargo door latch fittings for cracks, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. Accomplishing the installation of new aluminum cargo door latch fittings constitutes terminating action for the repetitive detailed inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective November 21, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 21, 2019.

The FAA must receive comments on this AD by December 23, 2019.

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

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

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0724.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0724; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0181, dated July 26, 2019 (''EASA AD 2019–0181'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes.

This AD was prompted by a report of cracked external lugs of the aluminum cargo door latch fittings in the lower part of the forward and aft cargo doors. The FAA is issuing this AD to address this condition, which, if not detected and corrected, could result in rapid decompression or loss of structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0181 describes procedures for repetitive detailed inspections of the external lugs of the aluminum cargo door latch fittings for cracks and corrective actions if necessary. Corrective actions include installation of new aluminum cargo door latch fittings. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2019–0181 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0181 will be incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with EASA AD 2019–0181 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0181 that is required for compliance with EASA AD 2019–0181 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0724 after the FAA final rule is published.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0724; Product Identifier 2019–NM–134–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the following

are the cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
6 work-hour × $85 per hour = $510	$0	$510

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
49 work-hours × $85 per hour = $4,165	$83,600	$87,765

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–21–07 Airbus SAS: Amendment 39–19773; Docket No. FAA–2019–0724; Product Identifier 2019–NM–134–AD.

(a) Effective Date

This AD becomes effective November 21, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0181, dated July 26, 2019 (''EASA AD 2019–0181'').

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracked external lugs of the aluminum cargo door latch fittings in the lower part of the forward and aft cargo doors. The FAA is issuing this AD to address this condition, which, if not detected and corrected, could result in rapid decompression or loss of structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0181.

(h) Exceptions to EASA AD 2019–0181

(1) Where EASA AD 2019–0181 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0181 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0181 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0181, dated July 26, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0181, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0724.

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

Issued in Des Moines, Washington, on October 18, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24191 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0522; Product Identifier 2019–NM–082–AD; Amendment 39–19737; AD 2019–19–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes. This AD was prompted by reports that the regulated bleed temperature was measured above the design target with a temperature regulation shift phenomenon, and investigation results show that incorrect temperature regulation can degrade pneumatic system components located downstream of the pre-cooler. This AD requires uploading improved bleed monitoring computer (BMC) software (SW), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 11, 2019.

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

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0094, dated April 26, 2019 (''EASA AD 2019–0094'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes. The NPRM published in the **Federal Register** on July 8, 2019 (84 FR

32338). The NPRM proposed to require uploading improved BMC SW.

This AD was prompted by reports that the regulated bleed temperature was measured above the design target with a temperature regulation shift phenomenon, and investigation results show that incorrect temperature regulation can degrade pneumatic system components located downstream of the pre-cooler. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to hot air leakage and consequent bleed loss, possibly resulting in the reduction of the system equipment safety margin. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0094 describes procedures for uploading BMC SW standard 4.3.

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

Costs of Compliance

The FAA estimates that this AD affects 85 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$28,900

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–19–01 Airbus SAS: Amendment 39–19737; Docket No. FAA–2019–0522; Product Identifier 2019–NM–082–AD.

(a) Effective Date

This AD is effective December 11, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Reason

This AD was prompted by reports that the regulated bleed temperature was measured above the design target with a temperature regulation shift phenomenon, and investigation results show that incorrect temperature regulation can degrade pneumatic system components located downstream of the pre-cooler. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to hot air leakage and consequent bleed loss, possibly resulting in the reduction of the system equipment safety margin.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0094, dated April 26, 2019 (''EASA AD 2019–0094'').

(h) Exceptions to EASA AD 2019–0094

(1) Where EASA AD 2019–0094 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0094 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0094 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0094, dated April 26, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0094, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522.

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

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

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24159 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0520; Product Identifier 2019–NM–046–AD; Amendment 39–19770; AD 2019–21–04]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. This AD was prompted by reports of loose and irregular fasteners at the forward end of the nacelle upper longeron, where the bulkhead frame and struts are attached to the engine mounting structure (EMS). This AD requires modification of the EMS and structural attachments. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 11, 2019.

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

ADDRESSES: For service information identified in this final rule, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; phone: +46 13 18 5591; fax: +46 13 18 4874; email: *saab2000.techsupport@saabgroup.com;* internet: *https://www.saabgroup.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0520.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0520; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3220.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0054, dated March 18, 2019 (''EASA AD 2019–0054'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Saab AB, Saab

Aeronautics Model SAAB 2000 airplanes. The NPRM published in the **Federal Register** on July 2, 2019 (84 FR 31524). The NPRM was prompted by reports of loose and irregular fasteners at the forward end of the nacelle upper longeron, where the bulkhead frame and struts are attached to the EMS. The NPRM proposed to require modification of the EMS and structural attachments.

The FAA is issuing this AD to address loose and irregular fasteners of the EMS which could cause development of cracks in the EMS, leading to failure of the affected engine mount-to-airplane structural connection, possibly resulting in significant airframe vibrations and detrimental effects on the surrounding pylon/nacelle structure, and loss of structural integrity. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Saab has issued Service Bulletin 2000–54–036, Revision 02, dated January 18, 2019. This service information describes procedures for modification of the EMS and structural attachments.

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

Costs of Compliance

The FAA estimates that this AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
256 work-hours × $85 per hour = $21,760	$2,500	$24,260	$266,860

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–21–04 Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems): Amendment 39–19770; Docket No. FAA–2019–0520; Product Identifier 2019–NM–046–AD.

(a) Effective Date

This AD is effective December 11, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category, all serial numbers, except serial numbers 006, 043, 056, and 061.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of loose and irregular fasteners at the forward end of the nacelle upper longeron, where the bulkhead frame and struts are attached to the engine mounting structure (EMS). The FAA is issuing this AD to address loose and

irregular fasteners of the EMS which could cause development of cracks in the EMS, leading to failure of the affected engine mount-to-airplane structural connection, possibly resulting in significant airframe vibrations and detrimental effects on the surrounding pylon/nacelle structure, and loss of structural integrity.

(f) Compliance

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

(g) Modification of the EMS and Structural Attachments

Within 3,000 flight hours or 24 months, whichever occurs first after the effective date of this AD, modify the EMS and structural attachments, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–036, Revision 02, dated January 18, 2019. Where Saab Service Bulletin 2000–54–036, Revision 02, dated January 18, 2019, specifies to contact Saab for appropriate action: Before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (i)(2) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Saab Service Bulletin 2000–54–036, dated November 6, 2018; or Saab Service Bulletin 2000–54–036, Revision 01, dated January 7, 2019.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0054, dated March 18, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0520.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3220.

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

(k) Material Incorporated by Reference

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

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

(i) Saab Service Bulletin 2000–54–036, Revision 02, dated January 18, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; phone: +46 13 18 5591; fax: +46 13 18 4874; email: *saab2000.techsupport@saabgroup.com*; internet: *https://www.saabgroup.com.*

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

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

Issued in Des Moines, Washington, on October 18, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24161 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 233

[Docket ID: DOD–2019–OS–0103]

RIN 0790–AI27

Federal Voting Assistance Program (FVAP)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This regulatory action amends the Department of Defense rule for the Federal Voting Assistance Program (FVAP) to remove internal policy and assignments of responsibility and otherwise make administrative updates. The FVAP assists service members serving away from home and other overseas citizens in exercising their voting rights by serving as a critical resource for these individuals to successfully register to vote and to vote absentee.

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

FOR FURTHER INFORMATION CONTACT: Scott Wiedmann, 571–372–0760.

SUPPLEMENTARY INFORMATION: The Federal Voting Assistance Program (FVAP) works to ensure Service members, their eligible family members and overseas citizens are aware of their right to vote and have the tools and resources to successfully do so from anywhere in the world. Additional information regarding internal DoD processes related to this program is contained in DoD Instruction 1000.04, ''Federal Voting Assistance Program,'' which is publicly available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100004p.pdf?ver=2017-12-01-105434-817*.

This regulatory action amends Part 233 to remove DoD internal policies and procedures, which do not require rulemaking and are otherwise publicly available on *www.fvap.gov* and in DoD Instruction 1000.04. This rule also makes administrative updates to legal citations. Finally, this rule removes the responsibility for the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) to establish a demonstration project to permit absent uniformed services voters to vote for Federal office through an electronic voting system.

Background

This part was last published on September 18, 2012, as an interim final rule (77 FR 57487). The rule provided direction and guidance to the Department of Defense and other Federal departments and agencies in establishing voting assistance programs for citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as modified by the Military and Overseas Voter Empowerment Act. It established policy and assigned responsibilities for the development and implementation of installation voter assistance (IVA) offices. It also established policy for the development and implementation, jointly with each State, of procedures for persons to apply to register to vote

at recruitment offices of the Military Services.

No comments were received during the comment period that ended on November 19, 2012. This finalizes the interim final rule with the exception of removing internal policies and procedures and making administrative updates.

Legal Authority for This Program

FVAP administers the UOCAVA, 52 U.S.C. Chapter 203, on behalf of the Secretary of Defense, as the Presidential designee under 52 U.S.C. 20301(a). See Executive Order No. 12642, Designation of Secretary of Defense as Presidential Designee, 53 FR 21975 (June 8, 1988).

United States citizens under UOCAVA include:

- Members and eligible family members of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Coast Guard, United States Public Health Service Commissioned Corps, and National Oceanic and Atmospheric Administration Commissioned Corps).
- Members of the Merchant Marines.
- U.S. citizens residing outside of the United States.

52 U.S.C. 20506, requires State voter registration agencies to provide individuals the opportunity to register to vote or to change their voter registration data when they apply for or receive services or assistance.

The Secretary of Defense under 10 U.S.C. 1566 must prescribe regulations to require the Military Services (Army, Navy, Air Force, and Marine Corps) to implement voting assistance programs that comply with DoD directives.

The Military Services, under 10 U.S.C. 1566a, must designate Installation Voter Assistance Offices to make voting assistance available for military members, their eligible family members and eligible citizens. The Secretary of Defense may authorize the Secretaries of the military departments to designate offices on military installations as voter registration agencies under 52 U.S.C. 20506(a)(2) for all purposes of such act.

52 U.S.C. 20506(c) requires the Secretary of Defense jointly with each State, to develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces.

52 U.S.C. 22301(c)(1) requires Government departments, agencies, and other entities, upon the Presidential designee's request to distribute balloting materials and cooperate in carrying out UOCAVA.

Public Law 113–291, div. A, title V, § 593, Dec. 19, 2014, 128 Stat. 3395 repeals Public Law 107–107, div. A, title XVI, § 1604, Dec. 28, 2001, 115 Stat. 1277, as amended by Public Law 108–375, div. A, title V, § 567, Oct. 28, 2004, 118 Stat. 1919, which established a demonstration project under which absent uniformed services voters were permitted to vote in a general election for Federal office through an electronic voting system.

Summary of Major Provisions

This regulatory action:

- Removes DoD internal policies and procedures, which do not require rulemaking and are available on Government websites in order to increase transparency and clarity for the public.
- Removes the responsibility for the USD(P&R) to establish a demonstration project to permit absent uniformed services voters to vote for Federal office through an electronic voting system. In the National Defense Authorization Act for Fiscal Year 2015, Congress eliminated this requirement. DoD no longer explores program implementation in this area.
- Makes administrative changes to the United State Code citations. In 2014, the Law Revision Counsel, U.S. House of Representatives transferred provisions relating to voting and elections were in the United States Code from Titles 2 and 42 into a new Title 52, Voting and Elections. No statutory text was altered. The provisions were relocated from one place to another in the Code.

Executive Order 12866, ''Regulatory Planning and Review'', Executive Order 13563, ''Improving Regulation and Regulatory Review'', and Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

Executive Orders 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, 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. It has been determined that this rule is not a significant regulatory action.

The amendments to this rule remove duplicative and unnecessary rule text, and makes other administrative changes. This rule has been deemed not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply.

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more, or have certain other impacts.

This rule is not a major rule under the Congressional Review Act.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The DoD certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 233 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 233

Civil rights, Elections, Voting rights.

For the reasons stated in the preamble, the Department of Defense amends 32 CFR part 233 as follows:

PART 233—FEDERAL VOTING ASSISTANCE PROGRAM (FVAP)

■ 1. The authority citation for part 233 is revised to read as follows:

Authority: E.O. 12642; 10 U.S.C. 1566a; 52 U.S.C. 20506; 52 U.S.C. Ch. 203.

§ 233.1 [Amended]

■ 2. Amend § 233.1 by:
■ a. In paragraph (a), removing ''42 U.S.C. 1973ff–1973ff–6'' and adding in its place ''52 U.S.C. Ch. 203''.
■ b. In paragraph (c), removing ''42 U.S.C. 1973gg–5'' and adding in its place ''52 U.S.C. 20506''.

§ 233.2 [Amended]

■ 3. Amend § 233.2(c) by removing ''42 U.S.C. 1973ff(c)'' and adding in its place ''52 U.S.C. 20301(c)''.

■ 4. Amend § 233.3 by:
■ a. In the introductory paragraph:
■ i. Removing ''Joint Publication 1–02'' and adding in its place ''DoD Dictionary of Military Terms''.
■ ii. Removing ''*http://www.dtic.mil/doctrine/dod_dictionary/*'' and adding in its place ''*http://www.jcs.mil/Doctrine*''.
■ b. Revising the definition of ''Installation voter assistance (IVA) offices''.
■ c. Removing the definitions of ''Metrics,'' ''Senior service voting representative (SSVR),'' and ''Service voting action officer (SVAO)''.
■ d. Revising the definitions of ''State'' and ''Uniformed services''.
■ e. Removing the definition of ''Unit voting assistance officer (UVAO)''.
■ f. Revising the definition of ''Voter registration agency''.
■ g. Adding the definition of ''Voting assistance officer (VAO)'' in alphabetical order.

The revisions and additions read as follows:

§ 233.3 Definitions.

* * * * *

Installation voter assistance (IVA) offices. The office designated by the installation commander, pursuant to 10 U.S.C. 1556a, to provide voter assistance to military personnel, voting-age military dependents, Government employees, contractors, and other civilian U.S. citizens with access to the installation. IVA offices also serve as voter registration agencies pursuant to 52 U.S.C. 20506(a)(2).

* * * * *

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

* * * * *

Uniformed services. The Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

Voter registration agency. An office designated pursuant to 52 U.S.C. 20506 to perform voter registration activities. Pursuant to 52 U.S.C. 20506(c), a recruitment office of the Military Services is considered to be a voter registration agency. All IVA offices are also designated as voter registration agencies pursuant to 52 U.S.C. 20506(a)(2).

Voting assistance officer (VAO). An individual responsible for voting assistance.

§ 233.4 [Amended]

■ 5. Amend § 233.4 by:
■ a. In paragraph (a), removing ''42 U.S.C. 1973ff(b)(5)'' and adding in its place ''52 U.S.C. 20301(b)(5)''.
■ b. In paragraph (d), removing ''42 U.S.C. 1973ff'' and adding in its place ''52 U.S.C. 20301''.

§ 233.5 [Amended]

■ 6. Amend § 233.5 by:
■ a. In paragraph (a)(1), removing ''*http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf.*'' and adding in its place ''*https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512402p.pdf.*''
■ b. In paragraph (a)(2), removing ''42 U.S.C. 1973gg–5, and 42 U.S.C. 1973ff—1973ff–6'' and adding in its place ''52 U.S.C. 20506; 52 U.S.C. Ch. 203''.
■ c. In paragraph (a)(3):
■ i. Removing ''42 U.S.C. 1973gg–5, 42 U.S.C. 1973ff—1973ff–6'', and adding in its place ''52 U.S.C. 20506; 52 U.S.C. Ch. 203''.
■ ii. Removing ''Section 1604 of Public Law 107–107, ''The National Defense Authorization Act for Fiscal Year 2002,'' and Section 567 of Public Law 108–375, ''The National Defense Authorization Act for Fiscal Year 2005''.''
■ d. In paragraph (a)(4), removing ''42 U.S.C. 1973gg–5'' and adding in its place ''52 U.S.C. 20506''.
■ e. In paragraph (a)(5), removing ''42 U.S.C. 1973ff–1(g)'' and adding in its place ''52 U.S.C. 20302(g)''.
■ f. Removing paragraphs (a)(6), (b), (c), and (d).
■ g. Redesignating paragraph (e) as paragraph (b).
■ h. Removing paragraph (f).

■ 7. Amend § 233.6 by:
■ a. In paragraph (a), removing ''The Director,''.
■ b. In paragraph (a)(1), removing ''42 U.S.C. 1973ff'' and adding in its place ''52 U.S.C. Ch. 203.''
■ c. Redesignating paragraphs (a)(3) through (19) as (a)(2) through (18).
■ d. In newly redesignated paragraph (a)(2):
■ i. Removing ''42 U.S.C. 1973ff–1'' and adding in its place ''52 U.S.C. 20302''.
■ ii. Removing ''42 U.S.C. 1973ff'' and adding in its place ''52 U.S.C. Ch. 203''.
■ e. In newly redesignated paragraph (a)(3), removing ''Consult with the Defense State Liaison Office which is the DoD office for contact and coordination with Federal, State, and local government entities for legislative and other policy matters involving voting assistance and elections pursuant to 42 U.S.C. 1973ff *et seq.*''.
■ f. In newly redesignated paragraph (a)(4):
■ i. Adding a '','' after ''DoD Components''.
■ ii. Removing ''42 U.S.C. 1973ff(b)(5)'' and adding in its place ''52 U.S.C. 20301(b)(5)''.
■ g. In newly redesignated paragraph (a)(5), removing ''42 U.S.C. 1973ff *et seq.*'' and adding in its place ''52 U.S.C. Ch. 203''.
■ h. In newly redesignated paragraph (a)(6)(iv), removing ''42 U.S.C. 1973ff–1(e)(4)'' and adding in its place ''52 U.S.C. 20302(e)(4).''
■ i. In newly redesignated paragraph (a)(6)(vii):
■ i. Removing ''42 U.S.C. 1973ff(b)(6)'' and adding in its place ''52 U.S.C. 20301(b)(6)''.
■ ii. Removing ''42 U.S.C. 1973ff–4A'' and adding in its place ''52 U.S.C. 20308''.
■ j. In newly redesignated paragraph (a)(6)(viii), removing ''Director,''.
■ k. In newly redesignated paragraph (a)(7):
■ i. Adding a '','' after ''but not limited to''.
■ ii. Removing ''42 U.S.C. 1973ff *et seq.*'' and adding in its place ''52 U.S.C. Ch. 203''.
■ iii. Removing ''42 U.S.C. 1973ff(6)'' and adding in its place ''52 U.S.C. 20301(6)''.
■ iv. Removing ''42 U.S.C. 1973ff–4A'' and adding in its place ''52 U.S.C. 20308.''
■ l. In newly redesignated paragraph (a)(8), removing ''42 U.S.C. 1973ff(7)'' and adding in its place ''52 U.S.C. 20301(7)''.
■ m. Removing newly redesignated paragraphs (a)(10) and (11), and redesignating newly redesignated (a)(12) and (a)(13) as (a)(10) and (a)(11).
■ n. In newly redesignated paragraph (a)(10), removing ''42 U.S.C. 1973ff–1(g)'' and adding in its place '' 52 U.S.C. 20302(g)''.
■ o. Removing newly redesignated paragraphs (a)(14) and (15), and

redesignating newly redesignated (a)(16) as (a)(12).
■ p. Removing newly redesignated paragraph (a)(17).
■ q. Redesignating newly redesignated paragraph (a)(18) as (a)(13).
■ r. In newly redesignated paragraph (a)(13), removing ''42 U.S.C. 1973ff'' and adding in its place ''52 U.S.C. 20301.''
■ s. Removing paragraphs (b)(1) through (b)(4), and redesignating (b)(5) as (b)(1).
■ t. In newly redesignated paragraph (b)(1)(i), removing ''42 U.S.C. 1973gg–5(a)(2)'' and adding in its place ''52 U.S.C. 20506(a)(2)''.
■ u. In newly redesignated paragraph (b)(1)(iii), removing ''42 U.S.C. 1973gg–5(a)(4)'' and adding in its place ''52 U.S.C. 20506(a)(4)''.
■ v. In newly redesignated paragraph (b)(1)(iv)(B), removing ''uniformed services members'' and adding in its place ''members of a uniformed service''.
■ w. Removing newly redesignated paragraphs (b)(1)(iv)(C)(*2*), (D) and (H), and redesignating paragraphs (b)(1)(iv)(E), (F), and (G) as paragraphs (b)(1)(iv)(D), (E), and (F).
■ x. Removing paragraphs (b)(6) through (b)(22), and redesignating (b)(23) as (b)(2).
■ y. Removing paragraphs (b)(24) through (b)(29), and redesignating (b)(30) as (b)(3).
■ z. In newly redesignated paragraph (b)(3)(i):
■ i. Removing ''*http://www.eac.gov/voter/Register_to_Vote*'' and adding in its place ''*https://www.eac.gov/voters/register-and-vote-in-your-state/*''.
■ ii. Removing ''*http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfopage2084.html*'' and adding in its place ''*http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2645.pdf*.''
■ aa. In newly redesignated paragraph (b)(3)(v):
■ i. Removing ''Director,''.
■ ii. Removing ''two'' and adding in its place ''2''.
■ iii. Removing ''42 U.S.C. 1973gg(6)(i)'' and adding in its place ''52 U.S.C. 20507(i).''
■ bb. Removing paragraphs (b)(31) through (b)(32), and redesignating (b)(33) as (b)(4).
■ cc. In paragraph (c)(2), removing ''42 U.S.C. 1973ff(c)'' and adding in its place ''52 U.S.C. 20301(c).''
■ dd. In paragraph (c)(2)(ii), removing ''42 U.S.C. 1973ff'' and adding in its place ''52 U.S.C. 20301'' and revising the last sentence.
■ ee. In paragraph (c)(2)(iii), removing ''Director,''.
■ ff. In paragraph (c)(2)(v), removing ''Director,''.
■ gg. In paragraph (c)(2)(vi):
■ i. Adding ''installation,'' before ''embassy''.
■ ii. Adding ''U.S.'' before ''civilians''.

The revisions and additions read as follows:

§ 233.6 Procedures.

* * * * *

(c) * * *

(2) * * *

(iii) * * * The name, mailing address, email address, and telephone number of this individual shall be provided to the FVAP.

* * * * *

Dated: October 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–23816 Filed 11–5–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 504

[Docket ID: USA–2017–HQ–0008]

RIN 0702–AA99

Obtaining Information From Financial Institutions

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of the Army (DA) regulation, which describes the procedures for complying with the Right to Financial Privacy Act (RFPA). On May 29, 2019, the Department of Defense (DoD) revised its overarching regulation for compliance with the RFPA which supersedes this part. This part is now unnecessary and should be removed from the CFR.

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

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Perkins, 703–614–3309.

SUPPLEMENTARY INFORMATION: The overarching DoD regulation at 32 CFR part 275, ''Right to Financial Privacy Act,'' was revised on May 29, 2019 (84 FR 24708). That rule updates policies, responsibilities, and prescribes procedures for obtaining access to financial records maintained by financial institutions. It implements 12 U.S.C. Chapter 35 by providing guidance on the requirements and conditions for obtaining financial records. The DA regulation at 32 CFR part 504, ''Obtaining Information from Financial Institutions,'' last updated on October 19, 2005 (70 FR 60723), provides DA policies, procedures, and restrictions governing access to and disclosure of financial records maintained by financial institutions during the conduct of Army investigations or inquiries. The revision of 32 CFR part 275 supersedes the rule at 32 CFR part 504, necessitating its removal from the CFR.

The DA has determined that publication of this removal action for public comment is unnecessary because the policies removed are currently articulated in 32 CFR part 275, and internal DA policies will continue to be maintained in Army Regulation 190–6, ''Obtaining Information from Financial Institutions'' (last updated February 9, 2006, and available at *https://armypubs.army.mil/ProductMaps/PubForm/Details.aspx?PUB_ID=50304*).

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the provisions of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' are not applicable to this removal action.

This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 32 CFR Part 504

Banks, banking, Business and industry, Investigations, Law enforcement, Military personnel, Privacy.

PART 504—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 504 is removed.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–24030 Filed 11–5–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter XII

[Docket ID: DOD–2019–OS–0091]

Defense Logistics Agency

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this technical amendment to amend the chapter heading that relates to the Defense Logistics Agency (DLA), which is a component of the Department of Defense. In revising this chapter heading, the Department of Defense is establishing that the DLA is

a component office and not a separate agency.

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

FOR FURTHER INFORMATION CONTACT: Patricia Toppings at 571–372–0485.

SUPPLEMENTARY INFORMATION: Title 32, Subtitle B, Chapter XII of the CFR is titled ''Defense Logistics Agency.'' According to the Office of the Federal Register's interpretation of 1 CFR chapter I, the DLA as the sole ''owner'' of this chapter is the only agency that can amend these regulations. However, the DLA is not an agency separate from the Department of Defense, but a component of it.

Adding the Department of Defense to the heading of chapter XII establishes that the DLA is part of, and subordinate to, the Department of Defense with respect to authority over chapter XII. This ensures that the Department of Defense can also amend chapter XII when necessary. Therefore, the Department of Defense is updating the title of Chapter XII.

SUBTITLE B—[AMENDED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR chapter XII is amended by revising the heading of chapter XII to read Chapter XII—Department of Defense, Defense Logistics Agency.

Dated: October 25, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–23685 Filed 11–5–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0847]

RIN 1625–AA00

Safety Zone; Missouri River, Mile Markers 377.5 to 378, Parkville, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Missouri River from mile marker 377.5 to mile marker 378. This action is necessary to provide for the safety of life on these navigable waters near the Platte Landing Park, Parkville, MO during a fireworks display on December 6, 2019. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective from 8 p.m. through 9:30 p.m. on December 6, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0847 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by December 6, 2019, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay establishment of the safety zone until after the date of the firework display and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is necessary to respond to the potential safety hazards associated with the firework display over the Missouri River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the firework display over the Missouri River will be a safety concern for anyone in the zone. This rule is needed to protect persons, vessels, and the marine environment on the navigable waters within the safety zone while the firework display is being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. through 9:30 p.m. on December 6, 2019 or until the firework display is completed, whichever occurs first. The safety zone covers all navigable waters from mile marker 377.5 to mile marker 378 on the Missouri River.

The duration of this safety zone is intended to protect persons, vessels, and the marine environment on these navigable waters while the fireworks display is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek entry into the safety zone, contact the COTP or a designated representative via VHF–FM channel 16 or by telephone at 314–269–2332. Persons and vessels permitted to enter this closure must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public of the enforcement date for this safety zone, through Local Notices to Mariners (LNMs), Broadcast Notice to Mariners (BNM), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration of the safety zone. This safety zone impacts a one-half mile stretch of the Missouri River for one and a half hours on December 6, 2019. Additionally this rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator because the rule will allow persons and vessels to seek permission to enter the zone and coordinated entry may be arranged on a case by case basis. Additionally, coordination with several waterways users has taken place to mitigate as much impact as possible.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This safety zone impacts less than one mile stretch of the Missouri River for up to one and a one half hours on December 6, 2019 and will prohibit entry through the fireworks display. It is categorically excluded from further review under paragraph L60 (a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0847 to read as follows:

§ 165.T08–0847 Safety Zone; Missouri River, Mile Marker 377.5 to 378, Parkville, MO.

(a) *Location.* The following area is a safety zone: In the vicinity of mile markers 378 to 377.5 on the Missouri River.

(b) *Period of enforcement.* This section will be enforced on December 6, 2019 from 8 p.m. through 9:30 p.m., or until the firework display is completed, whichever comes first.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or designated representative. A *designated representative* is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the representative via VHF–FM channel 16 or by telephone at 314–269–2332.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement dates and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone, through Local Notices to Mariners (LNM), Broadcast Notice to Mariners (BNM), and/or Marine Safety Information Bulletins (MSIB) as appropriate.

Dated: October 31, 2019.

S.A. Stoermer,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2019–24210 Filed 11–5–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0686]

RIN 1625–AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone for all navigable waters within an area of one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. This safety zone is needed to protect personnel, transiting vessels, and Liquefied Gas carriers. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan or his designated representative.

DATES: This rule is effective from 12:01 a.m. on November 16, 2019 until 11:59 p.m. on February 28, 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2374, email *Pedro.L.Mendoza@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because initial immediate action was needed to safeguard incoming, moored, and outgoing LNG carriers within San Juan Harbor, San Juan, Puerto Rico. This rule extends the duration of the existing safety zone, which would have expired on November 15, 2019, to ensure, to the extent practicable, the immediate, continued need to safeguard incoming, moored, and outgoing LNG carriers within the San Juan Harbor. Specifically, this rule is being extended while go through February 28, 2020. This is necessary considering the NPRM process and allows for time to receive public comment in order to complete the rulemaking process to revise the existing safety zone for LPG carriers in § 165.754 to include LNG carriers. Therefore, it would be contrary to the public interest for the existing safety zone to lapse.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. Potential hazards associated with LNG carriers continues to be a safety concern for anyone within 50-yards of these carriers. The purpose of this rule is to extend the safety zone until February 28, 2020 to ensure the safety of vessels and the navigable waters within a 50-yard radius of LNG and LPG carriers transiting San Juan Harbor while the NPRM process for establishing a revised safety zone in § 165.754 is completed. This temporary final rule continues to safeguard vessels at an adjacent berthing location, Puerto Nuevo Berth B, which supplies LNG to the Puerto Rico Electric Power Authority (PREPA) and other industrial sectors.

IV. Discussion of the Rule

This rule extends the duration of the temporary safety zone on navigable waters within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. This extension is necessary while the NPRM process of revising the existing regulation in § 165.754 to add LNG carriers is ongoing. The first safety zone on this matter was effective from September 13, 2019 until 11:59 p.m. on November 15, 2019. This regulation extends the safety zone until 11:59 p.m. on February 28, 2020. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative. The Coast Guard will provide notice of the safety zone through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and designated on-scene representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, available exceptions to the enforcement of the safety zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the safety zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 36 days that will prohibit entry within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the NPRM to modify the San Juan Harbor, San Juan, Puerto Rico safety zone is properly proposed and implemented. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0686 to read as follows:

§ 165.T07–0686 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Location.* A moving safety zone is established in the following area:

(1) The waters around Liquefied Gas (LNG) carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18–29.3 N, 66–07.6 W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8 N, 66–06.5 W. All coordinates are North American Datum 1983.

(2) The waters around Liquefied Gas carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.

(3) The waters around Liquefied Gas carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8 N, 66–06.5 W when the vessel gets underway, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18–28.3 N, 66–07.6 W. All coordinates referenced use datum: NAD 83.

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

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone unless authorized by the COTP San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.

(3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(4) The COTP and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 22A.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

(d) *Notification.* The zone described in paragraphs (a)(1) through (3) of this section will be activated upon entry of an LNG carrier into the navigable waters of the United States in the San Juan Captain of the Port Zone. An LNG carrier will be identifiable by the Bravo flag (red international signal flag under Pub. 102, International Code of Signals) flying from the outermost halyard (above the pilot house) where it can most easily be seen. In addition to visual identification of an LNG carrier, Coast Guard Sector San Juan will give notice through Mariners Broadcast Notice to Mariners for the purpose of enforcement of the temporary safety zone.

(e) *Enforcement period.* This section will be enforced from 12:01 a.m. on November 16, 2019 through 11:59 p.m. on February 28, 2020.

Dated: October 31, 2019.

E.P. King,

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

[FR Doc. 2019–24158 Filed 11–5–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0108; FRL–10001–37–Region 1]

Air Plan Approval; Massachusetts; Transport State Implementation Plans for the 1997 and 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts that address the interstate transport of air pollution requirements of the Clean Air Act for the 1997 and 2008 ozone national ambient air quality standards (NAAQS) (*i.e.,* ozone transport SIPs). The intended effect of this action is to approve the two transport SIPs as revisions to the Massachusetts SIP. This action is being taken in accordance with the Clean Air Act.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2008–0108. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email *simcox.alison@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background

On August 14, 2019 (84 FR 40344), EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts.

The NPRM proposed approval of SIP revisions that address the interstate transport of air pollution requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 1997, 2008, and 2015 ozone national ambient air quality standards (NAAQS) (*i.e.,* ozone transport SIPs). The formal SIP revisions were submitted by Massachusetts on January 31, 2008; February 9, 2018; and September 27, 2018. In today's action, we are approving the transport SIPs for the 1997 and 2008 ozone NAAQS. We will take final action on the transport SIP for the 2015 ozone NAAQS at a later date.

The rationale for EPA's proposed action is explained in the NPRM and will not be restated here. One public comment was received on the NPRM.

II. Response to Comments

EPA received one comment during the comment period stating that EPA cannot ''rely on a rule that a court has now vacated,'' referring to the recent ruling by the United States Court of Appeals for the District of Columbia Circuit in *Wisconsin* v. *EPA,* No. 16–1406, 2019 WL 4383259 (D.C. Cir. Sept. 13, 2019), on EPA's Cross State Air Pollution Rule Update for the 2008 Ozone NAAQS (''CSAPR Update Rule''), 81 FR 74504 (October 26, 2016). As an initial matter, the commenter is incorrect; the court remanded the CSAPR Update Rule to EPA but did not vacate it. *Wisconsin,* 2019 WL 4383259, at *26. In any event, our proposed approval of the Commonwealth's Transport SIP for the 1997 ozone NAAQS did not rely on the CSAPR Update Rule. Thus, the court's ruling in *Wisconsin* does not affect our approval of Massachusetts' Transport SIP for the 1997 ozone NAAQS.

With respect to the 2008 ozone NAAQS, our proposed approval relied in part on EPA's finding in the CSAPR Update Rule that emissions from Massachusetts do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any downwind state, *see* 84 FR at 40346–47 (citing 81 FR at 74506). However, no party challenged that aspect of the CSAPR Update in *Wisconsin* and nothing in the *Wisconsin* court's opinion overturned that finding or called it into doubt. Consequently, *Wisconsin* v. *EPA* likewise does not bar approval of the Commonwealth's Transport SIP for the 2008 ozone NAAQS.

III. Final Action

EPA is approving transport SIPs that were submitted to address interstate transport requirements for CAA section 110(a)(2)(D)(i)(I) for the 1997 and 2008 ozone NAAQS as a revision to the Massachusetts SIP.

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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 22, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1120 is amended in the table in paragraph (e) by adding entries for ''Interstate transport requirements of CAA for 1997 Ozone NAAQS,'' and ''Interstate transport requirements of CAA for 2008 Ozone NAAQS'' at the end of the table to read as follows;

§ 52.1120 Identification of plan

* * * * *

(e) * * *

MASSACHUSETTS NON REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
* *	*	*	*	* *
Interstate transport requirements of CAA for 1997 Ozone NAAQS.	Statewide	January 31, 2008 ..	November 6, 2019 [Insert **Federal Register** citation].	Approved with respect to requirements for CAA section 110(a)(2)(D)(i)(I).
Interstate transport requirements of CAA for 2008 Ozone NAAQS.	Statewide	February 9, 2018 ..	November 6, 2019 [Insert **Federal Register** citation].	Approved with respect to requirements for CAA section 110(a)(2)(D)(i)(I).

[FR Doc. 2019–23593 Filed 11–5–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[18X.LLWO310000.L13100000.PP0000]

RIN 1004–AE70

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the fees set forth in the Bureau of Land Management (BLM) mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective November 6, 2019.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW, Washington, DC 20240; Attention: RIN 1004–AE70.

FOR FURTHER INFORMATION CONTACT: Lorenzo Trimble, Acting Chief, Division of Fluid Minerals, 202–912–7342, *ltrimble@blm.gov*; Alfred Elser, Acting Chief, Division of Solid Minerals, 202–912–7114, *aelser@blm.gov*; or Chandra Little, Regulatory Affairs, 202–912–7403, *cclittle@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) that established new fees or revised fees and service charges for processing documents related to its minerals programs (''2005 Cost Recovery Rule''). In addition, the 2005 Cost Recovery Rule also established the method the BLM would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in subchapter C (43 CFR parts 3000–3900) according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule updates those fees and service charges consistent with that direction. The fee adjustments in this rule are based on the mathematical formula set forth in the 2005 Cost Recovery Rule. The public had an opportunity to comment on that adjustment procedure as part of the 2005 rulemaking. Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the fee adjustments in this rule may be effective less than 30 days after publication. See 43 CFR 3000.10(c).

II. Discussion of Final Rule

As set forth in the 2005 Cost Recovery Rule, the fee updates are based on the change in the IPD–GDP. The BLM's minerals program publishes the updated cost recovery fees, which become effective on October 1, the start of the fiscal year (FY).

This rule updates the cost recovery fees established by the cost recovery fee rule published on September 28, 2018 (83 FR 48957), effective October 1, 2018. This rule updates the cost recovery fees used in Fiscal Year 2019 for Fiscal Year 2020. The update adjusts the 2019 fees based on the change in the IPD–GDP from the 4th Quarter of 2017 to the 4th Quarter of 2018.

Under this rule, 24 fees will remain the same and 24 fees will increase. Of the 24 fees that are being increased by this rule, 13 will increase by $5 each, seven will increase by $10 each, two will increase by $15 each, and two will increase by more than $15. The largest increase, $75, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from $3,215 to $3,290. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $40, from $1,605 to $1,645. It is important to note that the ''real'' values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States.

The calculations that resulted in the new fees are included in the table below:

[3] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** document cited in this column for the particular provision.

Fixed cost recovery fees	Existing fee [1] (FY 2019)	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5] (FY 2020)
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):					
Noncompetitive lease application	$425	$427.283	$9.998	$437.281	$435
Competitive lease application	165	165.819	3.880	169.699	170
Assignment and transfer of record title or operating rights	95	95.656	2.238	97.894	100
Overriding royalty transfer, payment out of production	15	12.752	0.298	13.050	15
Name change, corporate merger or transfer to heir/devisee	225	223.197	5.222	228.419	230
Lease consolidation	470	471.909	11.042	482.951	485
Lease renewal or exchange	425	427.283	9.998	437.281	435
Lease reinstatement, Class I	85	82.893	1.939	84.832	85
Leasing under right-of-way	425	427.283	9.998	437.281	435
Geophysical exploration permit application—Alaska [6]	25	25.000	1.712	26.712	25
Renewal of exploration permit—Alaska [6]	25	25.000	1.712	26.712	25
Geothermal (part 3200):					
Noncompetitive lease application	425	427.283	9.998	437.281	435
Competitive lease application	165	165.819	3.880	169.699	170
Assignment and transfer of record title or operating right	95	95.656	2.238	97.894	100
Name change, corporate merger or transfer to heir/devisee	225	223.197	5.222	228.419	230
Lease consolidation	470	471.909	11.042	482.951	485
Lease reinstatement	85	82.893	1.939	84.832	85
Nomination of lands	120	119.383	2.793	122.176	120
Plus per acre nomination fee	0.12	0.119	0.002	0.121	0.12
Site license application	65	63.771	1.492	65.263	65
Assignment or transfer of site license	65	63.771	1.492	65.263	65
Coal (parts 3400, 3470):					
License to mine application	15	12.752	0.298	13.050	15
Exploration license application	350	350.749	8.207	358.956	360
Lease or lease interest transfer	70	70.163	1.641	71.804	70
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):					
Applications other than those listed below	40	38.267	0.895	39.162	40
Prospecting permit amendment	70	70.163	1.641	71.804	70
Extension of prospecting permit	115	114.789	2.686	117.475	115
Lease modification or fringe acreage lease	30	31.896	0.746	32.642	35
Lease renewal	550	548.454	12.833	561.287	560
Assignment, sublease, or transfer of operating rights	30	31.897	0.746	32.643	35
Transfer of overriding royalty	30	31.897	0.746	32.643	35
Use permit	30	31.897	0.746	32.643	35
Shasta and Trinity hardrock mineral lease	30	31.897	0.746	32.643	35
Renewal of existing sand and gravel lease in Nevada	30	31.897	0.746	32.643	35
Multiple Use; Mining (Group 3700):					
Notice of protest of placer mining operations	15	12.752	0.298	13.050	15
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):					
Application to open lands to location	15	12.752	0.298	13.050	15
Notice of Location	20	19.122	0.447	19.569	20
Amendment of location	15	12.752	0.298	13.050	15
Transfer of mining claim/site	15	12.752	0.298	13.050	15
Recording an annual FLPMA filing	15	12.752	0.298	13.050	15
Deferment of assessment work	115	114.789	2.686	117.475	115
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	31.897	0.746	32.643	35
Mineral Patent adjudication (more than ten claims)	3,215	3,214.181	75.211	3,289.392	3,290
(ten or fewer claims)	1,605	1,607.074	37.605	1,644.679	1,645
Adverse claim	115	114.789	2.686	117.475	115
Protest	70	70.163	1.641	71.804	70
Oil Shale Management (parts 3900, 3910, 3930):					
Exploration License Application	335	336.422	7.872	344.294	345
Assignment or sublease of record title or overriding royalty	70	68.431	1.601	70.032	70

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis; Table 1.1.9. Implicit Price Def Product (accessed on August 13, 2019) web link: *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2%20-%20reqid=19&step=3&isuri=1&1921=survey&1903=13*.

III. How Fees Are Adjusted

The BLM took the base values (or ''existing values'') upon which it

[1] The Existing Fee was established by the 2018 (FY 2019) cost recovery fee update rule published September 28, 2018 (83 FR 48957), effective October 1, 2018.

[2] The Existing Value is the figure from the New Value column in the previous year's rule.

[3] From 4th Quarter 2017 (108.713) to 4th Quarter 2018 (111.256), the IPD–GDP increased by 2.34 percent. The value in the IPD–GDP Increase column is 2.34 percent of the Existing Value. Two exceptions are noted in footnote 6.

[4] The sum of the Existing Value and the IPD–GDP Increase is the New Value.

[5] The New Fee for FY 2020 is the New Value rounded to the nearest $5 for values equal to or greater than $1 or rounded to the nearest penny for values under $1.

[6] In previous updates to the BLM's cost recovery fees, the BLM did not increase the fees for ''Geophysical exploration permit application—Alaska'' or ''Renewal of exploration permit—

Continued

derived the FY 2019 cost recovery fees (or ''existing fees'') and multiplied it by the percent change in the IPD–GDP (2.34 percent for this update) to generate the ''IPD–GDP increases'' (in dollars). The BLM then added the ''IPD–GDP increases'' to the ''existing values'' to generate the ''new values.'' The BLM then calculated the ''new fees'' by rounding the ''new values'' to the closest multiple of $5 for fees equal to or greater than $1, or to the nearest cent for fees under $1. The ''new fees'' are the updated cost recovery fees for FY 2020.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not 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. The changes in this rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflationary adjustment factor to existing user fees for processing certain actions associated with the onshore minerals programs.

Finally, this rule will not raise novel legal or policy issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 Cost Recovery Rule.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This action is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result, a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm's length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Iron ore mining (NAICS code 212210): 750 or fewer employees
- Gold ore mining (NAICS code 212221): 1,500 or fewer employees
- Silver ore mining (NAICS code 212222): 250 or fewer employees
- Uranium-Radium-Vanadium ore mining (NAICS code 212291): 250 or fewer employees
- All Other Metal ore mining (NAICS code 212299): 750 or fewer employees
- Bituminous Coal and Lignite Surface Mining (NAICS code 212111): 1,250 or fewer employees
- Bituminous Coal Underground Mining (NAICS code 212112): 1,500 or fewer employees
- Crude Petroleum Extraction (NAICS code 211120): 1,250 or fewer employees
- Natural Gas Extraction (NAICS code 211130): 1,250 or fewer employees
- All Other Non-Metallic Mineral Mining (NAICS code 212399): 500 or fewer employees

The SBA would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule may affect a large number of small entities because 24 fees for activities on public lands will be increased. The adjustments result in no increase in the fees for processing 24 actions relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims; that fee will increase by $75. It is important to note that the ''real'' values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States. Accordingly, the BLM has concluded that the economic effect of the rule's changes will not be significant, even for small entities.

For the 2005 Cost Recovery Rule, the BLM completed a Regulatory Flexibility Act threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in this rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, a Small Entity Compliance Guide is not required.

Executive Order 13132, Federalism

This final rule 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. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

Alaska'' based on a provision in the Energy Policy Act of 2005 which prohibited fee increases ''related to processing drilling-related permit applications and use authorizations.'' See, *e.g.,* 83 FR 48957, 48959 (Sept. 28, 2018) (citing Pub. L. 109–58). However, that provision was repealed by legislation in 2014 and replaced with a narrower restriction on fee increases that does not apply to these permits. Public Law 113–291. From 4th Quarter 2014 (104.123) to 4th Quarter 2018 (111.256), the IPD–GDP increased by 6.85 percent. The change in IDP–GDP was not large enough to increase the new fee above $25 for this update. In future years, the BLM will update this fee based upon a 1-year change in IDP–GDP, as it does for the other fees.

The Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this rule, the new fees may affect the non-hour burdens associated with the following control numbers:

Oil and Gas

(1) 1004–0034 which expires June 30, 2021;

(2) 1004–0137 which expired October 31, 2021

(3) 1004–0162 which expires October 31, 2021;

(4) 1004–0185 which expires December 31, 2021;

Geothermal

(5) 1004–0132 which expires February 29, 2020;

Coal

(6) 1004–0073 which expires January 31, 2020;

Mining Claims

(7) 1004–0025 which expires February 28, 2022;

(8) 1004–0114 which expires January 31, 2020; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires August 31, 2019.[7]

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

[7] A renewal request for control number 1004–0121 was submitted to the Office of Management and Budget on July 24, 2019.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1508.4).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian tribes. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Chandra Little of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.;* 30 U.S.C. 181 *et seq.,* 301–306, 351–359, and 601 *et seq.;* 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.;* and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for FY 2020. These fees are nonrefundable and must be included with documents filed under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM website (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FY 2020 PROCESSING AND FILING FEE TABLE

Document/action	FY 2020 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):	
Noncompetitive lease application	$435
Competitive lease application	170
Assignment and transfer of record title or operating rights	100
Overriding royalty transfer, payment out of production	15
Name change, corporate merger or transfer to heir/devisee	230
Lease consolidation	485
Lease renewal or exchange	435
Lease reinstatement, Class I	85
Leasing under right-of-way	435
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200):	
Noncompetitive lease application	435
Competitive lease application	170
Assignment and transfer of record title or operating rights	100
Name change, corporate merger or transfer to heir/devisee	230
Lease consolidation	485
Lease reinstatement	85
Nomination of lands	120
plus per acre nomination fee	0.12
Site license application	65
Assignment or transfer of site license	65
Coal (parts 3400, 3470):	
License to mine application	15
Exploration license application	360
Lease or lease interest transfer	70
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	40
Prospecting permit application amendment	70
Extension of prospecting permit	115
Lease modification or fringe acreage lease	35
Lease renewal	560
Assignment, sublease, or transfer of operating rights	35
Transfer of overriding royalty	35
Use permit	35
Shasta and Trinity hardrock mineral lease	35
Renewal of existing sand and gravel lease in Nevada	35
Public Law 359; Mining in Powersite Withdrawals: General (part 3730):	
Notice of protest of placer mining operations	15
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):	
Application to open lands to location	15
Notice of location [1]	20
Amendment of location	15
Transfer of mining claim/site	15
Recording an annual FLPMA filing	15
Deferment of assessment work	115
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	35
Mineral patent adjudication	* 3,290 ** 1,645
Adverse claim	115
Protest	70
Oil Shale Management (parts 3900, 3910, 3930):	
Exploration license application	345
Application for assignment or sublease of record title or overriding royalty	70

[1] To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute (43 CFR part 3833) must be paid.

* (More than 10 claims.)

** (10 or fewer claims.)

* * * * *

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2019–24116 Filed 11–5–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190312234–9412–01; RTID 0648–XX024]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to CT

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2019 commercial summer flounder quota to the State of Connecticut. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for North Carolina and Connecticut.

DATES: Effective November 5, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the revised 2019 allocations were published on May 17, 2019 (84 FR 22392).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

North Carolina is transferring 40,000 lb (18,144 kg) of summer flounder commercial quota to Connecticut through mutual agreement of the states. The revised summer flounder quotas for fishing year 2019 are: North Carolina, 2,886,555 lb (1,309,319 kg); and Connecticut, 293,119 lb (132,957 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 31, 2019.

Ngagne Jafnar Gueye,

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

[FR Doc. 2019–24182 Filed 11–5–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 215
Wednesday, November 6, 2019

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No.: AMS–SC–19–0081; SC–19–932–2]

Olives Grown in California; Proposed Amendments to the Marketing Order No. 932

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on proposed amendments to Marketing Order No. 932, which regulates the handling of olives grown in California. The proposed amendment would change the California Olive Committee's (Committee) quorum requirements.

DATES: Comments must be received by December 6, 2019.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Senior Marketing Specialist, or Andrew Hatch, Chief, Rulemaking Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Melissa.Schmaedick@usda.gov* or *Andrew.Hatch@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of olive producers and handlers operating within the area of production.

Section 8c(17) of the Act (7 U.S.C 608c(17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900.43) authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order would effectuate the declared policy of the Act, a subsequent proposed rule and notice of referendum would be issued and producers would be allowed to vote for or against the proposed Order amendments. AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not be deemed to preclude, preempt, or supersede any State program covering olives grown in California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed

amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed herein is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the ''Initial Regulatory Flexibility Analysis'' section of this proposed rule.

The Committee unanimously recommended the amendments following deliberations at a public meeting held on July 29, 2019. The proposed action would amend the Order by changing the Committee's quorum requirements.

Section 932.25 establishes an administrative committee, the California Olive Committee, with 16 members (eight producer members and eight handler members) and further allows the committee to be increased by a public member (who is not be a producer or handler of olives nor an officer or employee or director of any producer or handler of olives) for a total of 17 members. In addition, this section requires that each member has an alternate who meets the same qualifications as the member. The Committee currently operates with 17 members and 17 alternate members.

Section 932.30 further states that each alternate member shall act in the place and stead of such member (a) during such member's absence, and (b) in the event of such member's removal, resignation, disqualification or death, until a successor for such member's unexpired term has been selected and has qualified.

Section 932.36 establishes the Committee's quorum requirements. Current requirements state that a quorum must consist of at least 10 members of whom at least five must be producer members and at least five must be handler members and, if the Committee is increased by the addition of a public member, a quorum must consist of at least 11 members of which at least five must be producer members and at least five must be handler members. Given that the Committee currently has a public member, a quorum of 11 members of which five must be producers and five must be handlers is required.

This proposed action would amend § 932.36 by removing the requirement of having five producer members and five handler members in attendance to form a quorum. The proposed modified language would define a quorum as consisting of at least 10 members and, if the committee is increased by the addition of a public member, a quorum would consist of at least 11 members.

The proposed modification would also clarify that alternate members acting as members could satisfy the quorum requirement. The Committee's proposed amendment, which would modify the second sentence of the current § 932.36, adds a phrase recognizing that alternate members who are serving in place of an absent member should be counted as full Committee members in the context of qualifying a quorum. This proposed phrase reiterates the authority of alternate members as specified in § 932.30. For clarity and consistency, USDA recommends adding the same phrase to the first sentence of § 932.36. The proposed revision to the sentence would read as follows: ''Decisions of the committee shall be by majority vote of the members, including alternates acting as members, present and voting, and a quorum must be present: . . .'' This proposed additional revision would clarify that alternate members acting as members could not only fulfill quorum requirements, but they would also be able to vote as members on matters of Committee business in the absence of their member. This proposed addition has been incorporated into the amendatory text of this document.

Since promulgation of the Order in 1965, the California olive industry has seen reductions of 64 percent (from 2500 to 900) and 93 percent (from 28 to two) in the number of California olive producers and handlers, respectively. Industry consolidation has resulted in increased difficulties in filling Committee member seats as well as fulfilling quorum requirements at meetings.

Given the current quorum requirement of a minimum of five producers and five handlers in attendance, the absence of just one individual could result in the lack of a quorum. Without a quorum, the Committee is unable to vote on business decisions or make regulatory recommendations to USDA. Meetings without a quorum are also costly as attendees must travel to attend the meeting, thus incurring travel costs in addition to time lost operating their businesses.

Adjusting the current quorum requirement as proposed would lower the risk of not reaching a quorum during scheduled meetings due to the absence of the required number of producer or handler members. This change would streamline the Committee's operations and increase its effectiveness by allowing the Committee to conduct business as long as the minimum number of members are in attendance. It would also reduce the risk of members incurring costs from traveling to meetings at which business cannot be conducted due to lack of a quorum.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 900 producers of olives in the production area and two handlers subject to regulation under the Order. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of less than $1,000,000, and small agricultural service firms as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) data, as of June 2019 the average price to producers for the 2018 crop year was $766.00 per ton, and total assessable volume for the 2018 crop year was 17,953 tons. Based on production, the total number of California olive producers, and price paid to those producers, the average annual producer revenue is less than $1,000,000 ($766.00 times 17,953 tons equals $13,751,998 divided by 900 producers equals an average annual producer revenue of $15,280.00). Therefore, most olive producers may be classified as small entities. Both handlers may be classified as large entities under the SBA's definitions because their annual receipts are greater than $30,000,000.

The proposed change would revise the quorum requirement for Committee meetings by removing the requirement of having five producer members and five handler members in attendance to form a quorum. The proposed modified language would define a quorum as consisting of at least 10 members and, if the committee is increased by the

addition of a public member, a quorum would consist of at least 11 members.

The Committee unanimously recommended the proposed amendment at a public meeting on July 29, 2019. If this proposed amendment is approved in a referendum, there would be no direct financial effects on producers or handlers as it is primarily administrative in nature. The proposed amendment would increase the efficiency of the Committee's operations and allow it to respond more quickly to the industry's needs.

Since 1965, when the marketing order was established, the number of producers and handlers operating in the industry has decreased significantly, dropping from 2,500 to 900 (64 percent) and from 28 to two (93 percent), respectively. Industry consolidation has made it difficult to find enough members to fill positions on the Committee. Moreover, fulfilling quorum requirements at meetings has also become increasingly challenging.

Changing the quorum requirement from the current 11 member requirement, of which five must be producers and five must be handlers, to simply the attendance of 11 members would increase meeting efficiency by making the quorum requirement more easily fulfilled. This proposed change would also reduce costs to members and Committee and USDA staff who travel to meetings where a quorum is not established. If implemented, the proposed amendment is not expected to result in any increases in economic costs or burden to industry members, USDA staff or consumers.

Alternatives to this proposed amendment, including making no changes at this time, were considered by the Committee. One alternative included lowering the required number of producer or handler members in attendance. However, given that there are only two handlers in operation within the industry, this option was still considered too restrictive by the Committee. Therefore, the alternatives were not considered viable by the Committee.

AMS believes the proposed amendment is justified and necessary to ensure the Committee's ability to locally administer the program. Modifying the quorum requirement as proposed in this rule would ensure a more efficient and orderly flow of business.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings were widely publicized throughout the California olive production area. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the July 29, 2019, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposed amendment.

Interested persons are invited to submit comments on the proposed amendments to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following an analysis of any comments received on the amendments in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If AMS determines that the amendments would effectuate the declared policy of the Act, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments.

Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. A final rule would then be issued to effectuate the amendments if it is favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 932; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 932 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 932 as hereby proposed to be amended regulates the handling of olives grown in California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 932 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 932 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of olives produced or packed in the production area; and

5. All handling of olives produced or packed in the production area as defined in Marketing Order 932 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to these proposed amendments.

Comments received during the comment period on the amendments proposed will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendment. If favored by producers participating in the referendum, a final rule would then be issued to effectuate it.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 932.36 [Amended]

■ 2. Amend § 932.36 to read as follows:

§ 932.36 Procedure.

Decisions of the committee shall be by majority vote of the members, including alternates acting as members, present and voting, and a quorum must be present: *Provided,* That decisions requiring a recommendation to the Secretary on matters pertaining to grade and size regulations shall require at least 10 affirmative votes, at least 5 of which must be from producer members and at least 5 of which must be from handler members and, if the committee is increased by the addition of a public member, at least 11 affirmative votes shall be required, at least 5 of which must be from producer members and at least 5 of which must be from handler members. A quorum shall consist of at least 10 members, including alternates acting as members, and, if the committee is increased by the addition of a public member, a quorum shall consist of at least 11 members, including alternates acting as members. Except in case of an emergency, a minimum of 5 days advance notice shall be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When voted on by such method, at least 14 affirmative votes, of which seven shall be producer member votes and seven shall be handler member votes, shall be required for adoption and, if the committee is increased by the addition of a public member, votes by mail or telegram shall require at least 15 affirmative votes, of which at least 7 shall be producer member votes and at least 7 shall be handler member votes. The committee may recommend for the Secretary's approval changes in the number of affirmative votes required for adoption of any proposition voted upon by means of a mail or telegram ballot: *Provided,* That the number of affirmative votes required for adoption shall not be less than ten, and in any case an equal number of producer member and handler member votes shall be required for adoption and, if the committee is increased by the addition of a public member, the number of affirmative votes required for adoption shall be increased by one.

Dated: November 1, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–24224 Filed 11–5–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0728; Product Identifier 2019–NM–071–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by a report that during ALTS CAP or (V) ALTS CAP mode, the flight guidance/autopilot does not account for engine failure while capturing an altitude. This proposed AD would require revising the existing airplane flight manual (AFM) to provide the flightcrew with new warnings for ''Autoflight'' and ''Engine Failure in Climb During ALTS CAP.'' The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 23, 2019.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free phone: 1–866–538–1247 or direct-dial phone: 1–514–855–2999; *email: ac.yul@aero.bombardier.com; internet: https://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0728; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7367; fax: 516–794–5531; *email: 9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0728; Product Identifier 2019–NM–071–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The

FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–12, dated April 3, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes.

This proposed AD was prompted by a report that during ALTS CAP or (V) ALTS CAP mode, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is proposing this AD to address the occurrence of an engine failure during or before a climb while in ALTS CAP or (V) ALTS CAP mode, as it could cause the airspeed to drop significantly below the safe operating speed and may require prompt flightcrew intervention to maintain a safe operating speed. See the MCAI for more information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which provides new warnings for ''Autoflight'' and ''Engine Failure in Climb During ALTS CAP,'' in the LIMITATIONS—System Limitations and the EMERGENCY PROCEDURES—Powerplant sections of the applicable AFM.

- Bombardier Challenger 300, Airplane Flight Manual, Publication No. CSP 100–1, Revision 55, dated April 8, 2019.
- Bombardier Challenger 350, Airplane Flight Manual, Publication No. CH 350 AFM, Revision 21, dated April 8, 2019.

These documents are distinct since they apply to different airplane models in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require revising the existing AFM with new warnings for ''Autoflight'' and ''Engine Failure in Climb During ALTS CAP,'' in the LIMITATIONS—System Limitations and the EMERGENCY PROCEDURES—Powerplant sections, as described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 252 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$21,420

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2019–0728; Product Identifier 2019–NM–071–AD.

(a) Comments Due Date

The FAA must receive comments by December 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20500 inclusive and 20501 through 20752 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Reason

This AD was prompted by a report that during ALTS CAP or (V) ALTS CAP mode, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is issuing this AD to address the occurrence of an engine failure during or before a climb while in ALTS CAP or (V) ALTS CAP mode, as it could cause the airspeed to drop significantly below the safe operating speed and may require prompt flightcrew intervention to maintain a safe operating speed.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the LIMITATIONS—System Limitations and the EMERGENCY PROCEDURES—Powerplant sections of the existing AFM to include the information in ''Autoflight'' and ''Engine Failure in Climb During ALTS CAP'' of Bombardier Challenger 300, Airplane Flight Manual, Publication No. CSP 100–1, Revision 55, dated April 8, 2019 (for airplanes having serial numbers 20003 through 20500 inclusive); or Bombardier Challenger 350, Airplane Flight Manual, Publication No. CH 350 AFM, Revision 21, dated April 8, 2019 (for airplanes having serial numbers 20501 through 20752 inclusive).

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–12, dated April 3, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0728.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7367; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free phone: 1–866–538–1247 or direct-dial phone: 1–514–855–2999; email: *ac.yul@aero.bombardier.com*; internet: *https://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on October 28, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24192 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0953]

RIN 1625–AA09

Drawbridge Operation Regulations; Lacombe Bayou, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Tammany Trace swing bridge across Lacombe Bayou, mile 5.2, at Lacombe, St. Tammany Parish, Louisiana. This action is necessary to effectively coordinate Tammany Trace trail operations and maintenance with drawbridge operations.

DATES: Comments and related material must be received by the Coast Guard on or before December 6, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0953 using Federal eRulemaking Portal at *http://www.regulations.gov*.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
STP St. Tammany Parish
Trace Tammany Trace
§ Section

II. Background, Purpose and Legal Basis

Saint Tammany Parish (STP) has requested to change the operating requirements for the Tammany Trace swing bridge across Lacombe Bayou, mile 5.2, at Lacombe, St. Tammany Parish, Louisiana. This bridge currently opens on signal according to 33 CFR 117.5. STP has requested to open the bridge if vessels provide 2 hours advance notification.

This bridge spans the Tammany Trace which is a park area that is used by pedestrians and bicyclists. The Trace is open from 7 a.m. to 7:30 p.m. daily. The bridge operates during Trace hours and is secured in the open to navigation position when the Trace is closed. This bridge has a vertical clearance of 9.7 feet above mean high water in the closed to vessel position and unlimited vertical clearance in the open to vessel traffic position. There are few vessel movements through this bridge. From 2015 through 2017 the bridge opened 197 times for vessel passage. This waterway is primarily used by recreational boaters in the Lacombe area and does not support commercial activity.

In addition to bridge operations, STP bridge tenders assist with Trace bike, pedestrian and equestrian operations and maintenance. This change would

allow the parish to coordinate and schedule Tammany Trace requirements and provide for the reasonable needs of navigation.

The Coast Guard is issuing this NPRM under authority 33 U.S.C. 499.

III. Discussion of Comments and Change

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the rule on the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian and recreational traffic in the overall public interest.

Based on the number of times that this bridge has opened for vessel traffic in three years, the Coast Guard proposes that it is reasonable for vessels to provide a 2 hour advance notice to open the drawbridge.

IV. Discussion of Proposed Rule

The Coast Guard has reviewed the data and information provided by STP and has determined that there should be no adverse impact on vessels ability to use Lacombe Bayou at the bridge location. There are no other proposed changes to the operating schedule. The regulatory text we are proposing appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the lack of commercial vessel traffic on this waterway, and the recreational boats that routinely transit the bridge under the proposed schedule. Those vessels with a vertical clearance requirement of less than 9.7 feet above mean high water may transit the bridge at any time, and the bridge will open in case of emergency at any time. This regulatory action takes into account the reasonable needs of vessel and vehicular traffic.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule

involves a change to the operating schedule of a drawbridge. It is categorically excluded from further review under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice*.

Documents mentioned in this SNPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.463 to read as follows:

§ 117.463 Lacombe Bayou

(a) The draw of the US190 bridge, mile 6.8 at Lacombe, shall open on signal if at least 48 hours notice is given.

(b) The draw of the Tammany Trace bridge, mile 5.2 at Lacombe, shall open on signal if at least 2 hours notice is given.

Dated: February 6, 2019.

Paul F. Thomas,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

Editorial Note: This document was submitted to the Office of the Federal Register on November 1, 2019.

[FR Doc. 2019–24238 Filed 11–5–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 70, and 71

[EPA–HQ–OAR–2006–0089; FRL–10001–61–OAR]

Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Corn Milling Facilities Under the ''Major Emitting Facility'' Definition; Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial grant and partial denial of a petition for reconsideration.

SUMMARY: On March 2, 2009, the Natural Resource Defense Council (NRDC) submitted a petition for reconsideration (the NRDC Petition) of the rule ''Prevention of Significant Deterioration, Nonattainment New Source Review and Title V: Treatment of Certain Ethanol Production Facilities Under the 'Major Emitting Facility' Definition'' (the Ethanol Rule), published in the **Federal Register** on May 1, 2007. The Ethanol Rule reinterpreted the component term ''chemical process plants'' within the statutory definition of ''major emitting facility'' and regulatory definitions of ''major stationary source'' under the Prevention of Significant Deterioration and Nonattainment New Source Review programs and ''major source'' under title V, to exclude all facilities that produce ethanol through a natural fermentation process. In response to the NRDC Petition, the Environmental Protection Agency (EPA) grants the request for reconsideration with regard to NRDC's claim that the Ethanol Rule did not appropriately address the Clean Air Act (CAA) anti-backsliding requirements for nonattainment areas in the Ethanol Rule. Therefore, the EPA is convening a proceeding for reconsideration as provided for under the CAA. In the near future, the EPA will publish a document in the **Federal Register** establishing a comment period and opportunity for a hearing for this proceeding. With regards to the other three claims raised in the NRDC Petition, the EPA denies the request for reconsideration. For these claims, NRDC has failed to establish that they meet the criteria for reconsideration under the CAA.

DATES: November 6, 2019.

ADDRESSES: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–03, Research Triangle Park, N.C. 27711,

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Mataway-Novak, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–03, Research Triangle Park, N.C. 27711, phone number (919) 541–5795 or by email at *mataway-novak.dylan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Where can I get copies of this document and other related information?

This **Federal Register** document, the petition for reconsideration, and the response letter to the petitioner are available in the docket that the EPA established for the Ethanol Rule under Docket ID NO. EPA–HQ–OAR–2006–0089. All documents in the docket are listed in the index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for

the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

II. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' In the Ethanol Rule, the EPA determined that the action was of nationwide scope and effect for the purposes of CAA section 307(b)(1). *See* 72 FR 24060, 24077 (May 1, 2007).

The EPA has determined that its actions denying the petitions for reconsideration also are of nationwide scope and effect because these actions directly relate to the Ethanol Rule that the EPA previously determined are of nationwide scope and effect. Thus, any petitions for review of the final letters denying the petitions for reconsideration must be filed in the Court of Appeals for the District of Columbia Circuit on or before January 6, 2020.

Dated: October 22, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–23711 Filed 11–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R04–OW–2019–0592; FRL–10001–81–Region 4]

Ocean Dumping: Cancellation of Final Designation for an Ocean Dredged Material Disposal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to cancel the final designation of an ocean dredged material disposal site (ODMDS) pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The ODMDS is in the Atlantic Ocean offshore Wilmington, North Carolina. This proposed action is being taken because this site has been replaced by another permanent site. In addition, the EPA proposes to rename the permanent site that exists for the Wilmington, North Carolina area.

DATES: Comments must be received by December 23, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OW–2019–0592, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments and accessing the docket and materials related to this proposed rule.
- *Email: collins.garyw@epa.gov.*
- *Mail:* Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303.

Instructions: Direct your comments to Docket ID No. EPA–R04–OW–2019–0592. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy during normal business hours from the regional library at the U.S. Environmental Protection Agency, Region 4 Library, 9th Floor, 61 Forsyth Street, Atlanta, Georgia 30303. For access to the documents at the Region 4 Library, contact the Region 4 Library Reference Desk at (404) 562–8190, between the hours of 9:00 a.m. to 12:00 p.m., and between the hours of 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562–9395; email: *collins.garyw@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this proposed action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Wilmington, North Carolina. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this proposed action. For any questions regarding the applicability of this proposed action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.,* gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed cancellation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that modifications in disposal site use which involve withdrawal of disposal sites from use will be made by promulgation in part 228. This site cancellation is being published as proposed rulemaking in accordance with § 228.11(a) of the Ocean Dumping Regulations, which permits the withdrawal of designated disposal sites from use based upon changed circumstances concerning use of the site.

III. Proposed Action

The proposed cancellation of the designation of this site is needed as a housekeeping measure. The ODMDS is no longer a suitable disposal option and has no foreseeable need. The Wilmington site has been replaced by a larger site due to changes in alignment of the Federal navigation channel, which now cuts through the original ODMDS. EPA also proposes to change the name of the New Wilmington ODMDS to the Wilmington ODMDS.

IV. Statutory and Executive Order Reviews

This proposed action complies with applicable executive orders and statutory provisions as follows:

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

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

b. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This proposed action does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities. After considering the economic impacts of this proposed rule, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

d. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

e. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It does 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. The EPA specifically solicits comment on this proposed action from State and local officials.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the proposed action will not have a direct effect on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comments on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law

104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed action is only cancelling the designation of an ODMDS which is no longer viable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This proposed action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: August 27, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

For the reasons set out in the preamble, the EPA proposes to amend chapter I, title 40 of the Code of **Federal Register** as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by removing and reserving paragraph (h)(2) and revising paragraph (h)(20) introductory text to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

* * * * *

[FR Doc. 2019–24066 Filed 11–5–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–300, and 60–741

RIN 1250–AA08

Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors: TRICARE and Certain Other Health Care Providers

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is proposing to amend its regulations pertaining to its authority over TRICARE health care providers. The proposed rule is intended to increase access to care for uniformed service members and veterans and to provide certainty for health care providers who serve beneficiaries of TRICARE. It is also believed that this proposed rule may result in cost savings to the health care system. In a reconsideration of its legal position, the proposed rule would provide that OFCCP lacks authority over Federal health care providers who participate in TRICARE. In the alternative, the proposed rule would establish a national interest exemption from Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 for health care providers with agreements to furnish medical services and supplies to individuals participating in TRICARE (in the alternative to a reconsideration of OFCCP's authority over such providers). OFCCP would nevertheless have authority over health care providers participating in TRICARE if they hold a separate covered Federal contract or subcontract. Likewise, health care providers would remain subject to all other Federal, state, and local laws prohibiting discrimination and providing for equal employment opportunity. OFCCP has determined that special circumstances in the national interest justify proposing the exemption as it would improve uniformed service members' and veterans' access to medical care, more efficiently allocate OFCCP's limited resources for enforcement activities, and provide greater uniformity, certainty, and notice for health care providers participating in TRICARE.

DATES: To be assured of consideration, comments must be received on or before December 6, 2019.

ADDRESSES: Comments may be submitted, identified by Regulatory Information Number (RIN) 1250–AA08, by one of the following methods:

- *Electronically:* The Federal eRulemaking portal at *http://www.regulations.gov*. Follow the instructions found on that website for submitting comments.
- *Mail, Hand Delivery, or Courier:* Addressed to 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.

Instructions: Please submit one copy of your comments by only one method. Due to security concerns, postal delivery in Washington, DC, may be delayed. For faster submission, we encourage commenters to transmit their comment electronically via the *http://www.regulations.gov* website. All submissions must include OFCCP's name for identification.

Comments, including any personal information provided, become a matter of public record and will be posted on *http://www.regulations.gov*. Do not include any personally identifiable or confidential business information that you do not want publicly disclosed.

The Department will also make all the comments it receives available for public inspection during normal business hours at OFCCP at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. To schedule an appointment to review the comments and/or to obtain this notice of proposed rulemaking in an alternate

format, please contact OFCCP at the telephone numbers or address listed below.

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) 693–0104 (voice) or (202) 693–1337 (TTY). Copies of this document may be obtained in alternative formats (large print, braille, audio recording) by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Federal law requires Government contractors [1] to refrain from discriminating on the basis of race, sex, and other grounds. Additionally, Government contractors must take affirmative action to ensure equal employment opportunity.[2] OFCCP, situated in the Department of Labor (Department), enforces these contracting requirements. OFCCP requires Government contractors to furnish information about their affirmative action programs (AAPs) and related employment records and data so OFCCP can ascertain compliance with the laws it enforces.[3]

OFCCP enforces three nondiscrimination and equal employment opportunity laws that apply to covered Federal contractors: Executive Order (E.O.) 11246, as amended,[4] Section 503 of the Rehabilitation Act of 1973, as amended (Section 503),[5] and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA).[6] In 1965, President Lyndon B. Johnson signed E.O. 11246, which (as amended) prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, and national origin, as well as discrimination against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations. Six years after President Johnson signed E.O. 11246, Congress added disability as a protected class through Section 503 of the Rehabilitation Act.[7] And in 1974, Congress also covered veterans through the Vietnam Era Veterans' Readjustment Assistance Act, which prohibits discrimination on the basis of veteran status. All three laws also require Federal contractors to take affirmative steps to ensure equal employment opportunity in their employment practices.

OFCCP has rulemaking authority under all three laws.[8] Additionally, OFCCP has authority to exempt a contract from E.O. 11246, VEVRAA, and Section 503 if the Director of OFCCP determines that special circumstances in the national interest require doing so.[9] OFCCP's regulations allow the Director to grant national interest exemptions to groups or categories of contracts where he finds it impracticable to act upon each request for an exemption individually or where the exemption will substantially contribute to convenience in the administration of the laws.[10] These categorical exemptions follow the principle that an agency, whenever permitted, need not ''continually . . . relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding'' that ''could invite favoritism, disunity, and inconsistency.'' [11] These long-standing regulatory provisions allowing for categorical national interest exemptions are owed deference.[12] The provision permitting categorical exemption from E.O. 11246 was part of the original notice-and-comment regulation that implemented the Order, and has been in place for over fifty years.[13] The provisions permitting categorical exemptions from VEVRAA and Section 503 are patterned similarly and have been in place for decades as well.[14] Additionally, E.O. 11246's predecessor, E.O. 10925, contained a similarly worded exemption provision which was implemented through a regulation providing a substantially similar categorical exemption.[15] OFCCP has granted categorical exemptions in the national interest in the past.[16] OFCCP also may exercise prosecutorial discretion in determining its enforcement priorities.[17] OFCCP proposes this rule pursuant to all these authorities.

II. Introduction

OFCCP is proposing a rule that would clarify the scope of OFCCP's authority [18] and, to dispel any legal uncertainty, also further the national interest by explicitly exempting certain health care providers from OFCCP's enforcement activities. Specifically, in the E.O. 11246, VEVRAA, and Section 503 regulations, OFCCP would revise its definition of ''subcontractor''—meaning subcontractors regulated by OFCCP—to exclude health care providers with agreements to furnish medical services and supplies to individuals participating in TRICARE.

OFCCP is concerned about differences in understanding among TRICARE health care providers regarding the scope of OFCCP's authority, and also about the potential that OFCCP's recent assertions of authority may be affecting

[1] As used in this preamble, the term *contractor* includes, unless otherwise indicated, Federal Government contractors and subcontractors. When used in reference to Executive Order 11246, it also includes federally assisted construction contractors and subcontractors.

[2] *See* E.O. 11246, section 202(1); 29 U.S.C. 793(a); 38 U.S.C. 4212(a)(1); 41 CFR 60–1.40, 60–2.1 through 60–2.17; *id.* §§ 60–300.40 through 60–300.45; id. §§ 60–741.40 through 60–741.47.

[3] E.O. 11246, section 202(6); 41 CFR 60–1.4(a)(6), 60–1.43; *id.* §§ 60–300.40(d), 60–300.81; *id.* §§ 60–741.40(d), 60–741.81; *see also Chrysler Corp.* v. *Brown,* 441 U.S. 281, 286 (1979).

[4] E.O. 11246, 30 FR 12319 (Sept. 24, 1965).

[5] 29 U.S.C. 793.

[6] 38 U.S.C. 4212.

[7] 29 U.S.C. 793(a).

[8] E.O. 11246, section 201; 38 U.S.C. 4212(a)(2); 29 U.S.C. 793(a); E.O. 11758, section 2; Sec'y Order 7–2009, 74 FR 58834 (Nov. 13, 2009).

[9] E.O. 11246, section 204; E.O. 11758 sections 2–3, as amended; 29 U.S.C. 793(c)(1); 41 CFR 60–300.4(b)(1). E.O. 11246 refers to an ''exemption'' while VEVRAA and Section 503 use the term ''waiver.'' This proposed rule uses the term ''exemption'' to refer to both.

[10] 41 CFR 60–1.5(b)(1), 60–300.4(b)(1), 60–741.4(b)(1).

[11] *Heckler* v. *Campbell,* 461 U.S. 458, 467 (1983); *see also Lopez* v. *Davis,* 531 U.S. 230, 243–44 (2001); *Am. Hosp. Ass'n* v. *NLRB,* 499 U.S. 606, 612 (1991) (''[E]ven if a statutory scheme requires individualized determinations, the decision maker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.'' (discussing *Campbell,* 461 U.S. at 467; *FPC* v. *Texaco, Inc.,* 377 U.S. 33, 41–44 (1964); *United States* v. *Storer Broad. Co.,* 351 U.S. 192, 205 (1956)).

[12] *Cf., e.g., United States* v. *Cleveland Indians Baseball Co.,* 532 U.S. 200, 220 (2001) (''We do not resist according such deference in reviewing an agency's steady interpretation of its own 61-year-old regulation implementing a 62-year-old statute. Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law.'') (quoting *Cottage Sav. Ass'n* v. *Commissioner,* 499 U.S. 554, 561 (1991))

[13] *See* 33 FR 7804, 7807 (May 28, 1968); *see also* 33 FR 3000, 3003 (Feb. 15, 1968) (notice of proposed rulemaking).

[14] *See* 39 FR 20566, 20568 (June 11, 1974); 41 FR 26386, 26387 (June 25, 1976).

[15] *See* E.O. 10925, section 303; 41 CFR 60–1.3(b)(1) (1962).

[16] *See* OFCCP, Hurricane Recovery National Interest Exemptions, *https://www.dol.gov/ofccp/hurricanerecovery.htm.*

[17] *See* 5 U.S.C. 701(a)(2); *Heckler* v. *Chaney,* 470 U.S. 821, 831 (1985); *Andrews* v. *Consol. Rail Corp.,* 831 F.2d 678, 687 (7th Cir. 1987); *Clementson* v. *Brock,* 806 F.2d 1402, 1404–05 (9th Cir. 1986); *Carroll* v. *Office of Fed. Contract Compliance Programs, U.S. Dep't of Labor,* 235 F. Supp. 3d 79, 84 (D.D.C. 2017).

[18] OFCCP often refers to the scope of its authority to enforce equal employment opportunity requirements as its *jurisdiction.* For this proposed rulemaking, OFCCP believes the word *authority* is more precise, since OFCCP does not have adjudicative power.

uniformed service members' and veterans' access to health care.[19] OFCCP has also recently established a moratorium on enforcing the affirmative action obligations for health care providers deemed to be putative TRICARE subcontractors. OFCCP is accordingly proposing these changes to provide greater clarity to, and solicit feedback from, health care providers and other stakeholders before the expiration of the moratorium on May 7, 2021. OFCCP has reexamined its position that health care providers participating in TRICARE are among those Congress intended to be regulated and, for the reasons discussed below, now believes they are not. Given the decade of confusion that has accompanied this question, OFCCP also believes that lasting certainty for the health care field and Government health care program serving current and retired members of the armed services and their families is highly desirable. Therefore, OFCCP is also proposing, in the alternative, an exemption for health care providers under TRICARE. OFCCP believes the exemption is justified by special circumstances in the national interest. The exemption is expected to improve uniformed service members' and veterans' access to medical care and more efficiently allocate OFCCP's limited resources for enforcement activities, and provide greater uniformity, certainty, and notice for health care providers participating in TRICARE. Whether under the rationale of a lack of authority or via an exemption from that authority, the change proposed to OFCCP's regulatory text is the same: A revision of OFCCP's definition of ''subcontractor'' (*i.e.,* subcontractors regulated by OFCCP) to exclude health care providers who only participate as providers in TRICARE.

The proposed rule is an E.O. 13771 deregulatory action because it is expected to reduce compliance costs and potentially the cost of litigation for regulated entities.

III. Administrative and Regulatory Background

A. Overview of OFCCP's Areas of Authority

E.O. 11246, VEVRAA, and Section 503 apply to entities holding covered Government contracts and subcontracts.[20] OFCCP has authority to enforce the requirements of these three laws and their implementing regulations. Contractors agree to those requirements in the equal opportunity clauses included in their contracts with the Federal Government, clauses which also require contractors to ''flow down'' these requirements to any subcontractors. The text of these clauses is set forth in E.O. 11246 section 202 and the implementing regulations for all three programs, and is also found in part 52 of title 48 of the Code of Federal Regulations, which contains the Federal Acquisition Regulation's standard contract clauses.[21] Federal law provides that these clauses ''shall be considered to be part of every contract and subcontract required by [law] to include such a clause.'' [22] This is true ''whether or not the [equal opportunity clause] is physically incorporated in such contracts.'' [23] Persons who have no contractual (or subcontractual) relationships with the Federal Government, however, have no obligation to adhere to OFCCP's substantive requirements.[24]

OFCCP's regulations define ''Government contract'' as any agreement or modification thereof between a department or agency of the Federal Government and any person for the purchase, sale or use of personal property or nonpersonal services.[25] Agreements pertaining to programs or activities receiving Federal financial assistance, however, are not considered covered contracts,[26] nor are other noncontract Government programs or activities. Federally assisted construction contracts, however, do come within OFCCP's authority under E.O. 11246.[27]

As defined in regulation, a covered ''contract'' includes a ''contract or a subcontract.'' [28] A prime contract is an agreement with the Federal Government agency itself. A ''subcontract'' is any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.[29]

Although, in general, organizations holding a contract or subcontract as defined are covered under E.O. 11246, Section 503, and VEVRAA, some exemptions apply. Contractors that only hold contracts below OFCCP's basic monetary thresholds are exempt.[30] Certain affirmative action requirements only apply depending on the type and dollar value of the contract held as well as the contractor's number of employees.[31] The regulations also exempt some categories of contracts under certain circumstances or for limited purposes, including those involving work performed outside the United States; certain contracts with state or local governments; contracts with religious corporations, associations, educational institutions or societies; educational institutions owned in whole or in part by a particular religion or religious organization; and contracts involving work on or near an Indian reservation.[32]

Additionally, as discussed earlier in this NPRM, OFCCP has authority to exempt entities and categories of entities from E.O. 11246, VEVRAA and Section 503 if the Director of OFCCP determines that special circumstances in the national interest require doing so.[33]

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[19] *See* OFCCP, Directive 2014–01, TRICARE Subcontractor Enforcement Activities (May 7, 2014); OFCCP, Directive 2018–02, TRICARE Subcontractor Enforcement Activities (May 18, 2018).

[20] *See* E.O. 11246, section 202; 29 U.S.C. 793(a); 38 U.S.C. 4212(a)(1).

[21] *See* 48 CFR 52.222–26, 52.222–35, 52.222–36.

[22] 41 CFR 60–14(e), 60–741.5(e), 60–250.5(e).

[23] *Id.*

[24] *See* 41 CFR 60–1.1 (''The regulations in this part apply to all contracting agencies of the Government and to contractors and subcontractors who perform under Government contracts, to the extent set forth in this part.''); *see also id.* §§ 60–300.1(b), 60–741.1(b).

[25] *Id.* §§ 60–1.3, 60–300.2(n), 60–741.2(k).

[26] *See id.* §§ 60–1.1, 60–300.1(b), 60–741.4(a). Programs and activities receiving Federal financial assistance must comply with various other nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, or national origin) and Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability).

[27] 41 CFR 60–1.1.

[28] *Id.* §§ 60–1.3, 60–300.2, 60–741.2.

[29] *Id.* §§ 60–1.3, 60–300.2(x), 60–741.2(x).

[30] *Id.* §§ 60–1.5(a)(1), 60–300.4(a)(1), 60–741.4(a)(1). E.O. 11246's basic obligations apply to businesses holding a Government contract in excess of $10,000, or Government contracts which have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds. Section 503 applies to Federal contractors and subcontractors with contracts in excess of $15,000. VEVRAA applies to Federal contractors and subcontractors with contracts of $150,000 or more. The coverage thresholds under Section 503 and VEVRAA increased from those listed in the statutes and OFCCP's regulations in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* 80 FR 38293 (July 2, 2015); 75 FR 53129 (Aug. 30, 2010).

[31] 41 CFR 60–1.40, 60–300.40, 60–741.40.

[32] *See id.* §§ 60–1.5, 60–300.4, 60–741.4.

[33] E.O. 11246, section 204; 29 U.S.C. 793(c)(1); 41 CFR 60–300.4(b)(1).

B. Overview of Prior Treatment of Health Care Providers Participating in TRICARE

OFCCP has routinely audited health care providers who are Government contractors, and it would continue to do so under this proposal.[34] Provided below is a brief overview of TRICARE and developments regarding OFCCP's interpretations and practice regarding its authority over health care providers participating in TRICARE.

1. TRICARE

TRICARE is the Federal health care program serving uniformed service members, retirees, and their families.[35] TRICARE is managed by the Defense Health Agency, which contracts with managed care support contractors to administer each TRICARE region. The managed care support contractors enter into agreements with individual and institutional health care providers in order to create provider networks for fee-for-service, preferred-provider, and health maintenance organization (HMO)-like programs. Fee-for-service plans reimburse beneficiaries or the health care provider for the cost of covered services. The TRICARE HMO-like program involves beneficiaries generally agreeing to use military treatment facilities and designated civilian providers and to follow certain managed care rules and procedures to obtain covered services.

2. OFCCP and Health Care Providers Participating in TRICARE

In 2007, OFCCP for the first time in litigation asserted enforcement authority over a health care provider based solely on the hospital's delivery of medical care to TRICARE beneficiaries. The provider in this case, a hospital in Florida, disagreed with OFCCP's view, and OFCCP initiated enforcement proceedings in 2008 under the caption *OFCCP* v. *Florida Hospital of Orlando*. In 2010, an administrative law judge (ALJ) found for the agency.[36]

In December 2010—soon after the ALJ's decision in *Florida Hospital*—OFCCP issued a new directive on health care providers that superseded previous directives.[37] Directive 293 asserted that OFCCP had authority over certain health care providers participating in TRICARE and other Government health care programs.

Congress responded the next year. The National Defense Authorization Act for Fiscal Year 2012 (NDAA) included a provision addressing the maintenance of the adequacy of provider networks under the TRICARE program and TRICARE health care providers as purported Government subcontractors. Sec. 715of the NDAA provided that, for the purpose of determining whether network providers under TRICARE provider network agreements are Government subcontractors, a TRICARE managed care support contract that includes the requirement to establish, manage, or maintain a network of providers may not be considered to be a contract for the performance of health care services or supplies on the basis of such requirement.[38] In April 2012, 16 months after it had been issued, OFCCP formally rescinded Directive 293.[39]

Meanwhile, the *Florida Hospital* litigation continued. Six months after OFCCP formally rescinded Directive 293, in October 2012, the Department's Administrative Review Board (ARB or Board) held that the NDAA's amendment to the TRICARE statute precluded OFCCP from asserting authority over the Florida hospital.[40] The Board dismissed OFCCP's administrative complaint against the hospital. Four of the five judges agreed that the hospital did not satisfy the second prong of OFCCP's regulatory definition of ''subcontract.'' Two judges, Judge Corchado and Judge Royce, would have found for the agency on the basis of the first prong of the regulatory definition of ''subcontract.'' [41]

The Board subsequently granted OFCCP's request for reconsideration. This time, a three-judge majority ruled for the agency. In July 2013, the Board concluded that the Florida hospital at issue satisfied the first prong of the agency's regulatory definition of ''subcontract.'' [42] The Department's ARB remanded to the ALJ, however, to determine whether TRICARE constituted Federal financial assistance outside OFCCP's jurisdiction. Judge Igasaki and Judge Edwards dissented on the basis of their original opinion in the Board's first decision. They concluded that ''the enactment of Section 715 of the NDAA removes OFCCP's jurisdiction under either Prong One or Prong Two based on the specific contract at issue in this case.'' [43]

While the remand of *Florida Hospital* was pending, Congress introduced legislation to exempt all health care providers from OFCCP's enforcement activities and held a hearing regarding OFCCP's enforcement activities.[44] The Secretary of Labor at the time, in a letter to the leaders of the House Committee on Education and the Workforce and the Subcommittee on Workforce Protection, stated that the leaders ''ha[d] made clear that, in [their] judgment, Congress intended to eliminate entirely OFCCP's jurisdiction over TRICARE subcontractors.'' [45] The Secretary's letter proposed that ''in lieu of legislative action,'' OFCCP would ''exercise prosecutorial discretion over the next five years to limit its enforcement activities with regard to TRICARE subcontractors.'' [46]

In May 2014, OFCCP issued Directive 2014–01, establishing a five-year moratorium on enforcement of affirmative action obligations for health care providers deemed to be TRICARE subcontractors.[47] OFCCP also administratively closed its open compliance reviews of contractors covered by the moratorium, which resulted in the dismissal of the *Florida Hospital* case.[48]

On May 18, 2018, OFCCP issued Directive 2018–02, a two-year extension of the previous moratorium.[49] Pursuant to this Directive, the moratorium will expire on May 7, 2021. OFCCP explained that it extended the moratorium out of concern that the approaching expiration of the moratorium and accompanying uncertainty over the applicability of the laws OFCCP enforces might contribute to the difficulties veterans and uniformed service members face when accessing health care. The Directive also explained that the extension would provide additional time to receive

[34] As noted throughout this proposal, health care providers who are prime government contractors, or who hold subcontracts apart from their provider relationship to a government health care program, included in this rule, would remain under OFCCP's authority.

[35] *See* 32 CFR 199.17(a).

[36] *OFCCP* v. *Fla. Hosp. of Orlando,* No. 2009–OFC–00002, 2010 WL 8453896 (ALJ Oct. 18, 2010).

[37] *See* OFCCP, Directive 293, Coverage of Health Care Providers and Insurers (Dec. 16, 2010) (rescinded Apr. 25, 2012).

[38] Public Law 112–81, section 715, 125 Stat. 1298, 1477 (2011), codified at 10 U.S.C. 1097b(a)(3).

[39] *See* Notice of Rescission No. 301 (Apr. 25, 2012).

[40] *OFCCP* v. *FLA. Hosp. of Orlando,* No. 11–011, 2012 WL 5391420 (ARB Oct. 19, 2012*).*

[41] Judge Brown concluded that the question about the first prong was not properly before the Board.

[42] *OFCCP* v. *Fla. Hosp. of Orlando,* No. 11–011, 2013 WL 3981196 (ARB July 22, 2013).

[43] *Id.* at *25 (Igasaki & Edwards, JJ., dissenting).

[44] H.R. 3633, Protecting Health Care Providers from Increased Administrative Burdens Act, Hearing Before the Subcomm. On Workforce Protections of the H. Comm. on Educ. & the Workforce, 113th Cong. (Mar. 13, 2014) [hereinafter ''2014 Hearing''].

[45] *Id.* at 3–5 (Sec'y of Labor Thomas E. Perez, Letter to Congressional Leaders, Mar. 11, 2014).

[46] *Id.* at 4.

[47] OFCCP, Directive 2014–01, TRICARE Subcontractor Enforcement Activities (May 7, 2014).

[48] *OFCCP* v. *Fla. Hosp. of Orlando,* No. 2009–OFC–00002 (ALJ Apr. 1, 2014).

[49] OFCCP, Directive 2018–02, TRICARE Subcontractor Enforcement Activities (May 18, 2018).

feedback from stakeholders. The Directive extended the scope of the moratorium to cover providers participating in the Department of Veterans Affairs' health benefits programs.[50]

IV. Proposal To Reconsider OFCCP's Authority Over TRICARE

Since bringing the *Florida Hospital* case over a decade ago, and as reiterated in its 2014 and 2018 moratoria, OFCCP has consistently held the position that it holds authority over TRICARE providers.[51] In preparing this proposed rulemaking, OFCCP has carefully examined the authorities it administers, its legal position as stated in litigation and repeated public statements and guidance, the decisions in *Florida Hospital,* and Congress's recent actions. OFCCP has concluded that its recent assertions of authority over TRICARE providers warrant reconsideration. For the reasons below, OFCCP now believes it does not have authority over these providers simply because these providers choose to participate in TRICARE.

When OFCCP issued Directive 293, asserting authority over these health care providers, Congress reacted quickly by enacting Section 715 of the 2012 NDAA. ''Where an agency's statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.'' *N. Haven Bd. of Ed.* v. *Bell,* 456 U.S. 512, 535 (1982) (internal quotation marks omitted). OFCCP's history in this area shows the opposite with regard to TRICARE providers.

Regarding section 715 itself, it was clearly intended, both by its text and by the surrounding context, to reverse OFCCP's assertion of authority over TRICARE providers. The section states, ''For the purpose of determining whether network providers''—*e.g.,* hospitals and physicians—''are subcontractors . . . , a TRICARE managed care support contract that includes the requirement to establish, manage, or maintain a network of providers may not be considered to be a contract for the performance of health care services on the basis of such requirement.'' The ARB held in *Florida Hospital* that it could nonetheless deem a health care provider a subcontractor where the TRICARE regional administrator could not ''fulfill its contract to create an integrated health delivery system without the services from network providers like Florida Hospital.'' [52] But, upon reconsideration, OFCCP now believes the dissenting opinion in *Florida Hospital* gave the better reading of the statute. The dissent explained that because the ''managed care prime contract . . . includes the requirement to maintain a network of providers, OFCCP's jurisdiction is removed. Under Section 715, the subcontract is no longer a 'subcontract' under [OFCCP's regulatory definition] because the element of the contract that is 'necessary to the performance of any one or more contracts' involves the provisions of health care network provider services to TRICARE beneficiaries.'' [53] The dissent's reading would prevent the statute from becoming a nullity—since the purpose of creating a provider network is to provide health care.

For this reason, after careful consideration, OFCCP has reconsidered its position and now believes it does not have jurisdiction over TRICARE providers.

V. Proposal To Establish a National Interest Exemption for Health Care Providers Participating in TRICARE

OFCCP believes that lasting certainty for TRICARE health care providers and patients is highly desirable. Therefore, OFCCP is also proposing, as an alternative, an exemption from E.O. 11246, Section 503, and VEVRAA for health care providers with agreements to furnish medical services and supplies to individuals participating in TRICARE. Nothing in the proposed action is intended to interfere with OFCCP's vital mission of enforcing equal employment opportunity in organizations that contract with the Government. OFCCP would retain authority over a health care provider participating in such a network or arrangement if the health care provider holds a separate covered Federal contract or subcontract. But as explained below, OFCCP believes that there are several reasons why special circumstances in the national interest warrant an exemption for TRICARE health care providers who do not hold such separate contracts.

First, OFCCP is concerned that the prospect of exercising authority over TRICARE providers is affecting or will affect the Government's ability to provide health care to uniformed service members, veterans, and their families. Congressional inquiries and testimony, as well as amicus filings in the *Florida Hospital* litigation, have brought to OFCCP's attention the risk that health care providers may be declining to participate in Federal health care programs that serve members of the military and veterans because of the presumed costs of compliance with OFCCP's regulations.[54] The former president of a TRICARE managed care support contractor testified that he feared they would lose smaller providers in their network because of the administrative costs and burdens associated with OFCCP's requirements, and he predicted that it would make it ''much more difficult to build and retain provider networks.'' [55] TRICARE managed care support contractors similarly stated in an amicus brief that subjecting TRICARE providers to OFCCP's requirements would ''make the already difficult task of finding health care professionals willing to act as network providers even more difficult.'' [56] A partner of a law firm testified that he has seen health care provider clients choose not to participate in TRICARE and in other programs because of the costs of compliance.[57] The American Hospital Association also testified that some hospitals may decline to participate out

[50] *Id.* at 1 n.1.

[51] *See, e.g.,* OFCCP, Frequently Asked Questions: TRICARE Subcontractor Enforcement Activities (Q. ''Our hospital participates in the Federal Employees Health Benefits Program, but not TRICARE. Are we covered by the Moratorium?'' A. ''No. If your hospital does not participate in TRICARE, it is not covered by the Moratorium.''), *https://www.dol.gov/ofccp/regs/compliance/faqs/tricare_faq.htm.*

[52] *Fla. Hosp.,* 2013 WL 3981196, at *19.

[53] *Id.* at *29.

[54] 2014 Hearing, *supra* note 44; Examining Recent Actions by the Office of Federal Contract Compliance Programs, Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Education and the Workforce, 113th Cong. (2013) [hereinafter 2013 Hearing]; Reviewing the Impact of the Office of Federal Contract Compliance Programs' Regulatory and Enforcement Actions, Hearing Before the Subcomm. on Health, Emp't, Labor & Pensions of the H. Comm. on Educ. & the Workforce, 112th Cong. (2012).

[55] 2014 Hearing, *supra* note 44, at 24–26, 46–47, 149 (Prepared Statement and Testimony of Thomas Carrato, President, Health Net Federal Services).

[56] Amicus Brief of Humana Military Health Services, Inc., Health Net Federal Services, LLC, and TriWest Healthcare Alliance dated May 2, 2012, at 9, *Fla. Hosp.*, 2013 WL 3981196; *see also* Amicus Brief of Human Military Health Services, Inc., Health Net Federal Services, LLC, and TriWest Healthcare Alliance dated December 29, 2010, at 2, *Fla. Hosp.,* 2013 WL 3981196 (''Subjecting the network providers to Federal Affirmative action requirements will make it more difficult for the [TRICARE managed care support] contractors to find and retain providers willing to sign network agreements due to the added compliance requirements.'').

[57] 2014 Hearing, *supra* note 44, at 34–35, 47 (Statement and Testimony of David Goldstein, Shareholder, Littler Mendelson P.C.).

of concern that they could be found to be Federal contractors.[58]

Providers' decisions not to participate may exacerbate the well-documented difficulties that uniformed service members, veterans, and their families have accessing health care.[59] The unique nature of the health care system heightens OFCCP's concern about the refusal of providers to participate in health care programs for uniformed service members and veterans. Creating adequate networks of providers is a critical component of ensuring access to health care. These networks need to offer comprehensive services and cover all geographical areas where beneficiaries reside. An inadequate network may mean that beneficiaries are unable to obtain urgent and life-saving treatment. The willingness of health care providers to participate in TRICARE is thus especially important.

OFCCP requests comments from stakeholders that will help it to more thoroughly evaluate the potential impact of OFCCP compliance on uniformed service members' and veterans' health care provider networks. Particularly, OFCCP seeks comments from health care providers regarding the impact of potential Federal subcontractor status on their decision to participate in health care programs for uniformed service members and veterans.

Second, OFCCP believes that an exemption is in the national interest because pursuing enforcement efforts against TRICARE providers is not the best use of its and providers' resources were it to, consistent with its public position until the issuance of this NPRM, attempt to exercise authority over those providers. Given the history in this area, such attempts—which would occur in the absence of this NPRM—could again meet with protracted litigation and unclear ultimate results: The *Florida Hospital* case proceeded for seven years and would have continued for some time into the future had it not been voluntarily dismissed. OFCCP believes its limited resources are better spent elsewhere, and it would be unreasonable to impose substantial compliance costs on health care providers when the legal justification for doing so would be open to challenge in light of the language in the NDAA and the question left unresolved in *Florida Hospital* as to whether TRICARE constitutes Federal financial assistance.

Third, OFCCP believes an exemption would be in the national interest because it would provide uniformity and certainty in the health care community with regard to legal obligations concerning participation in TRICARE. OFCCP conducts a case-by-case inquiry as to whether a particular entity is a covered subcontractor. The proposed exemption would dispense with an agreement-by-agreement analysis and the attendant uncertainty, legal costs, and litigation risk. Providers could choose to furnish medical services to beneficiaries of different types of TRICARE programs without hiring costly lawyers and performing time-intensive contract analysis to determine, as best they can, whether they are a subcontractor or simply a provider.

This exception would also harmonize OFCCP's approach with that of the Department of Defense. OFCCP is the office charged with administering and enforcing its authorities, but comity between agencies is desirable whenever possible, reduces confusion for the public, and helps ensure evenhanded and efficient administration of the law. The Department of Defense stated in the *Florida Hospital* litigation that ''it would be impossible to achieve the TRICARE mission of providing affordable health care for our nation's active duty and retired military members and their families'' if all TRICARE providers were subject to OFCCP's requirements.[60] The Department of Defense also classifies TRICARE as Federal financial assistance in DoD Directive 1020.1.[61] A unified approach should reduce confusion for the public and assist coordination in regulating Government contracts in the health care field.[62]

As noted earlier, of course, the uniformed service members and veterans' health care providers discussed here would still be subject to OFCCP's authority if they are prime contractors or have a covered subcontract with a Government contractor. For example, a teaching hospital that participates as a TRICARE provider but that also has a research contract with the Federal Government would still be considered a covered contractor subject to OFCCP authority.

For all of these reasons, the Director of OFCCP has determined that the proposed exemption would be justified by special circumstances in the national interest because it would increase access to care for uniformed service members and veterans and allow OFCCP to better allocate its resources, and provide uniformity and certainty for the Government and for health care providers. The Director of OFCCP is also proposing that the requirements would be met for granting an exemption to a group or category of contracts. Since there are tens of thousands of providers that may be eligible for the exemption, it would be impracticable for OFCCP to act upon each provider's request individually and issuing a group exemption would substantially contribute to convenience in the administration of the laws.[63] OFCCP requests comments from stakeholders on the proposed exemption.

OFCCP is also considering and requests comments on whether health care providers participating in the Federal Employees Health Benefits Program (FEHBP)[64] should not be covered by OFCCP's authority. OFCCP is interested in comments from stakeholders and health care providers that participate in other Government health care programs, such as FEHBP, about the impact of OFCCP's requirements, if there is difficulty attracting and retaining participating providers, and whether a uniform rule

[58] *Id.* at 17–18 (Prepared Statement of the American Hospital Association); 2013 Hearing, supra note 54, at 139 (Testimony of Curt Kirschner, Partner, Jones Day, on behalf of the American Hospital Association).

[59] *See, e.g.,* Government Accountability Office Report, GAO–18–361, TRICARE Surveys Indicate Nonenrolled Beneficiaries' Access to Care Has Generally Improved (Mar. 2018), *available at https://www.gao.gov/assets/700/690964.pdf.* The GAO found that, although there has been a slight improvement in TRICARE beneficiaries' access to care, 29 percent of nonenrolled beneficiaries still reported that they experienced problems finding a civilian provider. Nonenrolled beneficiaries are those that have not enrolled in TRICARE Prime, which is a managed care option that that mostly relies on military hospitals and clinics to provide care.

[60] *OFCCP* v. *Fla. Hosp. of Orlando,* No. 2009–OFC–002, 2010 WL 8453896, at *2 (ALJ Oct. 18, 2010).

[61] *See* Dep't of Defense, Directive 1020.1, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense, ¶ E1.1.2.21 (Mar. 31, 1982).

[62] Note that this regulation would not affect health care entities' obligations under Title VII of the Civil Rights Act or other civil rights laws enforced by other agencies.

[63] 41 CFR 60–1.5(b)(1), 60–300.4(b)(1), 60–741.4(b)(1).

[64] FEHBP is the Federal health care program serving civilian Federal employees, annuitants, and their dependents. 5 U.S.C. 8901 *et seq.* The program is administered by the U.S. Office of Personnel Management. FEHBP offers two general types of plans: Fee-for-service plans and HMO plans. The Department's Administrative Review Board held OFCCP did not have authority over a health care provider based on a reimbursement agreement with a health insurance carrier offering a fee-for-service FEHBP plan, but did have authority over a health care provider's agreement to provide services pursuant to a FEHBP HMO plan. *See OFCCP* v. *UPMC Braddock,* No. 08–048, 2009 WL 1542298 (ARB May 29, 2009), *aff'd, UPMC Braddock* v. *Harris,* 934 F. Supp. 2d 238 (D.D.C. 2013), *vacated as moot, UPMC Braddock* v. *Perez,* 584 F. App'x 1 (D.C. Cir. 2014); *In re Bridgeport Hosp.,* No. 00–023, 2003 WL 244810 (ARB Jan. 31, 2003).

is needed to avoid legal uncertainty. Some stakeholders have indicated that other Government health care programs may face difficulties similar to TRICARE.[65]

VI. Section-by-Section Analysis

Section 60–1.3 Definitions

OFCCP proposes adding a paragraph to the definition of subcontract in the E.O. 11246 regulations noting that a subcontract does not include an agreement between a health care provider and health organization pursuant to which the health care provider agrees to furnish health care services or supplies to beneficiaries of TRICARE. OFCCP also proposes adding definitions of ''agreement,'' ''health care provider,'' and ''health organization.''

Section 60–300.2 Definitions

OFCCP proposes adding a paragraph to the definition of subcontract in the VEVRAA regulations noting that a subcontract does not include an agreement between a health care provider and health organization pursuant to which the health care provider agrees to furnish health care services or supplies to beneficiaries of TRICARE. OFCCP also proposes adding definitions of ''agreement,'' ''health care provider,'' and ''health organization.''

Section 60–741.2 Definitions

OFCCP proposes adding a paragraph to the definition of subcontract in the Section 503 regulations noting that a subcontract does not include an agreement between a health care provider and health organization pursuant to which the health care provider agrees to furnish health care services or supplies to beneficiaries of TRICARE. OFCCP also proposes adding definitions of ''agreement,'' ''health care provider,'' and ''health organization.''

[65] 2014 Hearing, *supra* note 44, at 17–18 (Prepared Statement of the American Hospital Association), 25–26, 46–47 (Prepared Statement and Testimony of Thomas Carrato, President, Health Net Federal Services), 34–35, 39–40 (Statement and Testimony of David Goldstein, Shareholder, Littler Mendelson P.C.); 2013 Hearing, *supra* note 54, at 67–68, 139 (Statement and Testimony of Curt Kirschner, Partner, Jones Day, on behalf of the American Hospital Association).

VII. Regulatory Analysis

E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

Under E.O. 12866, the U.S. Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of E.O. 12866 and OMB review. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. The Office of Management and Budget has determined that this proposed rule is a significant action under E.O. 12866 and has reviewed the proposed rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This proposed rule is expected to be an E.O. 13771 deregulatory action.

The Need for the Regulation

The proposed regulatory changes are needed to provide clarity regarding OFCCP's authority over health care providers that provide services and supplies under TRICARE, improve uniformed service members' and veterans' access to medical care, more efficiently allocate OFCCP's limited resources for enforcement activities, and provide greater uniformity, certainty, and notice for health care providers participating in TRICARE. The proposed rule is intended to address concerns regarding the risk that health care providers may be declining to participate in TRICARE, which reduces the availability of medical services for uniformed service members, veterans, and their families. OFCCP is proposing to exempt health care providers with agreements to furnish medical services and supplies to individuals participating in TRICARE from E.O. 11246, Section 503, and VEVRAA.

Discussion of Impacts

In this section, the Department presents a summary of the costs and savings associated with the changes proposed in this notice of proposed rulemaking. The estimated labor cost to contractors is reflected in Table 1, below. The mean hourly wage of Management Analysts (SOC 13–1111) is $45.38 and Human Resources Managers (SOC 11–3121) is $60.91.[66] The Department adjusted these wage rates to reflect fringe benefits such as health insurance and retirement benefits, as well as overhead costs such as rent, utilities, and office equipment. The Department used a fringe benefits rate of 46 percent[67] and an overhead rate of 17 percent,[68] resulting in fully loaded hourly compensation rates for Management Analysts of $73.97 ($45.38 + ($45.38 × 46%) + ($45.38 × 17%)) and Human Resources Managers of $99.28 ($60.91 + ($60.91 × 46%) + ($60.91 × 17%)).

[66] BLS, Occupational Employment Statistics, Occupational Employment and Wages, May 2018, *https://www.bls.gov/oes/current/oes_nat.htm.*

[67] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $24.86 per hour worked in 2018, while benefit costs averaged $11.52, which is a benefits rate of 46%.

[68] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' (June 10, 2002), *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

TABLE 1—LABOR COST

Major occupational groups	Mean hourly wage	Fringe benefit rate	Overhead rate	Fully loaded hourly compensation
Management Analysts	$45.38	46%	17%	$73.97
Human Resources Managers	$60.91	46%	17%	$99.28

The Department estimates that 48 percent of the burden hours will be associated with Management Analysts and 52 percent for Human Resources Managers. Thus, the average hourly rate is estimated at $87.13 per hour (($73.97 × .48) + (99.28 × .52)).

Cost of Regulatory Familiarization

The Department acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. To minimize the burden, OFCCP will publish compliance assistance materials including, fact sheets and responses to ''Frequently Asked Questions.'' OFCCP may also host webinars for the contractor community that will describe the new requirements and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the requirements.

The Department believes that human resource personnel (human resource managers and management analysts) at each health care contractor establishment or firm within its authority will be responsible for understanding or becoming familiar with the new requirements. Therefore, the Department estimates that it will take a minimum of 30 minutes for a human resource professional at each TRICARE contractor establishment to either read the proposed rule, read the compliance assistance materials provided by OFCCP, or participate in an OFCCP webinar to learn more about the new requirements. Consequently, the estimated burden for rule familiarization is 42,309 hours (84,617 establishments × ½ hour).[69] The Department calculates the total estimated cost of rule familiarization as $3,686,383 (42,309 hours × $87.13/hour) in the first year. The Department seeks public comments regarding the estimated number of establishments that would review this rule, the estimated time to review the rule, and whether management analysts and human resource managers would be the most likely staff members to review the rule. Table 2, below, reflects the estimated regulatory familiarization costs for the proposed rule.

TABLE 2—REGULATORY FAMILIARIZATION COST

Total number of health care contractor establishments	84,617.
Time to review rule	30 minutes.
Management Analysts and Human Resources Managers fully loaded hourly compensation (weighted 52 percent and 48 percent, respectively).	$87.13.
Regulatory familiarization cost in the first year	$3,686,383.

Cost Savings

While the proposed rule does not include any additional costs, it may result in cost savings as it reconsiders OFCCP's authority over health care providers with agreements to furnish medical services and supplies to individuals participating in TRICARE, and in the alternative, proposes a national interest exemption from E.O. 11246, VEVRAA, and Section 503 for these health care providers, thus eliminating any requirements associated with developing, updating, and maintaining AAPs.

To fully estimate the associated cost savings, the Department could use various data and information, only some of which are currently available. The partial analysis that follows sets forth relevant evidence and other helpful data that could be used to produce a more robust cost savings estimate to be used in the final rule.

To estimate the number of Federal contractors potentially impacted by the proposed rule, the Department identified the number of health care providers participating in TRICARE.[70] The Department further refined this universe to those entities with 50 or more employees, since the greatest burdens associated with the E.O. 11246, VEVRAA, and Section 503 requirements are associated with developing, updating, and maintaining AAPs.[71] The Department then determined the rate of compliance using OFCCP's compliance evaluation data from Fiscal Years 2012 through June 2019. The data showed that approximately 95 percent of health care providers scheduled for an OFCCP compliance evaluation during that period submitted their AAPs when requested and the remaining 5 percent submitted their AAPs after receiving a show cause notice. The scheduled health care providers included contractors ranging from 50 to more than 501 employees.

The Department identified the number of health care providers in the U.S. Census Bureau's Statistics of U.S. Businesses, using North American Industry Classification System (NAICS) 621, 622, and 623. There are 707,634 health care providers of which 28.3 percent or 200,260 have 50 or more employees.[72]

[69] The determination of the estimated number of health care contractor establishments is discussed under Cost Savings, below.

[70] OFCCP considered using its most recent EEO–1 numbers to conduct this analysis, but the reporting requirements are limited to prime contractors and first tier subcontractors. However, OFCCP's universe includes all tiers of subcontractors that meet the jurisdictional thresholds. Using EEO–1 data would underestimate the impact of the proposed rule. Thus, OFCCP relied upon the analysis described herein.

[71] The requirement to develop AAPs is based on employing 50 or more employees and having a contract that meets specific thresholds. OFCCP does not have information regarding the value of the contracts or financial agreements. Thus, the estimated number of establishments may be overstated as it may include establishments that have contracts of less than $50,000 (E.O. 11246 and section 503) or have contracts of less than $150,000 (VEVRAA).

[72] Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016, *https://www2.census.gov/*

Continued

The Department of Defense annual report to Congress reported that there were 155,500 TRICARE Primary Care Network Providers and 143,500 TRICARE Specialist Network Providers in FY2018.[73] The Department estimates that 28.3 percent of these providers have 50 or more employees. The Department believes that 84,617 providers ((155,500 + 143,500) × 28.3%)) are potentially impacted by the proposed rule.

Calculating cost savings is made more difficult because the savings may depend on whether the health care provider is still obligated to maintain an AAP under other contracts. Such obligations may come from many additional sources. For example, if the providers would qualify as Federal contractors due to activities outside what is covered by this proposed rule; or if they contract with states that mandate AAPs for certain employers.[74] Therefore, the estimate of affected TRICARE providers may overstate the number of entities that would actually realize cost savings as a result of this proposed rule. The Department requests comments that may assist refinement of the analysis, including: How often are health care providers subject to AAP rules imposed by states, and how similar are the state-level requirements to the provisions being rescinded by this proposed rule?

The rule proposes to amend § 60–1.3 to note that a subcontract does not include an agreement between a health care provider and a health organization pursuant to which the health care provider agrees to furnish services to beneficiaries of TRICARE. The clarification and amendment would result in a cost savings, as some affected contractors would no longer be required to comply with E.O. 11246 requirements and to engage in such activities as creating, updating, or maintaining AAPs or providing notifications to employees, subcontractors, or unions. The Department's current OMB approved Information Collection Request (ICR) for its supply and service program (1250–0003), ICR Reference No: 201811–1250–001, estimates an average of 91.44 hours per contractor to comply with the E.O. 11246 requirements.

The rule proposes to amend § 60–300.2 to note that a subcontract does not include an agreement between a health care provider and a health organization pursuant to which the health care provider agrees to furnish services to beneficiaries of TRICARE. The clarification and amendment would result in a cost savings, as some affected contractors would no longer be required to comply with VEVRAA requirements and to engage in such activities as creating, updating, or maintaining AAPs, listing job opportunity notices with the local or state employment service delivery systems, or providing notifications to employees, subcontractors, or unions. The Department's current OMB approved ICR for its VEVRAA requirements (1250–0004), ICR Reference No: 201610–1250–001, estimates an average of 16.86 hours per contractor to comply with the VEVRAA requirements.

The rule also proposes to amend § 60–741.2 to note that a subcontract does not include an agreement between a health care provider and a health organization pursuant to which the health care provider agrees to furnish services to beneficiaries of TRICARE. The clarification and amendment would result in a cost savings, as some affected contractors would no longer be required to comply with Section 503 requirements and to engage in such activities as creating, updating, or maintaining AAPs, or providing notifications to employees, subcontractors, or unions. OFCCP's current OMB approved ICR for its Section 503 requirements (1250–0005), ICR Reference No: 201610–1250–002, estimates an average of 7.92 hours per contractor to comply with the Section 503 requirements.

Summary of Costs and Cost Savings

The Department estimates the annualized costs of the proposed rule for rule familiarization at $419,569 at a discount rate of 3 percent or $490,522 at a discount rate of 7 percent.

The Department invites comments regarding the assumptions, data sources, and methodologies used to estimate the impacts of this proposed rule. Additionally, the Department solicits comments from health care providers on their current costs of compliance that would be mitigated by this rulemaking. Finally, the Department requests comments on any available data that would indicate the extent to which health care providers, who are not otherwise required due to separate Federal contracts or subcontracts, have an expectation of compliance or have complied with current requirements.

Summary of Transfer and Benefits

E.O. 13563 recognizes that some rules have benefits that are difficult to quantify or monetize but are nevertheless important, and states that agencies may consider such benefits. This rule has equity and fairness benefits, which are explicitly recognized in E.O. 13563.

The proposed rule is designed to achieve these benefits by providing clear guidance to contractors, and increasing contractor understanding of OFCCP's authority as it relates to heath care providers. If the proposed rule decreases the confusion of Federal contractors, this impact most likely represents a transfer of value to taxpayers (if contractor fees decrease because they do not need to engage third party representatives to interpret OFCCP's requirements).

Alternative Discussion

In proposing this rule, the Department considered a non-regulatory alternative. This alternative was to continue issuing moratoria or other sub regulatory guidance in which OFCCP would exercise enforcement discretion and not schedule compliance evaluations of certain health care providers. The Department rejected this alternative, as it would result in much greater uncertainty among the regulated entities. The Department requests comments on any regulatory alternatives it might consider.

Regulatory Flexibility Act and E.O. 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations and governmental jurisdictions subject to regulation.'' Public Law 96–354. The Act requires the consideration for the impact of a proposed regulation on a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities.[75] If the determination is that it would, then the agency must prepare a regulatory flexibility analysis as described in the RFA.[76]

programs-surveys/susb/tables/2016/us_6digitnaics_2016.xlsx?# (last accessed February 24, 2019).

[73] Evaluation of TRICARE Programs, Fiscal Year 2019, Report to Congress, *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Health-Care-Program-Evaluation/Annual-Evaluation-of-the-TRICARE-Program* (last accessed September 17, 2019).

[74] *https://ballotpedia.org/Federal_and_state_affirmative_action_and_anti-discrimination_laws.*

[75] *See* 5 U.S.C. 603.

[76] *Id.*

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear. The Department does not expect this rule to have a significant economic impact on a substantial number of small entities. The annualized cost at a discount rate of 7 percent for rule familiarization is $5.80 per entity ($43.57 in the first year) which is far less than 1 percent of the annual revenue of the smallest of the small entities affected by this proposed rule. Therefore, the Department certifies that this proposed rule will not have a significant impact on a substantial number of small affected entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.5(b)(2)(vi)), an agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number. The Department has determined that there is no new requirement for information collection associated with this proposed rule. The information collection requirements contained in the existing E.O. 11246, VEVRAA and Section 503 regulations are currently approved under OMB Control No. 1250–0003 (OFCCP Recordkeeping and Reporting Requirements—Supply and Service), OMB Control No. 1250–0004 (OFCCP Recordkeeping and Reporting Requirements—38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended), and OMB Control No. 1250–0005 (OFCCP Recordkeeping and Reporting Requirements—Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 703). Consequently, this proposed rule does not require review by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

E.O. 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with E.O. 13132 regarding federalism, and has determined that it does not have ''federalism implications''. This rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

E.O. 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 13175 that requires a tribal summary impact statement. The proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects

41 CFR Part 60–1

Administrative practice and procedure, Equal employment opportunity, Government contracts, Reporting and recordkeeping requirements.

41 CFR Part 60–300

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Veterans.

41 CFR Part 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

Craig E. Leen,

Director, Office of Federal Contract Compliance Programs.

For the reasons set forth in the preamble, OFCCP proposes to amend 41 CFR parts 60–1, 60–300, and 60–741 as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

■ 2. In § 60–1.3, revise the definition of ''Subcontract'' to read as follows:

§ 60–1.3 Definitions.

* * * * *

Subcontract. (1) Means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(i) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(ii) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed; and

(2) Does not include an agreement between a health care provider and a health organization under which the health care provider agrees to provide health care services or supplies to natural persons who are beneficiaries under TRICARE.

(i) An agreement means a relationship between a health care provider and a health organization under which the health care provider agrees to provide health care services or supplies to natural persons who are beneficiaries under TRICARE.

(ii) A health care provider is a physician, hospital, or other individual or entity that furnishes health care services or supplies.

(iii) A health organization is a voluntary association, corporation, partnership, managed care support contractor, or other nongovernmental organization that is lawfully engaged in providing, paying for, insuring, or reimbursing the cost of health care services or supplies under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, network agreements, health benefits plans duly sponsored or underwritten by an employee organization or association of organizations and health maintenance organizations, or other similar arrangements, in consideration of premiums or other periodic charges or payments payable to the health organization.

* * * * *

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

■ 3. The authority citation for part 60–300 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

■ 4. In § 60–300.2, revise paragraph (x) to read as follows:

§ 60–300.2 Definitions.

* * * * *

(x) *Subcontract.* (1) Means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(i) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(ii) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed; and

(2) Does not include an agreement between a health care provider and a health organization under which the health care provider agrees to provide health care services or supplies to natural persons who are beneficiaries under TRICARE.

(i) An agreement means a relationship between a health care provider and a health organization under which the health care provider agrees to provide health care services or supplies to natural persons who are beneficiaries under TRICARE.

(ii) A health care provider is a physician, hospital, or other individual or entity that furnishes health care services or supplies.

(iii) A health organization is a voluntary association, corporation, partnership, managed care support contractor, or other nongovernmental organization that is lawfully engaged in providing, paying for, insuring, or reimbursing the cost of health care services or supplies under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, network agreements, health benefits plans duly sponsored or underwritten by an employee organization or association of organizations and health maintenance organizations, or other similar arrangements, in consideration of premiums or other periodic charges or payments payable to the health organization.

* * * * *

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

■ 5. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

■ 6. In § 60–741.2, revise paragraph (x) to read as follows:

§ 60–741.2 Definitions.

* * * * *

(x) *Subcontract.* (1) Means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(i) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(ii) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed; and

(2) Does not include an agreement between a health care provider and a health organization under which the health care provider agrees to provide health care services or supplies to natural persons who are beneficiaries under TRICARE.

(i) An agreement means a relationship between a health care provider and a health organization under which the health care provider agrees to provide health care services or supplies to natural persons who are beneficiaries under TRICARE.

(ii) A health care provider is a physician, hospital, or other individual or entity that furnishes health care services or supplies.

(iii) A health organization is a voluntary association, corporation, partnership, managed care support contractor, or other nongovernmental organization that is lawfully engaged in providing, paying for, insuring, or reimbursing the cost of health care services or supplies under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, network agreements, health benefits plans duly sponsored or underwritten by an employee organization or association of organizations and health maintenance organizations, or other similar arrangements, in consideration of premiums or other periodic charges or payments payable to the health organization.

* * * * *

[FR Doc. 2019–23700 Filed 11–5–19; 8:45 am]

BILLING CODE 4510–45–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 19–282 and 17–105; FCC 19–106]

In the Matter of Use of Common Antenna Site, Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether it should eliminate or revise the requirements, in the Commission's rules, regarding access to FM and TV broadcast antenna sites. These rules prohibit the grant, or renewal, of a license for an FM or TV station if that applicant or licensee controls an antenna site that is peculiarly suitable for broadcasting in the area and does not make the site available for use by other similar licensees. The Commission seeks comment on whether these requirements, which are rarely invoked, are outdated and unnecessary in light of the significant changes in the broadcast marketplace, including significant growth in the availability of broadcast infrastructure that has occurred since these restrictions were first adopted nearly 75 years ago. With this proceeding, the Commission continues its efforts to modernize our rules and eliminate or modify outdated and unnecessary regulations.

DATES: Comments may be filed on or before December 6, 2019, and reply comments may be filed December 23, 2019.

ADDRESSES: Interested parties may submit comments and reply comments, identified by MB Docket Nos. 19–282 and 17–105, by any of the following methods:

▪ *Federal Communications Commission's Website: http://*

apps.fcc.gov/ecfs/. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, Policy Division, 202–418–2154, or email at *kim.matthews@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 19–106, adopted and released on October 25, 2019. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this *NPRM,* we seek comment on whether we should eliminate or revise the requirements, in sections 73.239 and 73.635 of the Commission's rules, regarding access to FM and TV broadcast antenna sites. As described in more detail below, these rules prohibit the grant, or renewal, of a license for an FM or TV station if that applicant or licensee controls an antenna site that is peculiarly suitable for broadcasting in the area and does not make the site available for use by other similar licensees. We seek comment on whether these requirements, which are rarely invoked, are outdated and unnecessary in light of the significant changes in the broadcast marketplace, including significant growth in the availability of broadcast infrastructure that has occurred since these restrictions were first adopted nearly 75 years ago. With this proceeding, we continue our efforts to modernize our rules and eliminate or modify outdated and unnecessary regulations.

I. Background

2. The earliest rules on record adopted by the Federal Communications Commission (Commission) regarding the use of common FM and TV antenna sites date from 1945. These rules provide that no FM or TV broadcast license, or license renewal, ''will be granted to any person who owns, leases, or controls a particular site which is peculiarly suitable'' for FM or TV broadcasting in a particular area, unless the site is available for use by other FM or TV licensees or there is another comparable site available in the area, and ''where the exclusive use of such site by the applicant or licensee would unduly limit the number of'' FM or TV stations that can be authorized in a particular area or would ''unduly restrict competition among'' FM or TV stations. Section 73.239 applies to commercial full power FM radio stations, and section 73.635 applies to full power commercial and noncommercial TV stations and Class A TV stations. Notably, the AM and noncommercial educational FM radio rules do not contain a provision comparable to sections 73.239 and 73.635 governing common use of AM antenna sites.

3. At the time the rules were adopted, FM and television broadcasting were still in their infancy, and the infrastructure available to broadcast a signal over the air was sparse. Towers used by AM radio stations, the first broadcasting service, were generally incompatible with use by FM radio or television antennas. While the reason underlying the initial adoption of common antenna site requirements is unclear, they were adopted at a time when shortages of equipment and materials needed for broadcasting were a serious impediment to the introduction of new broadcast services. In the 1940s, the Commission also became concerned about the effect of ownership concentration and certain anticompetitive broadcast network practices on competition and diversity in the nascent broadcast industry. The language of the rules themselves, which has remained unchanged since 1945, suggests that the Commission at that time was concerned that exclusive use of an antenna site could unduly restrict the number of FM and TV stations in a particular area or otherwise impede competition among stations.

4. In addition, it appears that the Commission may have intended to ensure that a renewal applicant or licensee that owns or controls a desirable antenna site make it available to other licensees on reasonable terms. In its order proposing adoption of the common antenna site rule for FM stations, the Commission noted that, when there is an antenna site in a particular area and ''there is no other comparable site available in the area, [a] licensee or applicant as a condition of being issued a license or renewal of license shall be required to make the use of his antenna site available to other FM licensees upon the payment of a reasonable rental and upon a showing that the shared use of the antenna site will permit satisfactory operation of all stations concerned.'' With respect to section 73.635, the Commission has noted that the common TV antenna rule ''makes clear that its purpose is to remove unnecessary impediments to competition, ensuring that the public will have access to a variety of different broadcast sources.''

5. Needless to say, the broadcast marketplace has evolved substantially since the antenna site sharing rules were adopted. In 1945, there were 46 licensed FM broadcast stations; today, there are 6,726 FM commercial stations and 4,179 FM educational stations. The terrestrial radio broadcast market today also includes 4,610 a.m. stations, 2,178 low power FM (LPFM) stations, and over 8,000 FM translator and booster stations that retransmit and extend the signal of a parent FM station. The TV marketplace similarly has expanded greatly since the rule regarding antenna sites was first adopted. In 1945, there were nine television stations; today, there are 1,757 commercial and noncommercial educational full power television stations, 387 Class A television stations, almost 1,900 low power television (LPTV) stations, and more than 3,600 TV translator stations that retransmit the signal of a parent TV station.

6. The dramatic increase in the number of television and radio stations since 1945 has contributed to a corresponding increase in the number of antenna sites suitable for broadcasting. While some communications towers are owned and operated by FM and TV broadcasters, the vast majority appear to be owned by non-broadcast entities,

including companies specializing in tower leasing such as American Tower, Crown Castle, InSite Wireless Group, and Vertical Bridge. Thus, while it appears that broadcasters were more likely to have owned their towers in 1945, this is less the case today, and there is now widespread availability of tower capacity from a variety of tower companies. Moreover, many antenna sites are available for lease and shared use by broadcasters and wireless carriers, thereby helping broadcaster tower tenants and other entities to avoid the capital investment, environmental, zoning and other concerns involved in building new communications towers. The trend toward co-location of communications towers on antenna farms has also reduced the cost and other barriers to entry associated with the need to build new transmission facilities. In addition, the development of broadband antennas now permits multiple FM and TV stations in a market to share an antenna, thereby reducing the cost of antenna and tower facilities for the sharing stations and permitting towers with broadband antennas to accommodate more individual FM and TV tower tenants.

II. Discussion

7. We invite comment on whether we should eliminate or revise sections 73.239 and 73.635 of our rules. In particular, we invite comment on whether the requirements regarding the use of common FM and TV antenna sites continue to serve the public interest in light of the vast changes in the broadcasting marketplace and infrastructure since they were first adopted nearly 75 years ago. For example, to what extent do FM and TV broadcasters own towers today? Publicly available information suggests that the tower market is dominated by non-broadcast owned tower companies that are in the business of leasing their capacity. Is there currently a sufficient supply of towers and antenna sites suitable for FM and TV broadcast use? Does the current abundance of towers and antenna sites owned or controlled by non-broadcast entities render the rules regarding use of common antenna sites unnecessary?

8. Do these rules remain necessary to ensure that today's consumers have access to an adequate variety of FM and TV broadcast sources? Do they remain necessary to ''remove unnecessary impediments'' to broadcast competition? Do the rules make sense as a practical matter given that there are few new full-power FM or TV channels being allotted today and no new Class A TV channels being allotted? That is, new entrants into FM or TV broadcasting would likely operate on existing channels using existing broadcast infrastructure and existing broadcasters, with the exception of stations subject to the Incentive Auction repack, are unlikely to be changing channels such that they will require new towers. Were we to eliminate these rules, would the likelihood increase that TV and FM broadcasters would need to construct their own towers?

9. We seek comment and data on whether requests for use of particular antenna sites under these rules are even made in today's broadcast marketplace. The only evidence we could find of the common antenna site rules being raised is in the context of disputes in which the rules are invoked unjustifiably, contributing to unnecessary adjudication expenses and delays. Would elimination of the rules help conserve industry and Commission resources by avoiding unnecessary complications in disputes between stations? To the extent legitimate requests for access to an antenna site have been made, are such requests ever refused? Are such refusals, if any, based on reasonable grounds? Are there instances in which the terms of use are unreasonable?

10. We ask commenters that advocate retaining the rules to provide information and data about specific circumstances in which the rules have proven useful in promoting access to sites peculiarly suitable for broadcasting. In this regard, we note that, for both rules, four elements must be satisfied in order to establish a violation, and this may be part of the reason why it appears that no party that has relied on sections 73.239 or 73.635 in disputes regarding access to a tower or tower site has been successful in establishing a violation of either rule. Indeed, we are aware of no instance where a license application or license renewal application was denied on the basis of a violation of these rules. If we were to retain the rules, should they be revised to make them more useful to parties seeking access to antenna sites? If so, what changes should we make?

11. We ask commenters who advocate eliminating the common antenna site rules to discuss the potential benefits and costs of eliminating the rules. How burdensome are the rules for broadcasters? How would stations be affected if the rules were eliminated. Would stations that own towers have an incentive to engage in anticompetitive behavior going forward if the rules were eliminated? Or, is it in their financial interest to lease capacity on their towers to the extent requested? Are there impending changes to the broadcast industry, including the transition to ATSC 3.0 and the importance of distributed transmission system (DTS) single frequency networks (SFN) to ATSC 3.0, that will increase demand for antenna sites and provide a greater need for rules regarding access to common antenna sites? To the extent that parties believe that there are not sufficient towers and antenna sites available, they should document this concern with specificity and data. Commenters that advocate in favor of or against retaining the rules should discuss whether and how the benefits of doing so outweigh any costs. Are there any other considerations or data that the Commission should take into account in determining whether to retain these nearly 75 year-old rules?

III. Procedural Matters

12. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Act Analysis (IRFA) relating to this *NPRM*. The IRFA is set forth in Appendix B.

13. *Initial Paperwork Reduction Act Analysis.* This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the RA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

14. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation

consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

15. *Filing Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

16. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

17. *People With Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

18. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews of the Media Bureau, Policy Division, *Kim.Matthews@fcc.gov,* (202) 418–2154.

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities of the policies and rules proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* seeks comment on whether to eliminate or revise the requirements, in Sections 73.635 and 73.239 of the Commission's rules, regarding access to use of television and FM broadcast antenna sites. These rules prohibit the grant of a license for a broadcast television or FM station, or a license renewal, to an entity that owns, leases, or controls a site that ''is peculiarly suitable'' for TV or FM broadcasting in a particular area unless the site is available for use by other TV or FM licensees or there is another comparable site available in the area, and where the exclusive use of the site by the applicant or licensee ''would unduly limit the number of'' TV or FM stations that can be authorized in a particular area or would ''unduly restrict competition among'' TV or FM stations. We seek comment on whether these requirements are outdated and unnecessary in light of the significant changes in the broadcast marketplace, including significant growth in the availability of broadcast infrastructure that has occurred since these restrictions were first adopted nearly 75 years ago. With this proceeding, we continue our efforts to modernize our rules and eliminate outdated and unnecessary regulations.

B. Legal Basis

3. The action is authorized pursuant to Sections 1, 4(i), 4(j), 303, 307, and 309 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 303, 307, 309.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. The rules we seek comment on herein directly affect small FM radio and full power and Class A television stations. Below, we provide a description of these small entities, as

well as an estimate of the number of such small entities, where feasible.

6. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $24,999,999 and $50 million, and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

7. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on January 8, 2018, about 11,372 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated that there are 6,726 licensed FM commercial stations. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,179. However, the Commission does not compile or have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis; thus, our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the estimates of small businesses to which they apply may be over-inclusive to this extent.

9. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $24,999,999 and $50 million, and 70 had annual receipts of $50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

10. The Commission has estimated the number of licensed full power commercial television stations to be 1,371. Of this total, 1,257 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 8, 2018, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 386. These stations are non-profit, and therefore considered to be small entities.

11. There are also 387 Class A stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

12. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. The *NPRM* seeks comment on whether to eliminate or revise the requirements, in Sections 73.635 and 73.239 of the Commission's rules, regarding access to use of television and FM broadcast antenna sites. These rules prohibit the grant of a license for a broadcast television or FM station, or a license renewal, to an entity that owns, leases, or controls a site that ''is peculiarly suitable'' for TV or FM broadcasting in a particular area unless the site is available for use by other TV or FM licensees or there is another comparable site available in the area, and where the exclusive use of the site by the applicant or licensee ''would unduly limit the number of'' TV or FM stations that can be authorized in a particular area or would ''unduly restrict competition among'' TV or FM stations. Elimination of these rules would reduce compliance requirements for full power and Class A television and FM stations, which are currently required to comply with the rules. The *NPRM* also seeks comment on whether, if the rules are retained, they should be revised and, if so, how.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements

under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The *NPRM* seeks comment on whether to eliminate or revise the requirements, in Sections 73.635 and 73.239 of the Commission's rules, regarding access to use of television and FM broadcast antenna sites. Eliminating these requirements would eliminate the costs of compliance with the Commission's rules, including any related managerial, administrative, legal, and operational costs. The *NPRM* asks whether stations that own towers would have an incentive to engage in anticompetitive behavior going forward if the rules are eliminated. The Commission also seeks comment on the alternative of not eliminating these requirements, or of revising them.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

16. None.

IV. Ordering Clauses

17. Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 307, 309 this *Notice of Proposed Rulemaking is adopted*.

18. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 to read as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The Authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.239 [Removed and Reserved]

■ 2. Remove and Reserve § 73.239.

§ 73.635 [Removed and Reserved]

■ 3. Remove and Reserve § 73.635.

[FR Doc. 2019–24148 Filed 11–5–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR part 395

[Docket No. FMCSA–2019–0174]

Commercial Driver's License Standards: Application for Exemption; Wilson Logistics

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Wilson Logistics has applied for an exemption from the requirement that the holder of a Commercial Learner's Permit (CLP) be accompanied by the holder of a Commercial Driver's License (CDL), seated in the front seat, while the commercial motor vehicle (CMV) is being driven by the CLP holder. Specifically, Wilson Logistics requests an exemption to allow CLP holders who have successfully passed the CDL skills test to drive a CMV without having a CDL holder seated in the front seat. Wilson Logistics states that the CDL holder would remain in the CMV while the CLP holder is driving, but not necessarily in the passenger seat. Wilson Logistics believes that the exemption, if granted, would promote greater productivity and help individuals who have passed the CDL skills test return to actively earning a living faster. FMCSA requests public comment on Wilson Logistics' application for exemption.

DATES: Comments must be received on or before December 6, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2019–0174 by any of the following methods:

- *Federal Rulemaking Portal: www.regulations.gov*. See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this document. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this document (FMCSA–2019–0174), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0174''

in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. An option to upload a file is provided. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice of exemption also specifies the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Wilson Logistics is a nationwide motor carrier with a fleet of over 700 commercial motor vehicles (CMVs). Wilson Logistics seeks an exemption from the provision in 49 CFR 383.25(a)(1) that requires a CDL driver to be seated in the front seat of a CMV operated by a CLP holder. Under Wilson Logistics' exemption request, a CDL holder would remain in the vehicle while a CLP holder who has passed the skills test is driving—just not always in the front seat. Wilson Logistics believes this would allow the CLP holder to participate in a revenue-generating trip back to his or her State of domicile to obtain the CDL document, as the CDL can only be issued by the State of domicile. Wilson Logistics advises that, if granted, 400–500 CLP holders would operate under the terms of the exemption each year.

Wilson Logistics states that 49 CFR 383.25(a)(1) creates undue burdens on the company and its CLP holders, is cost intensive, and contributes to the driver shortage affecting the commercial trucking industry. Wilson Logistics explains that, previously, ''it was not uncommon for States to issue temporary CDLs to CLP holders for the return trip to collect the CDL document from their State of domicile. During that time, CDL holders were neither required to log themselves 'on duty' when supervising the CLP holder who had a temporary CDL, nor did they always remain in the passenger seat of the CMV. Under that scenario, the productivity of the CMV, the earnings capacity of the CDL and CLP holders, and the logistics of the motor carrier's freight network were all protected. Currently carriers must assign a second CDL holder to the vehicle to accomplish the on-duty work that was previously performed by the CLP holder who had a temporary CDL.''

Wilson Logistics contends that compliance with the CDL rule leaves it with the following two options: (1) Secure some mode of public transportation from the State of training to the State of domicile to allow the CLP holder to pick up his/her CDL document before returning to Wilson Logistics; or (2) route the team of drivers directly to the CLP holder's State of domicile, often against the natural flow of the freight network. Wilson Logistics argues that securing public transportation for each of the CLP holders under the first option entails extreme cost burdens to the company; the second option is no better because routing CLP holders directly to their home States, commonly without reference to shipper demand, introduces extreme cost inefficiencies.

In addition, Wilson Logistics asserts that CDL-issuing agencies may require several days, if not weeks, to secure the CLP holder's licensure materials; CLP holders suffer financial hardship during this waiting period. The exemption sought would apply only to those Wilson Logistics drivers who have passed the CDL skills test and hold valid CLPs.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, Wilson Logistics asserts that it offers a company-sponsored, hands on, on-the-job training program. In its program, CLP holders will spend a minimum of two or three weeks driving over-the-road with a CDL instructor in the passenger seat. Wilson's CLP holders deliver loads to customers in all manner of weather and traffic conditions. Wilson Logistics trains drivers on all aspects of the job before drivers take their CDL exams, which prepares them better for every part of the job.

Once Wilson Logistics' drivers pass their CDL skills test, administered by Wilson as a CDL third-party tester, the CLP holders have the passing scores in their possession. Wilson Logistics then uploads the scores to the Commercial Skills Test Information Management System (CSTIMS) in accordance with the State's requirements and the State Driver's Licensing Agency for the students' State of domicile to have access to the information. In addition to the test scores, the drivers' CLP document would be scanned into the driver profiles with the company's Compliance Department before being allowed to take their first load after the CDL skills test. Wilson Logistics would ensure that all CLP holders would have their skills test scores in their possession at all times until they receive their CDL.

Wilson Logistics notes that CLP holders who pass the skills test after training in their State of domicile would be allowed to start operating the CMV without someone in the passenger seat—they would have received a licensing document from the agency.

Wilson Logistics believes that permitting a CLP holder to drive *en route* to his or her State of domicile without a CDL holder in the passenger seat is safer than current State regulations that allow a new CDL holder to drive unsupervised, moments after receiving the CDL.

FMCSA has previously granted similar exemptions to C.R. England—initially in 2015, renewed in 2017 [82 FR 48889, Oct. 20, 2017]—and to New Prime, Inc. [82 FR 29143, June 27, 2017].

A copy of Wilson Logistics' application for exemption is available for review in the docket for this document.

Issued on: October 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–24100 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 84, No. 215
Wednesday, November 6, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Comment Request—Supplemental Nutrition Assistance Program—Trafficking Controls and Fraud Investigations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection codified in Food and Nutrition Service (FNS) regulations.

DATES: Written comments must be received on or before January 6, 2020.

ADDRESSES: Comments may be sent to: Jane Duffield, Branch Chief, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. Comments may also be submitted via email to *SM.FN.SNAPSAB@usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Richard Duckworth at 703–305–4271.

SUPPLEMENTARY INFORMATION: This is a revision of a currently approved collection codified in FNS regulations at 7 CFR 274.6(b)(5) and 274.6(b)(6).

FNS' Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 274.6(b)(5) allow State agencies to deny a request for a replacement SNAP Electronic Benefit Transfer (EBT) card until the household makes contact with the State agency if the requests for replacement cards are determined to be excessive. The State agency may determine the threshold for excessive card replacments, not to be less than four replacement cards in a 12-month period.

FNS' SNAP regulations at 274.6(b)(6) require State agencies to monitor EBT card replacement requests and send notices to households when they request four cards within a 12-month period. The State agency shall be exempt from sending this Excessive Replacement Card Notice if it adopts the card withholding option in accordance with 7 CFR 274.6(b)(5) and sends the requisite Withholding Replacement Card Warning Notice on the fourth replacement card request.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations.

OMB Number: 0584–0587.

Expiration Date: 1/31/2020.

Type of Request: Revision of a currently approved collection.

Abstract: FNS regulations at 7 CFR 274.6(b) requires State Agencies to issue warning notices to withhold replacement cards or a notice for excessive replacement cards.

Withhold Replacement Card Warning Notice: State agencies may require an individual member of a household to contact the State agency to provide an explanation in cases where the number of requests for card replacements is determined excessive. The State agency must notify the household in writing when it has reached the threshold, indicating that the next request for card replacement will require the client to contact the State agency to provide an explanation for the request, before the replacement card will be issued. The State agency must also notify the household in writing once the threshold has been exceeded and the State agency is withholding the card until contact is made.

Excessive Replacement Card Notice: State agencies must monitor all client requests for EBT card replacements and send a notice upon the fourth request in a 12-month period, alerting the household their account is being monitored for potential suspicious activity. The State agency is exempt from sending this notice if they have chosen to exercise the option to withhold the replacement card until contact is made with the State agency.

FNS is currently aware out of the 53 State agencies, six State agencies have opted to follow our regulations at 274.6(b)(5) to withhold replacement cards. All other State agencies follow our regulations at 274.6(b)(6) for the Excessive Replacement Card Notice.

Affected Public: Individuals/Households participating in SNAP and State, Local or Tribal Government Agencies that administer SNAP.

Estimated Number of Respondents: 238,697. Card replacement data, adjusted for changes in SNAP caseload, suggest that about 238,644 households request four replacement EBT cards within a 12-month period annually. These households, plus the 53 State agencies that must send the notices required by 7 CFR 274.6(b) make up the respondents.

Estimated of Responses per Respondent: There is an average estimated 2.11 responses for each respondent. See the table below for estimated responses for each type of respondent.

Estimated Total Annual Responses: 503,712 (251,856 individuals/households total annual response + 251,856 States agencies total annual response). See the table below for estimated responses for each type of

respondent. Of the 238,644 households requesting four replacement EBT cards, about 26,424 are estimated to be in the six States where the agencies have opted to follow our regulations at 274.6(b)(5) to withhold replacement cards. FNS estimates that half of all recipients who receive a notice upon issuance of their fourth card will request a fifth card.

Estimated Time per Response: FNS estimates that it will take State personnel approximately 2 minutes to generate and mail each required notice to the client, to comply with 7 CFR 274.6; and that it will take SNAP recipients approximately 2 minutes to read each notice they receive and 28 minutes to make contact with the State agency when required. There is an average estimated time of 0.04557373 hours for each response.

Estimated Total Annual Burden on Respondents: 22,956 hours (14,560.85 burden hours for individuals/households and 8,396.20 for State agencies). The currently approved annual burden is 21,941 hours. The revision reflects two adjustments, neither of which is related to an FNS program change:

(1) Because the number of households participating in SNAP has decreased, we have fewer excessive replacement EBT card requests and therefore fewer notices, and

(2) more States opt to follow our regulations at 274.6(b)(5) to withhold replacement cards, which requires some households to make contact with the State agency if they request excessive replacement cards

See the table below for estimated total reporting annual burden for each type of respondent.

There is no recordkeeping or third-party disclosure burden contained in this information collection request.

Respondent	Activity	Estimated number respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
Individuals or Household (I/H)	Read Withhold Replacement Card Warning Notice (274.6(b)(5)).	26,424	1.00	26,424	0.03	880.81
	Read Replacement Card Withheld Notice & Contact State Agency (274.6(b)(5)).	*13,212	1.00	13,212	0.50	6,606.05
	Read Excessive Replacement Card Notice (274.6(b)(6)).	212,220	1.00	212,220	0.03	7,073.99
Individuals/Households Subtotal		238,644		251,856		14,560.85
State Agency	Send Withhold Replacement Card Warning Notice (274.6(b)(5)).	6	4,404.03	26,424	0.03	880.81
	Send Replacement Card Withheld Notice (274.6(b)(5)).	6	2,202.02	13,212	0.03	440.40
	Send Excessive Replacement Card Notice (274.6(b)(6)).	47	4,515.31	212,220	0.03	7,073.99
State Agencies Subtotal		53		251,856		8,395.20
Overall Grand Total Burden		238,697	2.11	503,712	0.0455737	22,956.05

* **Note:** The 13,212 Individuals/Households SNAP participants are the same I/H accounted for in the 26,424 and therefore not double counted.

Dated: October 18, 2019.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–24097 Filed 11–5–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest; Idaho; Caribou-Targhee National Forest and Curlew National Grassland Integrated Weed Management Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Caribou-Targhee National Forest will prepare an environmental impact statement (EIS) for invasive plant management. Invasive plants are a major threat to the biological diversity and ecological integrity within and outside the Caribou-Targhee National Forest and the Curlew National Grassland (Forests). The Forests propose to implement adaptive and integrated invasive plan management on current and potential infested areas forest-wide. A clear and comprehensive integrated invasive plant management strategy would allow for the implementation of timely and effective invasive plant management and prevention projects and programs on the Forests. In the absence of an aggressive invasive plant management program, the number, density, and distribution of invasive plants on both Forests is expected to increase.

DATES: Comments concerning the scope of the analysis must be received by December 23, 2019. The draft EIS is expected in May 2020 and the final EIS is expected in November 2020.

ADDRESSES: Send written comments to Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401. Comments may also be sent via email to *FS-comments-intermtn-caribou-targhee@usda.gov* or via facsimile to (208) 557–5827.

FOR FURTHER INFORMATION CONTACT: Heidi Heyrend at (208) 557–5791 or *heidi.heyrend@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Invasive plants create many adverse environmental effects, including, but not limited to: Displacement of native plants; reduction in functionality of habitat for wildlife; loss of threatened, endangered, and sensitive species; increased soil erosion and reduced water quality; alteration of physical and biological properties of soil, including reduced soil productivity; changes to the intensity and frequency of fires, and loss of recreational opportunities. Within the 2.9 million acres of the Caribou-Targhee National Forest and Curlew National Grassland, less than two percent are identified as being infested with invasive, non-native, and/or state-listed noxious weeds.

These invasive plant infestations have a high potential to expand on lands within and adjacent to the Forests, degrading desired plant communities

and the values provided by those communities. Forest lands are also threatened by invasive plants that have not been found on the Forests but are known to occur on adjacent lands. Infestations can be prevented, eliminated, or controlled through the use of specific management practices.

Purpose and Need for Action

The overall purpose of the proposed action is to reduce the negative effects of invasive plants on the structure and function of native plant communities and on other natural resource values. The proposal is in response to an underlying need to implement policy and direction provided at the national, regional, state, and forest levels (Executive Order 13112—Invasive Species, 2004 National Invasive Species Strategy and Implementation Plan, 2008–2012 National Invasive Species Management Plan, 2009 Intermountain Region Invasive Species Management Strategy, 2005 Idaho Strategic Plan for Managing Noxious and Invasive Weeds, and the amended Land and Resource Management Plans for the Caribou-Targhee National Forest and Curlew National Grassland).

The need for the proposed action is multifaceted. Forest resources are negatively impacted by existing and expanding invasive plant species populations. These species are known to out-compete native plants, which can result in reduced productivity and biodiversity, habitat loss, and associated economic impacts. A timely response to new infestations, new invasive plant species, and landscape scale disturbances is needed. On the Forests, landscape-level tree mortality and disturbance from insects and wildfires have increased and are likely to continue to increase the potential for invasive plant infestations.

Existing decisions for invasive plant management on the Forests do not address new species or provide priorities for managing new infestations. Updating these decisions would allow the Forests to satisfy the need to incorporate early detection and rapid response into the invasive plant management program. Invasive plant infestations already exist throughout the Forests and without management will likely increase in density and distribution. Active and adaptive integrated management is necessary to contain invasive plants within existing boundaries, reduce infestation densities, and retard the establishment of new infestations. Control efforts would be focused on infestations that can realize the greatest resource benefits—those with the highest risk of spread, those that have not become established, and those that have the best likelihood of success of control. New analysis and planning is needed to make available the most current tools and guide their best use.

Rehabilitation of degraded landscapes can inhibit the spread and establishment of invasive plants. Appropriate rehabilitation efforts are a critical component of a fully functional invasive plant management program. The goals of rehabilitating degraded areas may include preventing new infestations, preventing the reoccurrence of eradicated infestations, and/or reducing the density and spread of existing infestations. Post-fire rehabilitation efforts may incorporate one or more of the established control techniques outlined in the proposed action.

Proposed Action

The Forests propose to implement adaptive and integrated invasive plant management on current and potential infested areas forest-wide, including the Jedidiah Smith Wilderness Area and the Winegar Hole Wilderness Area. Management activities would include inventory and assessment designed to support early detection and rapid response, control methods, implementation and effectiveness monitoring, and rehabilitation.

Activities would be implemented with federal, state, and local partners where opportunities exist. Infestations outside of currently identified areas may include new sites that arise in the future, or sites that currently exist, but have not been identified in Forest inventories to date.

The proposed action includes the use of ground-based and aerial herbicide applications, manual and mechanical treatments, aquatic treatments, biological treatments, and combinations of these treatments. Proposed control methods would be based on integrated pest management principles and methods known to be effective for each target species. They include, but are not limited to, mechanical techniques, such as mowing and pulling; cultural practices, such as the use of certified noxious weed-free hay; biological control agents, such as pathogens, insects, and controlled grazing; and herbicides that target specific invasive plant species. Control methods could be employed alone or in combination. Treatment methods would be based on the extent, location, type, and character of an infestation and would be implemented using project design features. Management priority would be based on factors such as number and size of known infestations, proximity to vectors or susceptible habitat, and ability to outcompete desirable plant species. The priority of species to be treated would vary based on these factors and could change over time. These priorities would be used to guide selection of specific management activities for particular infestations.

Rehabilitation activities would be designed and implemented based on the conditions found in and around infested areas. Both active revegetation and passive revegetation (allowing plants on site to fill in a treated area) would be considered. Rehabilitation techniques would be assessed and implemented in order to promote native plant communities that are resistant to infestation by invasive plants.

Possible Alternatives

The No Action/Current Management Alternative would continue current weed management programs, treatments, and levels of effort for controlling weeds on both Forests. Because of limited ability to respond rapidly to new treatment areas and updated methods, it is anticipated that continuation of the current weed treatment program would not keep pace with the spread of weeds on both Forests. New weed invaders would continue to establish populations that would likely increase in size. Under this Alternative, it would likely not be possible to be consistent with management direction in all of the management areas on both Forests or to implement effectiveness monitoring and adaptive management as prescribed in the amended Land and Resource Management Plans.

Responsible Official

The responsible official will be the Forest Supervisor for the Caribou-Targhee National Forest and the Curlew National Grassland.

Nature of Decision To Be Made

The responsible official will decide whether or not to treat invasive plants on the Caribou-Targhee National Forest and the Curlew National Grassland, including the Jedidiah Smith Wilderness Area (123,451 acres) and the Winegar Hole Wilderness Area (10,721 acres), and if so, what methods and treatments will be used.

Permits or Licenses Required

Applicators must be licensed Idaho professional herbicide applicators per Idaho Department of Agriculture Rules Governing Pesticide Use and Application (Idaho Code § 22–3404).

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. Comments that would be most useful are those concerning developing or refining the proposed action, and in particular, are site-specific concerns and those that can help us develop treatments that would be responsive to our goal to control, contain, or eradicate invasive plants. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

The decision for this project will be subject to the objection process at 36 CFR 218 subparts A and B. Only individuals or entities who submit timely and specific written comments concerning the project during this or another designated public comment period established by the responsible official will be eligible to file on objection.

Dated: October 16, 2019.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2019–24222 Filed 11–5–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Cooperative Wildland Fire Management and Stafford Act Response Agreements

AGENCY: Forest Service, USDA, Bureau of Land Management DOI, Fish and Wildlife Service DOI, National Park Service DOI, and Bureau of Indian Affairs DOI.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no changes to the information collection, Cooperative Wildland Fire Management and Stafford Act Response Agreements.

DATES: Comments must be received in writing on or before January 6, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Tim Melchert, Cooperative Fire Specialist, USDA Forest Service, 1400 Independence Avenue SW, Washington, DC 20250.

Comments also may be submitted via facsimile to 208–387–5398 or by email to: *SM.FS.Fire-Agrmts@usda.gov.*

The public may inspect comments received at Forest Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250 during normal business hours. Visitors are encouraged to call ahead to 202–205–1637 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tim Melchert, Cooperative Fire Specialist, at USDA Forest Service, 208–387–5887. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, Forest Service will submit a request for a new information collection to Office of Management and Budget.

Title: Cooperative Wildland Fire Management and Stafford Act Response Agreements.

OMB Number: 0596–0242.

Type of Request: Extension of a currently approved information collection.

Abstract: To allow the performance of specific activities in cooperation with Federal, State, local, and Tribal governments, Congress enacted authorities allowing the United States Department of Agriculture (USDA) and United States Department of the Interior (DOI) to enter into cooperative agreements with fire organizations to improve efficiency.

These include:

1. Facilitating the coordination and exchange of personnel, equipment, supplies, services, and funds among the parties.

2. Sustaining Wildland Fire Management activities, such as prevention, preparedness, communication and education, fuels treatment and hazard mitigation, fire planning.

3. Response strategies, tactics and alternatives, suppression and post-fire rehabilitation and restoration.

4. Allow for the parties to respond to presidentially declared emergencies or disasters.

The primary authorities allowing for the agreements are the Reciprocal Fire Protection Act, 42 U.S.C 1856, and the Stafford Act, 42 U.S.C. 5121. The proposed Cooperative Wildland Fire Management and Stafford Act Response Agreement template will allow authorized agencies to streamline coordination with other Federal, State, local, and Tribal governments in wildland fire protection activities, and to document in an agreement the roles and responsibilities among the parties, ensuring maximum protection of resources.

To negotiate, develop, and administer Cooperative Wildland Fire Management and Stafford Act Response Agreements, the USDA Forest Service, DOI Bureau of Land Management, DOI Fish and Wildlife Service, DOI National Park Service, and DOI Bureau of Indian Affairs must collect information from willing State, local, and Tribal governments from the pre-agreement to the closeout stage via telephone calls, emails, postal mail, and person-to-person meetings. There are multiple means to communicate responses, which include forms, optional forms, templates, electronic documents, in person, telephone, and email. The scope of information collected includes the project type, project scope, financial plan, statement of work, and cooperator's business information. Without the collected information, authorized Federal agencies would not be able to negotiate, create, develop, and administer cooperative agreements with stakeholders for wildland fire protection, approved fire severity activities, and presidentially declared emergencies or disasters. Authorized Federal agencies would be unable to develop or monitor projects, make payments, or identify financial and accounting errors.

The regulations governing Federal financial assistance relationships are not applicable to agreement templates under this information collection request. The regulations in 2 CFR 200 set forth the general rules that are applicable to all grants and cooperative agreements made by the Department of Agriculture and Department of the Interior. Because the Federal government's use of Cooperative Wildland Fire Management and Stafford Act Response Agreements entered into under cited Federal statutes are not financial assistance for the benefit of the recipient, but instead are entered into for the mutual benefit of the Federal government and the non-Federal cooperators, the assistance regulations in 2 CFR 200, as adopted and supplemented by the Department of

Agriculture and Department of Interior, are not applicable to such agreements.

This is a new information collection request. The Cooperative Wildland Fire Management and Stafford Act Response Agreement template can be viewed at *www.fs.fed.us/managing-land/fire/master-agreement-template.*

Estimate of Annual Burden: 4 to 24 hours annually per respondent.

Type of Respondents: State, local, and Tribal governments.

Estimated Annual Number of Respondents: 320.

Estimated Annual Number of Responses per Respondent: 1 to 4.

Estimated Total Annual Burden on Respondents: 47,040 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: October 18, 2019.

John Phipps,

Deputy Chief, State and Private Forestry.

[FR Doc. 2019–24223 Filed 11–5–19; 8:45 am]

BILLING CODE 3411–15–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public briefing, *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities.*

DATES: Friday, November 15, 2019, 9:00 a.m. Eastern Time (ET).

ADDRESSES: Place: National Place Building, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20245 (Entrance on F Street NW).

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b, the U.S. Commission on Civil Rights will hold a public briefing to examine the exemption under the Fair Labor Standards Act—the section 14(c) waiver program—which permits employers to pay less than the minimum wage to individuals with disabilities. In April 2018, the U.S. Department of Labor reported that more than 1,800 employers held a waiver of minimum wage requirements, affecting at least some 150,000 workers. Reliable reports indicate that many employers with 14(c) certificates pay far below prevailing or minimum wage while segregating these employees from the non-disabled workforce. The Commission will investigate whether this violates the civil rights of people with disabilities. The Commission will analyze the use of the 14(c) waiver program, its effect on people with disabilities, and oversight by the Departments of Labor and Justice.

This briefing is open to the public. We will offer an open comment session in which members of the public will have an opportunity to address the Commission; detailed information, including on registering for a three-minute speaking slot, can be viewed here. Individuals may attend the briefing without the need to confirm attendance or RSVP.

The event will also live-stream. (Information subject to change.) There will also be a public call-in line (listen-only): 800–822–2024, conference ID: 8561700. If attending in person, we ask that you RSVP to *publicaffairs@usccr.gov.* Persons with disabilities who need accommodation should contact Pamela Dunston at 202–376–8105 or at *access@usccr.gov* at least seven business days before the date of the meeting.

The Commission welcomes the submission of additional material for consideration as we prepare our report; please submit to *subminimumwages@usccr.gov* no later than December 15, 2019. Stay abreast of updates at *www.usccr.gov* and on Twitter and Facebook.

Agenda

Introductory Remarks: Chair Catherine E. Lhamon: 9:00 a.m.–9:10 a.m.

Panel One: The Federal Government's Role: 9:10 a.m.–10:30 a.m.

Panel Two: Data Regarding Subminimum Wages and Competitive Integrated Employment: 10:40 a.m.–11:20 a.m.

Panel Three: The Nature of Existing 14(c) Programs: 11:30 a.m.–12:40 p.m.

Remarks by Former Pennsylvania Governor and U.S. Secretary of Homeland Security Tom Ridge: 12:45 p.m.–1:00 p.m.

Lunch break: 1:00 p.m.–2:00 p.m.

Panel Four: Transitioning from 14(c) Programs: 2:00 p.m.–3:10 p.m.

Panel Five: Reform to the 14(c) Program at the Federal Level: 3:20 p.m.–4:30 p.m.

Open Public Comment Session: 5:30 p.m.–6:30 p.m.

Adjourn: 6:30 p.m. (Adjournment time subject to change).

Dated: November 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–24353 Filed 11–4–19; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

Advisory Committee on Data for Evidence Building

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce (DOC).

ACTION: Notice of establishment of the Advisory Committee on Data for Evidence Building (Advisory Committee) and solicitation of nominations for non-Federal membership.

SUMMARY: Notice is hereby given that the Advisory Committee on Data for Evidence Building will be established and will terminate not later than two years after the date of the first meeting. The Advisory Committee will review, analyze, and make recommendations on how to promote the use of Federal data for evidence building. This notice also requests nominations for non-Federal members of the Advisory Committee to ensure a wide range of member candidates and a balanced Advisory Committee.

DATES: Nominations must be received on or before midnight EST on December 4, 2019. The Department encourages nominations submitted any time before the deadline. After that date, the Department will continue to accept nominations under this notice to fill any vacancies that may arise.

ADDRESSES: All nomination materials should be emailed to *Evidence@bea.gov.*

FOR FURTHER INFORMATION CONTACT: Lucas Hitt at 4600 Silver Hill Rd., BE–

64, Department of Commerce, Washington, DC 20233; phone (301) 278–9223; email: *Lucas.Hitt@bea.gov.*

SUPPLEMENTARY INFORMATION: The Federal Data Strategy offers a ten-year vision for how the Federal Government will accelerate the use of data to support the foundations of democracy, deliver on mission, serve the public, and steward resources while protecting security, privacy, and confidentiality. The Strategy supports a coordinated approach to Federal data stewardship by establishing more consistent and integrated data infrastructure and data practices in order to more fully leverage the value of data as a strategic asset.

In keeping with the Strategy, the Foundations for Evidence-Based Policymaking Act of 2018 (the Act), § 101(a)(2) (5 U.S.C. 315(a)) directed the OMB Director, or head of an agency designated by the Director, to establish an Advisory Committee on Data for Evidence Building (Advisory Committee). Pursuant to Section 9(a)(1) of the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), and in accordance with Title 41, Code of Federal Regulations, § 102–3.50(a), notice is hereby given that the Advisory Committee will be established and will terminate not later than two years after the date of the first meeting.

Pursuant to authority granted in the Office of Management and Budget (OMB) letter dated September 3, 2019, the Advisory Committee will be administered and managed by the Department of Commerce Office of the Under Secretary for Economic Affairs (OUSEA).

The Advisory Committee will review, analyze, and make recommendations on how to promote the use of Federal data for evidence building. Duties include:

(1) Assisting the OMB Director in carrying out the duties outlined under part D of subchapter III of chapter 35 of title 44 (which concerns access to data for evidence);

(2) evaluating and providing recommendations to the OMB Director on how to facilitate data sharing, enable data linkage, and develop privacy enhancing techniques; and

(3) reviewing the coordination of data sharing or availability for evidence building across all agencies.

The Advisory Committee will submit to the OMB Director, and make publicly available, an annual report on its activities and findings.

The establishment of the Advisory Committee is necessary for the Office of Management and Budget to carry out its mission and is in the public interest. The Advisory Committee will operate in accordance with the provisions of the Foundations for Evidence-Based Policymaking Act of 2018 and the FACA and the rules and regulations issued in implementation of the FACA.

The Chief Statistician of the United States shall serve as the Chair of the Advisory Committee. Members of the Advisory Committee from Federal agencies will be sourced separately from this Notice and will be appointed by the Director of OMB. These Federal members are as follows: One agency Chief Information Officer; one agency Chief Privacy Officer; one agency Chief Performance Officer; three members who are agency Chief Data Officers; three members who are agency Evaluation Officers; three members who are agency Statistical Officials who are members of the Interagency Council for Statistical Policy established under section 3504(e)(8) of title 44.

The U.S. Department of Commerce Office of the Under Secretary for Economic Affairs is hereby soliciting nominations for the *non-Federal* members of the Advisory Committee. In addition to the members listed above, the Director of OMB will appoint at least 10 committee members from *non-Federal* sources. As required by the Act, these members will be sourced from State and local governments and nongovernmental stakeholders with expertise in government data policy, privacy, technology, transparency policy, evaluation and research methodologies, and other relevant subjects, of whom—

(A) at least one shall have expertise in transparency policy;

(B) at least one shall have expertise in privacy policy;

(C) at least one shall have expertise in statistical data use;

(D) at least one shall have expertise in information management;

(E) at least one shall have expertise in information technology; and

(F) at least one shall be from the research and evaluation community.

Committee members may serve for a term of 2 years or less.

The Advisory Committee is expected to meet a minimum of three times per year, with the possibility of additional meetings as the Chair may determine.

Subcommittees may be formed to address specific issues. Subcommittees will report directly to the Advisory Committee.

Because non-Federal Advisory Committee members will serve as Special Government Employees, they will be subject to certain ethical restrictions and required to submit certain information in connection with the appointment process. An ethics review is conducted for each selected nominee; therefore, individuals selected for nomination will be required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Process and Deadline for Submitting Nominations: Non-Federal individuals can self-nominate or be nominated by any individual or organization. To be considered for the Advisory Committee, nominators should submit the following information:

(1) Contact Information for the nominee, consisting of:

a. Name
b. Title
c. Organization or Affiliation
d. Address
e. City, State, Zip
f. Telephone number
g. Email address

(2) Statement of interest limited to 250 words on why the nominee wants to serve on the Advisory Committee and the unique perspectives and experiences the nominee would bring to the Advisory Committee.

(3) Resumé limited to 3 pages describing professional and academic expertise, experience, and knowledge, including any relevant experience serving on advisory committees and advisory panels, past and present;

(4) An affirmative statement that the nominee is not a Federally registered lobbyist, and that the nominee understands that, if appointed, the nominee will not be allowed to continue to serve as an Advisory Committee member if the nominee becomes a Federally registered lobbyist; and

(5) Optional letters of support. Please do not send company, trade association, organization brochures, or any other promotional information. Letters submitted should total five pages or less and must be formatted in Microsoft Word or PDF. Should more information be needed, OUSEA staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the internet. Nominations may be emailed to *Evidence@bea.gov.* Nominations must be received on or before midnight EST on December 4, 2019. After that date, the Department will continue to accept nominations under this notice to fill any vacancies that may arise. The Department encourages nominations submitted any time before the deadline. The Department is not responsible for any technical difficulties submitting a nomination form.

A joint OMB and Office of the Under Secretary for Economic Affairs selection team will review the nomination packages to identify a set of potential members that possesses the balance of qualifications required by law, and provide a vetted slate of proposed candidates for appointment by the OMB Director.

The selection team will make recommendations regarding membership based on criteria including: (1) Professional or academic expertise, experience, and knowledge; (2) stakeholder representation; (3) availability and willingness to serve; and (4) relevant experience in working in committees and advisory panels.

Nominees selected for appointment to the Advisory Committee will be notified by return email and by a letter of appointment.

Nomination packages submitted under this **Federal Register** Notice will be considered if vacancies occur over the two years that the Advisory Committee will be active.

Dated: October 31, 2019.

Brian C. Moyer,

Director, Bureau of Economic Analysis, Performing the Non-Exclusive Functions and Duties of the Under Secretary for Economic Affairs.

[FR Doc. 2019–24172 Filed 11–5–19; 8:45 am]

BILLING CODE 3510–MN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires 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 Weihai Zhongwei Rubber Co., Ltd. (Zhongwei), an exporter of certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China), did not sell merchandise in the United States at prices below normal value during the period of review (POR) September 1, 2017 through August 31, 2018.

DATES: Applicable November 6, 2019.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5139.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on August 23, 2019.[1] We invited interested parties to comment on the *Preliminary Results;* however, no interested party submitted comments.

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[2]

Separate Rates

In our *Preliminary Results,* Commerce determined that information placed on the record by Zhongwei and Qingdao Honghua Tyre Factory (Honghua) demonstrates that these companies are entitled to separate rate status,[3] which we preliminarily granted.[4] We received no comments since the issuance of the *Preliminary Results* that provide a basis for reconsidering the determination with respect to the separate rate status of these entities. Therefore, for the final results, we continue to find that Zhongwei and Honghua are eligible for a separate rate.

Changes Since the Preliminary Results

As noted above, we received no comments in response to the *Preliminary Results.* Accordingly, for the purposes of these final results, Commerce has made no changes to the *Preliminary Results.*

Final Results of the Review

Commerce determines that the following weighted-average dumping margins exist for the POR from September 1, 2017 through August 31, 2018:

Exporter	Weighted-average dumping margin (percent)
Weihai Zhongwei Rubber Co., Ltd	0.00
Qingdao Honghua Tyre Factory	0.00

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[5] 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 China-wide entity. Because no party requested a review of the China-wide entity in this review, and we did not self-initiate a review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 105.31 percent).[6]

Where the rates for the individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Tariff Act of 1930, as amended (the Act) provides that Commerce may use ''any reasonable method'' to establish the all-others rate. As the margin calculated for the mandatory respondent, Zhongwei, is zero, we assigned Honghua, the sole separate-rate respondent not selected for individual examination in this review, a separate rate margin based on Zhongwei's weighted-average dumping margin, which we find to be reasonable and consistent with practice.[7]

Disclosure

Commerce normally discloses the calculations performed regarding these final results to parties in this proceeding

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 44283 (August 23, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Results,* PDM at 3–5.

[3] *See* Zhongwei's March 11, 2019 Section A Questionnaire Response at 2–14; *see also* Honghua's Letter, ''Separate Rate Application: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated December 14, 2018.

[4] *See Preliminary Results,* PDM at 9–13.

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] The China-wide rate was determined in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 20197 (April 15, 2015).

[7] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015–2016,* 83 FR 35461, 35462 (July 26, 2018) (citing *Albemarle Corp.* v. *United States,* 821 F. 3d 1345 (Fed. Cir. 2016)).

within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). However, because no changes were made to the preliminary calculations, we refer parties to the preliminary disclosure calculation memoranda.[8]

Assessment Rates

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 section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review in the **Federal Register**.

For any individually examined respondent whose (estimated) *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), Commerce will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).[9] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated is not zero or *de minimis*. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[10]

Cash Deposit Requirements

Because the antidumping duty order on OTR tires from China was revoked,[11] Commerce will not issue cash deposit instructions at the conclusion of this administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–24220 Filed 11–5–19; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2017–2018: Preliminary Results Surrogate Value Memorandum,'' dated August 16, 2019; *see also* Memorandum, ''Analysis Memorandum for the Preliminary Results of the 2017–2018 Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Weihei Zhongwei Rubber Co., Ltd.,'' dated August 16, 2019.

[9] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[10] *See* 19 CFR 351.212(b)(1).

[11] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders,* 84 FR 20616 (May 10, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–824]

Certain Cold-Rolled Steel Flat Products From the United Kingdom: 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) determines that the producer/exporter subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) September 1, 2017 through August 31, 2018.

DATES: Applicable November 6, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, 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) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2019, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on certain cold-rolled steel flat products (cold-rolled steel) from the United Kingdom.[1] The administrative review covers one producer or exporter of the subject merchandise, Caparo Precision Strip, Ltd./Liberty Performance Steels Ltd. (Liberty).[2] We gave interested parties an opportunity to comment on the *Preliminary Results,* and we received a case brief from Liberty.[3] We did not receive any rebuttal briefs.

Commerce conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products subject to this review are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000,

[1] *See Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 34868 (July 19, 2019) (*Preliminary Results*).

[2] In the *Initiation Notice,* we initiated a review of ''Caparo Precision Strip, Ltd./Liberty Performance Steels, Ltd.'' *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411, 57417 (November 15, 2018) (*Initiation Notice*). We have previously determined that Liberty Performance Steels Ltd. is the successor-in-interest to Caparo Precision Strip, Ltd.

[3] *See* Liberty's Letter, ''Certain Cold-Rolled Steel Flat Products from the United Kingdom: Liberty Performance Steels, Ltd. Case Brief,'' dated August 19, 2019.

7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the Order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

The issues raised by Liberty in its case brief 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 the appendix to this notice.

Changes Since the Preliminary Results

Based on the comments received we made changes for these final results which are enumerated in the Issues and Decision Memorandum.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margin exists for Liberty for the period of September 1, 2017 through August 31, 2018.

Producer or exporter	Weighted-average dumping margin (percent)
Liberty Performance Steels Ltd ..	21.71

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), 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.

For Liberty, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[5] For entries of subject merchandise during the POR produced by Liberty for which it did not know its merchandise was destined for the United States, we intend to 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. We intend to issue liquidation instructions to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice for all shipments of cold-rolled steel from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Liberty will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, then the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 22.58 percent, the all-others rate established in the less-than-fair-value investigation.[6] 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 duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce presuming that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction 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 terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in

[4] *See* Memorandum, ''Certain Cold-Rolled Steel Flat Products from the United Kingdom: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[6] *See Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432, 64434 (September 20, 2016).

accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: October 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2019–24219 Filed 11–5–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR043

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Astoria Waterfront Bridge Replacement Phase 2 Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the City of Astoria (City) for authorization to take marine mammals incidental to pile driving and construction work in Astoria, OR. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations, and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 6, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Davis@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On June 3, 2019 NMFS received a request from the City of Astoria (City) for an IHA to take marine mammals incidental to pile driving and construction work in Astoria, Oregon. The application was deemed adequate and complete on October 17, 2019. The

City's request is for take of a small number of California sea lion (*Zalophus californianus*) and harbor seal (*Phoca vitulina richardii*) by Level A and Level B harassment, and a small number of Steller sea lion (*Eumetopias jubatus*) by Level B harassment only. Neither the City nor NMFS expects serious injury or mortality to result from this activity, and, therefore, an IHA is appropriate.

This proposed IHA would cover one year of a larger, two-year project that involves removal and replacement of six bridges on the Astoria, Oregon waterfront. NMFS previously issued an IHA to the City for removal and replacement of three bridges (83 FR 19243, May 2, 2018). The City complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Proposed Monitoring and Mitigation Section. The monitoring report exposed the need for clarification of monitoring requirements, specifically those involving Protected Species Observer (PSO) coverage of Level A and Level B zones. NMFS has clarified those requirements with the applicant.

Description of Proposed Activity

Overview

The City of Astoria, Oregon proposes to remove and replace three bridges connecting 6th, 8th, and 10th Streets with waterfront piers near the mouth of the Columbia River. The bridges are currently supported by decayed timber piles. Among all three bridges, an estimated 150 timber piles will be removed as will other timber structural elements and concrete footings. 65 temporary 36-inch steel casings will be installed to help guide the installation of 65 permanent 24-inch steel piles. Pile driving and removal activities will be conducted using a vibratory and impact hammer. The contractor may need to conduct preboring inside of the temporary casings using a vibratory hammer and a 14-inch H-pile to prepare the new pile sites. In the event that preboring is not effective, the contractor may conduct down-the-hole drilling inside of the 36-inch piles to prepare the site for the permanent piles. It is unlikely that the contractor will need to conduct down-the-hole drilling, as it was not necessary during Phase 1. The roadway and railway superstructures will also be replaced, and a temporary, above-water work platform will be created for the construction. The use of vibratory and impact hammers for pile driving and site preparation is expected to produce underwater sound at levels that may result in behavioral harassment or auditory injury of marine mammals. Human presence and use of general construction equipment may also lead to behavioral harassment of sea lions hauled out along the riverbank below the bridges.

The impacted area extends outward from the three bridge sites to a maximum distance of 21.54 km (13.28 mi). The project will occur over one year beginning in December 2019, with in-water activities expected to occur over an estimated 21 days during the months of November through April.

Dates and Duration

The IHA will be effective from December 2019 to October 2020. Project work is expected to begin in November 2019 with concurrent above-water and in-water demolition activities. In-water activities will be conducted during the Oregon Department of Fish and Wildlife-prescribed in-water work period (IWWP) for the Lower Columbia River (November–February). The IWWP is imposed to protect the following species: MAR (various marine species of fish), SHL (various marine shell fish), CHF (Chinook salmon, fall), CHS (Chinook salmon, spring), SS (sockeye salmon), CO (coho salmon), STW (steelhead winter), STS (steelhead summer), CT (cutthroat trout—including sea run). It is possible that the City will request an IWWP extension through April. In-water construction activities will occur intermittently over the entire proposed IWWP, and above-water work is expected to occur during the IWWP and over the remainder of the IHA period. Work will take place over approximately 21 in-water work days, and 11 days per month for over-water activities.

Specific Geographic Region

The project site is located in the Baker Bay-Columbia River sub-watershed near the mouth of the Columbia River. This section of the lower Columbia River represents the most saline portion of the river's estuarine environment. Tidal influence extends 146 miles upriver to the Bonneville Dam (LCEP, 2016). The Columbia River is over nine miles wide in the area around Astoria and contains multiple islands, buoys, and sandbars that marine mammals utilize to haul out. The upland portions of the region of activity have been highly altered by human activities, with substantial shoreline development and remnants of historical development. This includes thousands of timber piles, overwater buildings, a railroad trestle, and vehicular bridges. The downtown Astoria waterfront is a busy area for pedestrians, vehicles, and boats. In addition to onshore development, the lower Columbia River is utilized by various types of vessels, including cargo ships, dredging vessels, fishing vessels, trawlers, pollution control vessels, and search and rescue vessels, among others. The remainder of the region of activity is located within the river channel within the intertidal and subtidal zones. The substrate in this area is primarily made up of historical rip rap and other rocks/cobbles.

All in-water construction will occur in the intertidal and subtidal zones. Some piles may be removed and installed completely in the dry while others may be in water more than 75 percent of the time.

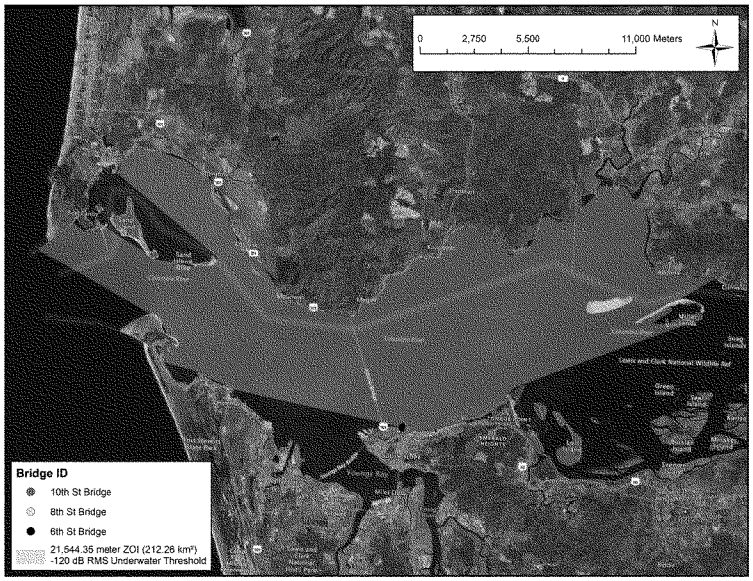

Figure 1: Project footprint in the lower Columbia River.

Detailed Description of Specific Activity

Phase two of the project involves the removal and replacement of three bridges connecting 6th, 8th, and 10th Streets to waterfront piers.

Demolition Activities—Demolition of the existing bridge crossings will require the removal of the bridge decks and other above-ground components for the trestle crossings and roadway approaches. Demolition of the superstructures will likely be accomplished using standard roadway and bridge construction equipment, including an excavator, backhoe, jackhammer, and concrete and chain saws, as well as a crane will be used to remove larger timber elements. Source levels for these equipment are included in Table 1. Source levels are mostly based on acoustic data collected during the City of San Diego Lifeguard Station Demolition and Construction Monitoring project. All equipment will be operated from the existing roadway, trestle, and upland areas, and removed materials will be hauled off-site to an approved upland location for disposal.

TABLE 1—SUPERSTRUCTURE CONSTRUCTION EQUIPMENT SOUND SOURCE LEVELS

Equipment	Peak source level (dB root mean squared (RMS)) at 20 meters)	Reference
Air Compressor	78	WSDOT, 2016.
Backhoe	78	Hanan & Associates, 2014.
Chain Saw	78	
Concrete Saw	93	
Crane	89	
Excavator	91	
Generator Powered Jackhammer	87	
Hand Tools	85	

Construction activities associated with removal of the roadway approach superstructures will be situated away from the river. Buildings and other above-grade structures will reduce noise by physically blocking it and reflecting it away from the river, due to structural noise reduction (FHWA, 2011). The pier structures will also block noise from reaching the river and bank areas by deflecting it upwards. Based on the sound levels produced by the proposed equipment, existing site conditions, the likely location of the pinnipeds within the area in relation to the associated construction activities, and Phase 1 monitoring, removal of the roadway approach superstructures is not expected to disturb nearby marine mammals, and will not be considered further.

At each of the three bridge sites, the City will remove approximately 50 existing 14-inch timber piles (Table 2) using a vibratory hammer and via direct pull. Abandoned, cutoff timber piles that are located within close proximity to proposed pile locations will also be removed. Old pilings are often in very poor condition near and above the ground surface, making attachment to the pilings for extraction very difficult. Old vertical piles and other obstructions encountered near the surface may need to be extracted or cut below the ground surface elevation per Federal Aid Highway Program (FAHP) programmatic criteria. Due to uncertainty in the precise timing of extraction, and therefore the tidal state, all piles are assumed to be in-water during removal in effort to conduct a conservative analysis of the project impacts.

The City estimates it will remove approximately 15 additional structural elements at each bridge site, consisting of the timber columns, bottom plates, lower braces and/or cross bracings. These elements will be removed during low tides and will not require the use of a vibratory hammer. Standard construction equipment will be used to remove these elements.

In addition to the timber substructures, an estimated seven concrete footings will need to be extracted, two at the 8th Street bridge, and five at the 10th Street bridge. It is anticipated that the contractor will use an excavator, positioned on the existing roadway or adjacent gravel/asphalt parking areas, to reach down and remove the concrete footings. If the vertical or horizontal distance makes a footing unreachable, the contractor will likely drill an anchor into the concrete then attach the crane to the anchor with a chain and pull upwards to extract the concrete. The existing concrete footings are located just below/above the MHHW elevation, so this work is likely to occur in the dry during low tides.

The contractor will set up temporary work containment systems to catch debris during demolition activities. Selection of the appropriate equipment and design of the work containment systems is the responsibility of the contractor; however, additional pilings to support these structures are not anticipated as the contractor will utilize the existing substructure to support them.

Site Preparation for New Bridges—A total of 65 permanent, 24-inch steel piles are proposed for this project, as well as installation and removal of 65 temporary 36-inch steel casings (Table 2). The contractor is likely to create a template to facilitate pile installation. The template will consist of a grid pattern in-line with the existing boardwalk grade comprised of steel H-piles and steel angle iron/channels, among other materials. The template will guide the vibratory installation of 36-inch temporary casings at the locations of all new 24-inch steel piles.

A variety of large debris and fill may be present at the pile sites, given the history of the area, results from the preliminary geotechnical investigation during which most of the borings encountered riprap, and Phase 1 construction. To avoid inducing unacceptable vibration levels on adjacent structures, the contractor may predrill the piling locations to an elevation of about ±3 feet below mean sea level (msl); though the need to predrill will be determined on-site once the contractor has identified the exact pile locations. Predrilling work, also referred to as down-the-hole drilling, would be conducted inside the 36-inch temporary casings, and no sediment will be removed from within the temporary casing during this site preparation activity. The source level for down-the-hole drilling (166.2dB RMS SPL, Denes *et al.,* 2016) is below the source level for vibratory installation of 36″ piles (Table 6). Predrilling was not required during Phase 1 of the project, and the applicant considers it unlikely for this phase; therefore, the analysis for vibratory installation of 36-inch piles was used to estimate the Level B harassment zone for potential down-the-hole drilling, and the impact installation of 24-inch piles was used to estimate the Level A harassment zone. (See additional explanation in the *Ensonified Area* section below.) If pre-drilling is not required, the contractor may use a 14-inch H-pile equipped with a torched point at the end to break up the ground at each piling location using the vibratory hammer. The H-pile site preparation was used in Phase 1. The contractor may also manually remove riprap and other obstructions from the riverbed and banks, if such materials prohibit the installation of the temporary casings and permanent pilings.

Bridge Design—The 6th Street Bridge will require a total of 21 plumb piles. Estimated pile depths range from −74 to −77 feet below msl. The trestle crossing will consist of two end bents and one interior bent each consisting of three piles. The trolley bridge will be constructed using precast concrete tee beams. The roadway approach will consist of two bents supported by a total of 12 steel piles, with a pre-cast prestressed slab bridge.

The 8th Street Bridge will consist of a total of 23 plumb piles. Estimated pile depths range from 84 to −85 feet below msl. The trestle crossing will consist of two end bents, one comprised of four piles and the other composed of three piles, and one interior bent comprised of four piles. The trolley bridge will be constructed using precast concrete tee beams. The roadway approach will consist of two bents supported by a total of 12 steel piles, with a pre-cast prestressed slab bridge.

The 10th Street Bridge will consist of a total of 21 plumb piles. Estimated pile depth is -64 feet below msl. The trestle crossing will consist of two end bents and one interior bent each comprised of three piles. The trolley bridge will be constructed using precast concrete tee beams. The roadway approach will consist of two bents, each constructed on six piles for a total of 12 piles, with a pre-cast prestressed slab bridge.

Bridge Construction—The contractor will install a temporary 36-inch casing at the site of each of the 65 permanent, 24-inch piles. The temporary casings will be installed to a depth of approximately 7 feet below the ground surface elevation using a vibratory hammer. The permanent piles will be installed inside the casings, and will be driven open-ended into very soft siltstone and mudstone to develop the required axial resistance using a vibratory hammer followed by a diesel impact hammer. It is estimated that the contractor will be able to advance the permanent piles to roughly 80 percent of the desired depth using the vibratory hammer, then will use the diesel hammer to seat the piles at the desired depths.

TABLE 2—PILINGS EXPECTED TO BE REMOVED AND INSTALLED AT EACH BRIDGE

Bridge	Timber piles removed	36-inch temporary steel casings (each installed and removed)	24-inch steel piles to be installed
6th Street Bridge	50	21	21
8th Street Bridge	50	23	23
10th Street Bridge	50	21	21
Total	150	65	65

The contractor has six temporary casings on-site, so they will need to remove the casing once the permanent 24-inch piles are advanced to a low enough depth with the vibratory hammer that the casing prohibits driving the 24-inch pile with the diesel impact hammer. Removal of the temporary casings will be completed using a vibratory hammer. The removed pile will then be positioned elsewhere within the template to guide additional pile installation. All bridge construction equipment will be operated from the existing roadway and upland areas.

It is anticipated that the contractor may employ two crews during construction. These crews would work concurrently at two different bridge sites to keep the project on schedule. Implications for project analysis and potential take are discussed in the *Ensonified Area* section, below.

Abutment Wingwalls—Wingwalls will need to be constructed at the 10th Street crossing to help contain the roadway approach fill. The wingwalls will be cast-in-place concrete retaining walls. Construction of the wingwalls will require the operation of general construction equipment (see Table 1 for source levels). The contractor will first excavate existing ground to the desired elevation using an excavator and dump truck positioned on the existing roadway. Then the contractor will frame the wall using pneumatic tools or hammer and nails. Once framed, concrete will be poured into the frame and allowed to cure. It is anticipated that the contractor will be able to do this work in the dry; however, the contractor will install isolation measures when necessary. All equipment will be operated from the existing roadway and upland areas.

Superstructures—The rail superstructures are comprised of precast, prestressed slabs with a 2-inch wearing surface. Possible construction equipment includes a crane, excavator, concrete saw, and concrete mixer. Source levels are included in Table 1.

Roadway improvements will consist of curb and sidewalk construction, asphalt paving, inlet construction, and utility relocates. The roadway work will be completed using standard roadway construction equipment, such as excavators and backhoes, dump trucks, pavers, and rollers. Other equipment that may be employed includes air compressors, jack hammers, concrete pumps and mixers, and pneumatic tools. (See Table 1 for above-water equipment source levels). The work will be conducted landward of the trolley crossings, will not require IWW, and equipment will be operated away from the river. In-air noise produced by roadway construction equipment will range from 78 dB RMS to 93 dB RMS at 20 meters from the source (Hanan & Associates, 2014).

Buildings and other above-grade structures will reduce noise during roadway construction by physically blocking it and reflecting it away from the river, due to structural noise reduction (FHWA, 2011). The pier structures will also block noise from reaching the river and bank areas by deflecting it upwards. Additionally, noise levels from much of the construction equipment used for removal of the existing superstructures are no different than many of the existing noise sources in the area. Based on the sound levels produced by the proposed equipment, existing site conditions, the likely location of the pinnipeds within the area in relation to the associated construction activities, and Phase 1 monitoring, roadway improvements are not expected to disturb nearby marine mammals, and will not be considered further.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species with expected potential for occurrence in Astoria and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. For Steller sea lion (*Eumetopias jubatus*) the stock abundance is the best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys. All managed stocks in this region are assessed in NMFS's U.S. 2018 SARs (*e.g.,* Caretta *et al.* 2019). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2018 SARs (Caretta *et al.* 2019, Muto *et al.* 2019).

TABLE 3—SPECIES WITH EXPECTED POTENTIAL FOR OCCURRENCE IN ASTORIA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Humpback whale	*Megaptera novaeangliae.*	*Central North Pacific*	*-, -, Y*	*10,103 (0.300, 7,891, 2006).*	*83*	*26*

TABLE 3—SPECIES WITH EXPECTED POTENTIAL FOR OCCURRENCE IN ASTORIA—Continued

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Humpback whale	*Megaptera novaeangliae*.	*California/Oregon/ Washington*.	*-, -, Y*	*2,900 (0.05, 2,784, 2014)*.	*16.7*	*>= 40.2*
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*.	U.S	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>=321
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	41,638 (See SAR, 41,638, 2015).	2498	108
Family Phocidae (earless seals)						
Pacific harbor seal	*Phoca vitulina richardii*.	Oregon/Washington Coast.	-, -, N	Unknown (Unknown, Unknown, 1999).	Undetermined	10.6

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note—Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 3. However, the temporal and spatial occurrence of humpback whales is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Humpback whales occasionally enter the Columbia River to feed (Calambokidis, *et al.,* 2017), however their presence is rare. They were not observed during Phase 1 of the City's project (OBEC Consulting Engineers. 2019), and are not expected during Phase 2.

California sea lions

California sea lions are distributed throughout the Eastern North Pacific from central Mexico to southeast Alaska, with breeding areas restricted primarily to island areas off southern California (the Channel Islands), Baja California, and in the Gulf of California (Wright *et al.,* 2010). There are five genetically distinct geographic populations of California sea lions in U.S. waters (Schramm *et al.,* 2009). In Oregon, California sea lions are from the Pacific Temperate population, and commonly occur in Oregon from September through May (ODFW, 2015). The estimated net productivity rate for the species is 7 percent annually (Laake *et al.,* 2018). Threats to this species include incidental catch and entanglement in fishing gear, such as gillnets; gunshot wounds and other human-caused injuries; entanglement in marine debris; and oil exposure (Caretta *et al.,* 2019).

Almost all California sea lions in the Pacific Northwest are sub-adult or adult males (NMFS, 2008). California sea lions feed in the Columbia River and adjacent nearshore marine areas, and have been observed near several bridge crossings within the project site. They are often seen swimming around underneath the existing structures, and commonly use these areas when transiting from known temporary haul-outs and foraging sites in the river channel. A small group haul out at the Buoy Beer facility near the 8th Street bridge location. However, their primary haulout in Astoria is the East Mooring Basin, which is located over one mile (1.6km) upstream from the project site.

The bulk of the construction activities coincide with the season of lowest California sea lion abundance in the Columbia River basin. However, the in-water work period includes the tail end of peak usage of the lower Columbia River by California sea lions. Additionally, construction of the new rail superstructures will be partially above the high mean tide elevation which is directly above the river banks where California sea lions may be temporarily hauled-out.

Steller sea lions

The Steller sea lion range extends along the Pacific Rim, from northern Japan to central California (Loughlin *et al.,* 1984). Steller sea lions inhabiting U.S. waters are divided into two stocks, the Western U.S. stock and the Eastern U.S. stock. Steller sea lions that occur within the Lower Columbia River are part of the Eastern U.S. sock. The Eastern U.S. stock was de-listed in 2013 following a population growth from 18,000 in 1979 to 70,000 in 2010 (and an estimated annual growth of 4.18 percent) (NMFS, 2013). Threats to Steller sea lions include: Boat/ship strikes, contaminants/pollutants, habitat degradation, illegal hunting/shooting, offshore oil and gas exploration, and interactions (direct and indirect) with fisheries (NOAA, 2016b).

Steller sea lions are present year-round at the mouth of the Columbia River, and they are at their peak in the lower river from September through March. The primary haulout point is on the top of South Jetty (ten miles downstream from the project site). At the South Jetty, typical single day counts are approximately 100 individuals, while at Phoca Rock/ Bonneville Dam, there are approximately 40 individuals in a single day (Susan Riemer, pers. comm., 2016). Steller sea lions feed in both the Columbia River and adjacent nearshore marine areas. The timing of this

construction project coincides with peak presence of Steller sea lions but they are not known to haul out near the project site. Steller sea lions may be swimming past the project site in the main channel of the river, however, no Steller sea lions were observed within the region of activity during Phase 1 construction.

Harbor seals

On the U.S. west coast, Pacific harbor seals (*Phoca vitulina richardii*) range from Alaska to Baja California, Mexico (ODFW, 2015). Three separate harbor seal populations are recognized on the U.S. west coast: California Stock, Washington Inland Waters Stock, and Oregon/Washington Coast Stock (Caretta *et al.,* 2019). In 1999, the Oregon/Washington Coast stock abundance was estimated to be 24,732. However, the data used to publish that abundance was eight years old at the time and no more recent stock abundance estimates exist (Caretta *et al.,* 2019). The Oregon/Washington Coast stock of harbor seals is not listed under the ESA nor are they considered depleted or strategic under the MMPA.

Harbor seals utilize specific shoreline locations on a regular basis as haulouts including beaches, rocks, floats, and buoys. They must rest at haulout locations to regulate body temperature, interact with one another, and sleep (NOAA, 2016a). Harbor seals are present throughout the year at the mouth of the Columbia River and adjacent nearshore marine areas. They are infrequently present at the Astoria Mooring Basin, but they are known to transit through the main river channel past the project site. Their closest haulout and pupping area is Desdemona Sands which is downstream of the Astoria-Megler Bridge. Pupping occurs from Mid-April to July, outside of the proposed project work period (Susan Riemer, pers. comm., 2016). Due to their year-round occurrence in the Columbia River, harbor seals are likely to be found transiting the area during in-water construction.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Three marine mammal species (all pinnipeds) have the reasonable potential to co-occur with the proposed construction activities. Of those pinniped species, two are otariids (Steller sea lion and California sea lion) and one is a phocid (harbor seal). Please refer to Table 3.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds. Amplitude is the

height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (µPa). One Pascal is the pressure resulting from a force of one Newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 µPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in the document are referenced to a pressure of 1 µPa and all airborne sound levels in this document are referenced to a pressure of 20 µPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures. When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz;
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the Project include impact pile driving, vibratory pile removal and driving, potential down-the-hole drilling (included in vibratory pile removal and driving analysis), and potential preboring using an H-pile. The sounds produced by these activities fall into one of two general sound types: pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts. Pulsed sound sources (*e.g.,* impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features. Non-pulsed sounds can be tonal, narrowband or broadband, brief or prolonged, and may be continuous or non-continuous (ANSI 1995; NIOSH 1998). Some of these non-pulsed sounds can be transient signals of short duration without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment. Impact

hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate.

Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005). Drilling would be conducted inside of the hollow 36-inch casings. The pulsing sounds produced by the down-the-hole drilling methods are continuous, however, this method likely increases sound attenuation because the noise is primarily contained within the steel pile and below ground, rather than impact hammer driving methods which occur at the top of the pile (R&M, 2016).

The likely or possible impacts of the City's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during site preparation and pile installation and removal, and use of above-water construction equipment.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from the City's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving and drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal (Kastelein *et al.,* 2014)), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings

(Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from site preparation activities and pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

During Phase 1 of the Astoria Waterfront Bridge Replacement project, the City documented observations of marine mammals during construction activities (*i.e.,* pile driving and removal) at the bridge sites (see 83 FR 19243 for Final IHA **Federal Register** notice). In the marine mammal monitoring report, 604 California sea lions were observed within the behavioral disturbance zone (4204 takes when extrapolated across unobserved construction days) during pile driving activities (*i.e.,* documented as Level B harassment take). Behavioral reactions were observed in only five percent of the observed California sea lions, and included travel towards and away from construction activities. 53 harbor seals were also observed within the behavioral disturbance zone (323 takes when extrapolated across unobserved construction days), however very few behavioral reactions were observed by protected species observers (PSOs). Given that the projects sites in Phase 2 are adjacent to those in Phase 1, and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements).

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The Lower Columbia River is used by various types of vessels, including cargo ships, dredging vessels, fishing vessels, and pollution control vessels, among others; therefore, background sound levels in the area are sometimes already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated

with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise is primarily an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. During in-water activities, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are, in all cases, larger than those associated with airborne sound. However, this project includes above-water work that occurs near California sea lion haulouts, and there is potential for above-water work to result in behavioral harassment of these hauled out animals.

Marine Mammal Habitat Effects

The City's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. In-water construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound and minor visual disturbance due to the construction. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving and potential site preparation activities, elevated levels of underwater noise would ensonify the river where both fish and mammals may occur and could affect foraging success.

In-water pile driving and pile removal would also cause short-term effects on water quality due to increased turbidity. The City would employ standard construction best management practices, thereby reducing any impacts. Considering the nature and duration of the effects, combined with the measures to reduce turbidity, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the surrounding waters of the Columbia River and Pacific Ocean. Pile installation and removal may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.,* 1980). Based on monitoring results from Phase 1, pinnipeds in the project area would likely be traveling through and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Impacts to habitat and prey are expected to be temporary and minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey (Fish)

Construction activities would produce continuous (*i.e.,* vibratory pile driving) and pulsed (*i.e.,* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project. Uncertainty regarding direct and indirect effects on prey species will be mitigated due to the seasonal presence of salmonids and other prey present in the area, and the mitigation measures in place to reduce impacts to fish under Federal Aid Highway Program (FAHP). Further, it is anticipated that some of the pile driving activities will occur in the dry, despite the conservative project analysis that assumes all pile driving would occur in-water. Sound attenuation devices will be installed for in-water pile driving.

Construction activities, in the form of increased turbidity, have the potential to adversely affect fish in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates, any effects on fish are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

In summary, given the large areas of fish and marine mammal foraging habitat in the Columbia River outside of the ensonified area, and the anticipated rapid return to the project area following cessation of in-water work, pile driving and site preparation activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the vibratory and impact pile hammers, potential drill, and other construction equipment has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to California sea lions and harbor seals because they are more likely to occur closer to the project site, particularly considering the small, nearby California sea lion haulout. Auditory injury is unlikely to occur to other groups, and the proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality or serious injury is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 µPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 µPa (rms).

The City's proposed activity includes the use of continuous (vibratory pile driving, preboring and potential down-the-hole drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) are applicable for in-water noise.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City's proposed activities include the use of impulsive (impact hammers) and non-impulsive (vibratory hammers, potential down-the-hole drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance*.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB.	*Cell 2:* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, site preparation). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 21.53km (13.38 mi) into the river channel during vibratory installation/removal of the 36-inch temporary steel casings, though this distance does not account for tide levels. There is a chance that pile installation work could be done during low tides, where exposed sand bars could significantly reduce the Level B ZOI.

The project includes vibratory removal of timber piles, vibratory and impact pile installation of steel pipe piles and site preparation using a vibratory hammer and H-pile. Source levels of pile installation/removal activities and site preparation are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and driving method are presented in Table 6. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

The source level for vibratory removal of timber piles is from in-water measurements generated by the Greenbusch Group (2018) from the Seattle Pier 62 project (83 FR 39709; April 10, 2018). Hydroacoustic monitoring results from Pier 62 determined unweighted rms ranging from 140 dB to 169 dB. NMFS analyzed source measurements at different distances for all 63 individual timber piles that were removed at Pier 62 and normalized the values to 10 m. The results showed that the median is 152 dB SPLrms.

TABLE 6—SOUND SOURCE LEVELS FOR IN-WATER ACTIVITIES

Pile size/type	Method	Source level (at 10m)			Literature source
		dB RMS	dB SEL [b]	dB peak	
14-inch Timber	Vibratory	152			The Greenbusch Group, Inc (2018).
14-inch Steel H-pile	Vibratory	150			WSDOT (2016).
24-inch Steel Pipe	Vibratory	162			WSDOT (2010).
	Impact	[a] 187	[a] 171	[a] 200	WSDOT (2016).
36-inch Steel Pipe	Vibratory	170			CA Dept. of Transportation (2015).

[a] Includes 7dB reduction from use of bubble curtain.
[b] Sound exposure level (dB re 1 μPa²-sec).

It is anticipated that the contractor may employ two crews during construction to keep the project on schedule. This could result in concurrent use of a vibratory hammer and an impact hammer, however, the contractor will not operate two of the same hammer type concurrently. The hammers would be operated at two different bridges. The ensonified zones would likely overlap during concurrent use, but the multiple-source decibel addition method (Table 7) does not result in significant increases in the noise source when an impact hammer and vibratory hammer are operated at the same time, because the difference in noise source levels (Table 6) between the two hammers is greater than 10dB.

TABLE 7—MULTIPLE-SOURCE DECIBEL ADDITION

When two decibel values differ by:	Add the following to the higher level
0–1 dB	3 dB
2–3 dB	2 dB
4–9 dB	1 dB
>10 dB	0 dB

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB
B = transmission loss coefficient
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Astoria are not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 8—IN-WATER ACTIVITY SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile size/type	Method	Source level at 10 m (dB re 1 μPa rms)	Level B threshold (dB re 1 μPa rms)	Propagation (xLogR)	Distance to Level B threshold (m)	Level B harassment ensonified area (km^2)
14-inch Timber	Vibratory	152	120	15	1,359.4	3.2
14-inch Steel H-pile	Vibratory	150	120	15	1,000.0	1.8
24-inch Steel Pipe	Vibratory	162	120	15	6,309.6	55.3
	Impact	187	160	15	631.0	0.8
36-inch Steel Pipe	Vibratory	170	120	15	21,544.4	212.3

In-Air Disturbance during General Construction Activities—Behavioral disturbance (Level B harassment take) may occur incidental to the use of construction equipment during general construction that is proposed in the dry, above water, or inland within close proximity to the river banks. These construction activities are associated with the removal and construction of the rail superstructures, removal of the existing concrete foundations, construction of abutment wingwalls, and the construction of a temporary work platform. Possible equipment and sound source levels are included in Table 1. Using the Spherical Spreading Loss Model (20logR), a maximum sound source level of 93 dB RMS at 20 m, sound levels in-air would attenuate below the 90dB RMS Level B harassment threshold for harbor seals at 28 m, and below the 100 dB RMS threshold for all other pinnipeds at 9 m. Harbor seals are not expected to occur within 28m of the activity as there are no nearby haulouts, and are, therefore, not expected to be harassed by in-air sound. Additionally, the City is proposing a 10 m shutdown zone (Table 16) for all construction work to prevent injury from physical interaction with equipment. The City would therefore shut down equipment before hauled out sea lions could be acoustically harassed by the sound produced. No Level B harassment is expected to occur due to increased sounds from roadway construction. However, sea lions may be disturbed by the presence of construction equipment and increased human presence during above-water construction.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs entered in the User Spreadsheet (Table 9) and the resulting isopleths are reported below (Table 10).

TABLE 9—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Source level at 10 m	Number of piles within 24-h period	Duration to drive single pile (minutes)	Number of strikes per pile	Propagation (xLogR)	Distance from source level measurement (meters)
14-inch Timber Vibratory.	A.1) Vibratory pile driving.	2.5	152dB RMS SPL	50	20		15	10
14-inch Steel H-Pile	A.1) Vibratory pile driving.	2.5	150dB RMS SPL	36	25		15	10
24-inch Steel Vibratory	A.1) Vibratory pile driving.	2.5	162dB RMS SPL	18	20		15	10
36-inch Steel Vibratory	A.1) Vibratory pile driving.	2.5	170dB RMS SPL	36	8		15	10
24-inch Steel Impact	E.1) Impact pile driving.	2	171dB SEL/207 PK SPL.	23		500	15	10

The applicant may conduct down-the-hole drilling, however a separate analysis is not provided for that activity, as it is was not necessary in Phase 1 of the project, and is not expected to be necessary in Phase 2. Should drilling be necessary, the Level B harassment zone will be considered to be the same as that calculated for vibratory installation/removal of 36-inch steel piles, as that Level B harassment zone is clipped in all directions, and therefore is the most conservative a Level B harassment zone could be. A conservative Level B harassment zone is of particular importance due to the fact that the duration of drilling, should it be necessary, is unknown. The applicant will consider the Level A harassment zone for down-the-hole drilling to be the same as the Level A harassment zones calculated for impact pile driving of the 24-inch steel piles. These are the largest Level A harassment zones, and Level A harassment zones are expected to be smaller for a continuous sound source such as down-the-hole drilling.

TABLE 10—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Level A harassment zone (m)	
	Phocids	Otariids
14-inch Timber Vibratory	6.8	0.5
14-inch Steel H-Pile	4.7	0.3
24-inch Steel Vibratory	16	1.1
36-inch Steel Vibratory	47	3.3
24-inch Steel Impact *(and down-the-hole drilling, if necessary)*	* 431.5	31.4

* (Peak 7.4)

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals, and how it is brought together with the information provided above to produce a quantitative take estimate. Estimated takes of each species were calculated using information provided by the Oregon Department of Fish and Wildlife (Bryan Wright, pers. comm., August 2019), Washington Department of Fish and Wildlife (WDFW, 2014) and the Marine Mammal Commission (Tiff Brookens, pers. comm., March 2018).

Harbor Seal

Numbers of harbor seals hauled out at Desdemona Sands have been reported to reach into the thousands (Profita, 2015), but specific counts were unavailable. Without counts of harbor seals closer to the project site, the maximum average count of harbor seals at the South Jetty (57 seals; WDFW, 2014) is used to calculate take, as in Phase 1 (83 FR 19243, May 2, 2018). The Level B harassment zones for Phase 2 extend far beyond the calculated zones for Phase 1, approaching the South Jetty, further supporting the use of these harbor seal counts.

Harbor seals do not haul out near the project area and would only be potentially harassed if they are transiting through the Level A or Level B harassment zone during the in-water work period (including the extension, if applicable). Level B harassment take was calculated by multiplying the maximum average count of harbor seals at the South Jetty by days of in-water activity (Table 11).

Additionally, while harbor seals are unlikely to occur in the Level A harassment zone during vibratory pile driving (based on Phase 1 monitoring), the applicant is concerned that if a few animals occurred in the Level A harassment zone during impact pile driving, they may need to shut down more frequently than is practical, given the IWWP restrictions previously discussed. As such, NMFS is proposing to observe a shutdown zone that is smaller than the Level A isopleth for impact pile driving and to issue small numbers of Level A harassment take of harbor seals (Table 14). This proposed take would avoid potentially excessive shut downs should a small group of harbor seals enter the project area on each day while impact pile driving activities (or down-the-hole drilling, as necessary) are underway. Level A harassment take of harbor seals was calculated by multiplying a group of two animals by 14 in-water work days. Level A takes may only occur during the subset of in-water work days when the applicant conducts impact pile driving (or down-the-hole drilling, as required), as the shutdown zone contains the entire Level A harassment zone for all other in-water work activities.

Steller Sea Lion

Counts of Steller sea lions at the East Mooring Basin are typically in the single digits (B. Wright, pers. comm., March 2018), while the average number of Steller sea lions observed at the South Jetty during the in-water work period (including the possible extension) from 2000–2014, was 272 animals (WDFW, 2014). When the applicant consulted ODFW for more recent Steller sea lion data, ODFW advised that there were only three more recent surveys, none of which occurred during the IWWP months (Bryan Wright, pers. comm., September 2019). The Level B harassment zones for Phase 2 extend far beyond the calculated zones for Phase 1, approaching the South Jetty. Therefore, NMFS expects that that average daily count from the South Jetty provides an appropriate daily count to calculate potential Steller sea lion Level B harassment take during Phase 2. Note the calculation is based on the average daily count, not the maximum. The maximum daily count was 606 animals, in the month of April. Considering that work will only occur in April if the entire IWWP extension is exercised, and the large difference between the maximum daily count and the average daily count, NMFS believes that using the maximum daily count would greatly overestimate potential take.

For Phase 1 Level B harassment take calculations of Steller sea lions, daily estimates were based off of observations at Bonneville Dam and Willamette Falls, as these animals must transit past Astoria at some point in their travels from the Pacific to the upper Columbia River (83 FR 19243, May 2, 2018). The daily count was 67 animals, 63 at Bonneville Dam and four at Willamette Falls. However, NMFS believes that South Jetty estimates are more appropriate and more conservative for Phase 2 take calculations, given the larger Level B harassment zones, some of which extend downriver close to the South Jetty.

Level B harassment take was calculated by multiplying the daily counts of Steller sea lions by days of activity (Table 11).

Steller sea lions do not haul out near the construction sites and would only be potentially harassed if they are transiting through the Level B harassment zone during the in-water work period (including the extension, if applicable). Steller sea lions are not expected to occur within the calculated Level A harassment zone for otariids (Table 10). No Level A harassment takes of Steller sea lions are proposed nor expected to be authorized.

TABLE 11—LEVEL B HARASSMENT TAKE CALCULATION FOR HARBOR SEAL AND STELLER SEA LION

Species	Maximum average/daily count	Days of in-water activity [c]	Total take (Level B)
Harbor seal	[a] 57	21	1,197
Steller sea lion	[b] 272	21	5,712

[a] Maximum average count of harbor seals at the South Jetty (WDFW, 2014).
[b] Average number of Steller sea lions observed at the South Jetty during the in-water work period (including the possible extension) from 2000–2014 (WDFW, 2014).
[c] Includes in-water activity for the entire project.

California Sea Lion

Aerial surveys of the East Mooring Basin in Astoria from 2011 to 2018 (Bryan Wright, pers. comm., August 2019) were used to calculate in-water Level B harassment take of California sea lions, as in Phase 1 of this activity (83 FR 19243, May 2, 2018). The data provided to NMFS by ODFW included the maximum California sea lion count observed on a single day for each month throughout the survey period. These maximum counts at the East Mooring Basin ranged from 0 California sea lions on a single day in July 2017 to 3,834 on a single day in March 2016. A ''daily average maximum'' for each IWWP month (Table 12) was calculated by averaging the maximum counts on a single day for each survey month provided by ODFW. In addition to ODFW aerial surveys, the City conducted opportunistic surveys of pinnipeds at the bridge sites in December 2017. A maximum of four California sea lions were observed in the water surrounding the bridges and piers. Additional California sea lions were heard vocalizing from the riverbanks under the bridges but the exact number of sea lions could not be determined.

TABLE 12—DAILY AVERAGE MAXIMUM NUMBER OF CALIFORNIA SEA LIONS AT EAST MOORING BASIN FOR IWWP MONTHS, INCLUDING THE POTENTIAL EXTENSION

Month	Daily average maximum [a]
November	141
December	135
January	408
February	893
March	1,191
April	982

[a] Daily average maximum was calculated using data from aerial surveys of the East Mooring Basin in Astoria from 2011 to 2018 (Bryan Wright, pers. comm., 2019).

California sea lions are the most commonly observed marine mammal in the area, and are known to haul out on the riverbanks and structures near the bridges, as described above. California sea lions may be harassed by underwater sound resulting from vibratory pile removal and impact pile driving (at the distances listed above) as well as airborne sound resulting from roadway and railway demolition and construction. As such, California sea lions may be subject to harassment throughout the duration of Phase 2 of the project (December through November).

NMFS is proposing to authorize 1,056 Level B harassment takes of California sea lions associated with above-water construction activities taking place during the above-water work period, not including the IWWP extension (May to October). Level B harassment takes of California sea lions from above-water activities were calculated by multiplying the maximum estimate from the City's 2017 opportunistic surveys at the bridge sites (16 animals) by the estimated 11 days of work per month during the above-water work period.

NMFS is proposing to authorize 25,011 Level B harassment takes of California sea lions associated with in-water and above-water work during the IWWP. The City expects approximately 21 in-water work days across Phase 2 of the project. However, because the exact construction schedule is unknown, there are uncertainties in how many of the estimated work days will occur during each month. Therefore, estimated Level B harassment take during the IWWP (Table 13) is calculated by multiplying the highest daily average maximum (Table 12) during the IWWP months (including the potential extension) by the estimated 21 in-water work days. California sea lions exposed to in-air sound above Level B harassment threshold during the IWWP are expected to have already been taken by in-water activity, and therefore already be included in the take calculation.

Total California sea lion Level B harassment takes (Table 13) are calculated as the sum of above-water work period and IWWP takes.

TABLE 13—LEVEL B HARASSMENT TAKE CALCULATION OF CALIFORNIA SEA LION

Work period	Daily average maximum [b]	Potential number of workdays	Takes per month
IWWP [a]	1,191	21	25,011
May	16	11	176
June	16	11	176
July	16	11	176
August	16	11	176
September	16	11	176

TABLE 13—LEVEL B HARASSMENT TAKE CALCULATION OF CALIFORNIA SEA LION—Continued

Work period	Daily average maximum [b]	Potential number of workdays	Takes per month
October	16	11	176
Total			26,067

[a] IWWP includes the potential extension, as the month of March has the highest daily average maximum count.
[b] Daily average maximums during above-water work months are estimates from the City's opportunistic surveys at the Phase 1 bridge sites in December 2017.

Only 4204 Level B harassment takes of California sea lion were reported for Phase 1; however, the Phase 2 project area is much larger than the area within which marine mammals were reported in Phase 1. Therefore, NMFS expects California sea lion take to be higher for Phase 2 than was reported in the monitoring report for Phase 1.

As discussed above, the City estimates that approximately 16 California sea lions haul out near the project sites based on opportunistic surveys conducted in December 2017. Frequent construction shutdowns are of concern to the applicant, as there is a limited IWWP imposed by the Oregon Department of Fish and Wildlife and, therefore, the proposed mitigation zone does not entirely contain the area within the Level A harassment isopleth for impact pile driving. The applicant has requested Level A harassment takes of California sea lions, as the animals that haulout nearby may enter the Level A harassment zone as they transit between the haulouts and their feeding areas in the Columbia River.

NMFS is proposing to issue 224 Level A harassment takes of California sea lions (Table 14). The Level A harassment takes are calculated by multiplying the 16 animals that haulout near the project site (City of Astoria December 2017 surveys) by 14 in-water work days. Level A takes may only occur during the subset of in-water work days when the applicant conducts impact pile driving (or down-the-hole drilling, as required), as the shutdown zone contains the entire Level A harassment zone for all other in-water work activities.

TABLE 14—LEVEL A HARASSMENT TAKE CALCULATION OF HARBOR SEAL AND CALIFORNIA SEA LION

Species	Daily count	Estimated number of in-water work days	Level A harassment take
Harbor seal	2	14	28
California sea lion	[a] 16	14	224

[a] December 2017 survey estimates of California sea lions by the City at Phase 1 bridge sites.

TABLE 15—TOTAL LEVEL A AND LEVEL B TAKE PROPOSED FOR AUTHORIZATION

Common name	Stock	Level A harassment take	Level B harassment take	Total take	Stock abundance	Percent of stock
Harbor seal	Oregon/Washington Coast	28	1,197	1,225	[a] 24,732	5.0
Steller sea lion	Eastern U.S	0	5,712	5,712	41,638	13.7
California sea lion	U.S	224	26,067	26,291	257,606	10.2

[a] As noted in Table 3, there is no current estimate of abundance available for the Oregon/Washington Coast stock of harbor seal. The abundance estimate from 1999, included here, is the most recent.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case

of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, the City will employ the following standard mitigation measures:

- The *City* shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and City staff prior to the start of all construction work, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal and drilling will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If observed take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures would apply to the City's mitigation requirements:

Establishment of Shutdown Zones—For all pile driving/removal and drilling activities, the City will establish appropriate shutdown zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). These shutdown zones would be used to prevent incidental Level A exposures from pile driving and removal for Steller sea lions, and to reduce the potential for such take of harbor seals and California sea lions. During all pile driving and removal activities, as well as above-water construction, a minimum shutdown zone of 10m would be enforced (Table 16) for all species to prevent physical injury from interaction with construction equipment. Additionally, a shutdown zone of 32m will be enforced for Steller sea lions during impact pile driving to reduce the likelihood of Level A harassment take (Table 16). The placement of Protected Species Observers (PSOs) during all pile driving and drilling activities (described in detail in the *Monitoring and Reporting Section*) will ensure shutdown zones are visible when they are on site. When PSOs are not on site, the Oregon Department of Transportation (ODOT) inspector will be responsible for ensuring that activities shut down if a marine mammal enters the shutdown zone.

TABLE 16—SHUTDOWN ZONES

Construction activity	Shutdown zone (m)		
	Harbor seal	Steller sea lion	California sea lion
All Vibratory Pile Driving/Removal and Site Preparation	50	10	10
24-inch Steel Impact Pile Driving	.....	32	
Above-water Construction	10	10	

Establishment of Monitoring Zones for Level B Harassment—The City would establish monitoring zones to correlate with Level B harassment zones or zones of influence. These are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and site preparation. For airborne noise, these thresholds are 90 dB RMS re 20µPa for harbor seals and 100 db RMS re: 20µPa for all other pinnipeds. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The proposed monitoring zones are described in Table 17. Placement of PSOs on the shorelines around the Columbia River allow PSOs to observe marine mammals within the project site, however, due to the size of the Level B harassment zone during some activities, not all Level B harassment takes will be visible to PSOs. Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.

TABLE 17—MARINE MAMMAL MONITORING ZONES

Construction activity	Monitoring zone (m)
Above-water Construction.	28 (harbor seal only).
14-inch Timber Vibratory.	1,360.
14-inch Steel H-Pile	1,000.
24-inch Steel Vibratory.	6,310.
36-inch Steel Vibratory.	21,545.
24-inch Steel Impact	635.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact driving, an initial set of three strikes would be made by the hammer at 40 percent energy, followed by a 1-minute wait period, then two subsequent 3-strike sets at 40 percent energy, with 1-minute waiting periods, before initiating continuous driving. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or site preparation of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has been confirmed to have left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-

permitted species are not observed within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B monitoring zone. When a marine mammal permitted for Level B harassment take is present in the Level B harassment zone, activities may begin and Level B take will be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone will commence.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat);
- Mitigation and monitoring effectiveness.

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals, and will implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal and drilling activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Three PSOs will be on-site the first day and every third day thereafter during vibratory hammer installation and site preparation at each bridge. One observer will be stationed at the best practicable land-based vantage point to observe the Shutdown Zone and a portion of the Level A and Level B harassment zones. One observer will be stationed along the north bank of the river at the Washington State Department of Transportation Rest Area: Dismal Nitch. One observer will be stationed at the best practicable land-based vantage point to observe the remainder of the Level A and Level B harassment zones. Likely locations include the 6th Street viewing platform and the Pier 12 parking lot. If vibratory installation of the 36-inch casings occurs, this observer will be positioned along the north bank of the river downstream of the project site within the Chinook County Park. The ODOT on-site inspector will be trained in species identification and monitoring protocol and will be on-site during all vibratory removal and installation activities to confirm that no species enter the 10-meter Shutdown Zone when PSOs are not onsite.

Two PSOs will be on-site the first day of impact pile driving at each bridge, and every third day thereafter. One observer will be stationed at the best practicable land-based vantage point to observe the Shutdown Zone and a portion of the Level A and Level B harassment zones. One observer will be stationed at the best practicable land-based vantage point to observe the remainder of the Level A and Level B harassment zones. Likely locations include the 6th Street viewing platform, the Pier 12 parking lot, or the Washington State Department of Transportation Rest Area: Dismal Nitch on the north bank of the river. The ODOT on-site inspector will be trained in species identification and monitoring protocol and will be on-site during all impact pile driving activities to confirm that no species enter the 10-meter Shutdown Zone when PSOs are not onsite.

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. The City would adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) The City must submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of site preparation and pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, the City would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the City to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the City would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to the West Coast Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the City to determine whether modifications to the activities are appropriate.

In the event that the City discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to the West Coast Regional Stranding Coordinator, within 24 hours of the discovery. The City would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Phase 1 Monitoring Report

The City's monitoring report from Phase 1 of the project (OBEC, 2019) was frequently consulted in the NMFS evaluation of the City's proposed activities and requested take for Phase 2 of the project. The Phase 1 monitoring report indicated recorded take of California sea lions and harbor seals (Table 18). Steller sea lions were not observed during Phase 1 (Table 18), however, due to their known presence in the area, Level B harassment take was still requested for Phase 2 activities. Additionally, as mentioned above, the calculated Level B harassment zones were significantly smaller for Phase 1 than for Phase 2.

TABLE 18—PHASE 1 MONITORING RESULTS

Species	Number of takes recorded by PSOs	Estimated takes on days PSOs not present	Total estimated Level B harassment takes	Authorized Level B harassment take number	Percent of authorized takes that occurred
California sea lion	604	3,600 (240 × 15 days)	4204	33,736	12.5
Steller sea lion	0	0	0	5,360	0
Pacific harbor seal	53	270 (18 × 15 days)	323	4,560	7.1

Level A take was not requested nor authorized for Phase 1 activities, so the City used the calculated Level A isopleth as the shutdown zone to prevent Level A take. Shutdowns occurred on three days during Phase 1 activities. In all instances, shutdowns occurred when one or more California sea lion entered the shutdown zone. The Phase 1 and Phase 2 monitoring reports will provide useful information for analyzing impacts to marine mammals for potential future projects in the lower Columbia River.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving/removal and drilling activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment, identified above, when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity. Level A harassment is only anticipated for California sea lion and harbor seal. The potential for Level A harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Proposed Mitigation* section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, including Phase 1 of the City's project, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016; OBEC, 2019). Most likely for pile driving, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to Phase 1 activities and numerous other construction activities conducted in the Pacific Northwest, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving (and potential drilling) associated with the proposed project may produce sound at distances of many kilometers from the project site, the project site itself is located on a busy waterfront and in a section of the Columbia River with high amounts of vessel traffic. Therefore, we expect that animals disturbed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that California sea lions and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Other than feeding and the haulout areas previously described, the project area does not include any areas or times of particular biological significance for the affected species.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No serious injury is anticipated or authorized;
- The Level A harassment exposures are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species;
- The activity is expected to occur over 21 or fewer in-water work days.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals

and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes for each species proposed to be taken as a result of this project is 5, 13.7, and 10.2 percent of the total stock for harbor seal, Steller sea lion, and California sea lion, respectively (Table 15). Additionally, the number of takes requested is based on the number of estimated exposures, not necessarily the number of individuals exposed. Pinnipeds may remain in the general area of the project sites and the same individuals may be harassed multiple times over multiple days, rather than numerous individuals harassed once.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under Section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of Astoria for conducting waterfront bridge removal and replacement in Astoria, Oregon from November 2019 to October 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 31, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–24190 Filed 11–5–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Fiscal Year 2019 Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of Navy (DON) announces the appointment of members to the DON Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) Fiscal Year 2019 Performance Review Board (PRB). The purpose of the PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance-based bonuses and performance-based pay increases.

FOR FURTHER INFORMATION CONTACT: Leslie Joseph, Director, Executive Management Program Office, Office of Civilian Human Resources at 202–685–6186.

SUPPLEMENTARY INFORMATION:
Composition of the specific PRB is provided below:

Ms. Catherine Donovan
Ms. Steffanie Easter
Mr. Robert Hogue
Ms. Jennifer LaTorre
Mr. Garry Newton
Mr. Gary Ressing
Ms. Anne Sandel
Mr. James Smerchansky
Mr. Frederick Stefany
Ms. B. Lynn Wright
Mr. Robert Woods

(Authority: 5 U.S.C. 4314(c)(4))

Dated: October 7, 2019.

D.J. Antenucci,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–24175 Filed 11–5–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0109]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Evaluation To Inform the Teacher and School Leader Incentive Program

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 6, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0109. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Warner, 202–245–7744.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation to Inform the Teacher and School Leader Incentive Program.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 73.

Total Estimated Number of Annual Burden Hours: 45.

Abstract: This study will meet the Congressional mandate to evaluate the Teacher and School Leader Incentive Program (TSL) by including two evaluation components: (1) Descriptive study of Teacher and School Leader Incentive Program (TSL) grantees', and (2) Implementation, impact, and cost-effectiveness study of designating one or more ''teacher leaders'' as coaches in schools. It will provide updated information about the TSL program to help ED understand which strategies grantees are using and how effective a commonly-used strategy—designating teacher leaders to provide coaching to other teachers—is in improving educator effectiveness and ultimately student achievement.

Dated: November 1, 2019.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–24214 Filed 11–5–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0113]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; International Study of Adult Skills and Learning (ISASL) [Program for the International Assessment of Adult Competencies (PIAAC) Cycle II] 2022 Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before December 6, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0113. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will*

not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: International Study of Adult Skills and Learning (ISASL) [Program for the International Assessment of Adult Competencies (PIAAC) Cycle II] 2022 Field Test.

OMB Control Number: 1850–0870.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 5,611.

Total Estimated Number of Annual Burden Hours: 1,258.

Abstract: The Program for the International Assessment of Adult Competencies (PIAAC) is a cyclical, large-scale study of adult skills and life experiences focusing on education and employment. PIAAC is an international study designed to assess adults in different countries over a broad range of abilities, from simple reading to complex problem-solving skills, and to collect information on individuals' skill use and background. PIAAC is coordinated by the Organization for Economic Cooperation and Development (OECD) and developed by participating countries with the support of the OECD. In the United States, the National Center for Education Statistics (NCES), within the U.S. Department of Education (ED) conducts PIAAC. The U.S. participated in the PIAAC Main Study data collection in 2012 and conducted national supplement data collections in 2014 and 2017. All three of these collections are part of PIAAC Cycle I. A new PIAAC cycle is to be conducted every 10 years, and PIAAC Cycle II Main Study data collection will be conducted from August 2021 through March 2022. In preparation for the main study collection, PIAAC Cycle II will begin with a Field Test in 2020, in which 34 countries are expected to participate with the primary goal of evaluating newly developed assessment and questionnaire items and to test the PIAAC 2022 planned operations. PIAAC 2022 defines four core competency domains of adult cognitive skills that are seen as key to facilitating the social and economic participation of adults in advanced economies: (1) Literacy, (2) numeracy, (3) reading and numeracy components, and (4) adaptive problem solving. The U.S. will administer all four domains of the PIAAC 2022 assessment to a nationally representative sample of adults, along with a background questionnaire with questions about their education background, work history, the skills they use on the job and at home, their civic engagement, and sense of their health and well-being. The results are used to compare the skills capacities of the workforce-aged adults in participating countries, and to learn more about relationships between educational background, employment, and other outcomes. In addition, in PIAAC 2022, a set of financial literacy questions will be included in the background questionnaire. As in Cycle I, a user-friendly name for PIAAC Cycle II was created—the International Study of Adult Skills and Learning (ISASL)—to represent the program to the public, and will be used on all public-facing materials and reports. As this international program is well-known within the federal and education research communities, we continue to use ''PIAAC'' in all internal and OMB clearance materials and communications, and use the ''PIAAC'' name throughout this submission; however all recruitment and communication materials refer to the study as ISASL. This request is to conduct the PIAAC Cycle II Field Test in April–June 2020.

Dated: November 1, 2019.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–24215 Filed 11–5–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2488–018.

Applicants: Oasis Power Partners, LLC.

Description: Notice of Non-Material Change in Status of Oasis Power Partners, LLC.

Filed Date: 10/30/19.

Accession Number: 20191030–5136.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–234–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Amended and Restated TCIA with Western Spirit Transmission LLC to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5133.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–235–000.

Applicants: Public Service Company of New Mexico.

Description: Initial rate filing: EPC between PNM and Pattern NM Wind LLC to be effective 10/14/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5134.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–236–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Sunzia Transmission Interconnection Agreement to be effective 12/30/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5158.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–237–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Q3 2019 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 9/30/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5160.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–238–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5495; Queue No. AE1–124 to be effective 9/30/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5166.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–239–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA #4413(amend), 5298, 5299; ICSA #4422(amend), 5368, 5369; Queue #T131/AC1–173 to be effective 2/18/2016.

Filed Date: 10/30/19.

Accession Number: 20191030–5184.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–240–000.

Applicants: Hattiesburg Farm, LLC.

Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Category Seller Change to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5187.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–241–000.

Applicants: Simon Solar Farm LLC.

Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Category Seller Change to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5193.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–242–000.

Applicants: Sunshine Valley Solar, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5197.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–243–000.

Applicants: SR Millington, LLC.

Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Category Seller Change to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5199.

Comments Due: 5 p.m. ET 11/20/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–170–000.

Applicants: Eco Green Generation LLC.

Description: Form 556 of Eco Green Generation LLC [Clean Power #6].

Filed Date: 10/30/19.

Accession Number: 20191030–5135.

Comments Due: Non-Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24165 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–20–000.

Applicants: Sunshine Valley Solar, LLC.

Description: Sunshine Valley Solar, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/30/19.

Accession Number: 20191030–5087.

Comments Due: 5 p.m. ET 11/20/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–78–003.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance Filing for OPSI Annual Budget of PJM Interconnection, L.L.C.

Filed Date: 10/28/19.

Accession Number: 20191028–5193.

Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER10–2302–007.

Applicants: Public Service Company of New Mexico.

Description: Supplement to December 21, 2018 Triennial Market Power Analysis for the Southwest Region of Public Service Company of New Mexico.

Filed Date: 10/22/19.

Accession Number: 20191022–5028.

Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: ER10–2756–008; ER17–424–005.

Applicants: Griffith Energy LLC, Footprint Power Salem Harbor Development LP.

Description: Notice of Non-Material Change in Status of Griffith Energy LLC, et al. under ER10–2756, et al.

Filed Date: 10/30/19.

Accession Number: 20191030–5059.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER15–1344–007.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Revisions to OATT, Sch 12-Appx A in compliance with Commission's 8/30/2019 Order to be effective 5/25/2015.

Filed Date: 10/29/19.

Accession Number: 20191029–5135.

Comments Due: 5 p.m. ET 11/19/19.

Docket Numbers: ER17–256–009; ER17–242–008; ER17–243–008; ER17–245–008; ER17–652–008.

Applicants: Darby Power, LLC, Gavin Power, LLC, Lawrenceburg Power, LLC, Waterford Power, LLC, Lightstone Marketing LLC.

Description: Notice of Non-Material Change in Status of Darby Power, LLC, et al.

Filed Date: 10/30/19.

Accession Number: 20191030–5038.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER19–2782–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: First Revised ISA SA No. 5461 & First Revised ICSA SA No. 5462; Queue No. Y3–092 to be effective 10/24/2019.

Filed Date: 10/29/19.

Accession Number: 20191029–5136.

Comments Due: 5 p.m. ET 11/19/19.

Docket Numbers: ER20–218–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: BCS-Orchard Agreements to be effective 10/1/2019.

Filed Date: 10/29/19.

Accession Number: 20191029–5129.

Comments Due: 5 p.m. ET 11/19/19.

Docket Numbers: ER20–219–000

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: BCS-Roeder Agreements to be effective 10/1/2019.

Filed Date: 10/29/19.
Accession Number: 20191029–5133.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–220–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: BP Westcoast Products Agreements to be effective 10/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5134.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–221–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSC–BHS1–E&P-BigHorn-557–0.0.0–Agrmt to be effective 10/31/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5000.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–222–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Raymond Wind Farm 1st Amend and Restated GIA to be effective 10/24/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5069.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–223–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: Taygete Energy Project 2nd Amend and Restated GIA to be effective 10/15/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5072.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–224–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT, Att. L & CTOA, Att. A re:Name Change Essential Power (OATT) to be effective 12/29/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5085.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–225–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to CTOA, Att. A & OATT, Att. L re:Name Change Essential Power (CTOA) to be effective 12/29/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5088.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–226–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Amendment to Twiggs County Solar (Twiggs Solar) LGIA to be effective 9/27/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5096.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–227–000.
Applicants: Jersey Central Power & Light Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Jersey Central Power & Light Company Revenue Requirement to be effective 1/1/2020.
Filed Date: 10/30/19.
Accession Number: 20191030–5097.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–228–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Cooperative Energy NITSA Amendment Filing (adding Frank Snell DP) to be effective 10/3/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5099.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–229–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: PowerSouth NITSA Amendment Filing (re-add CAEC Enterprise DP) to be effective 9/25/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5100.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–230–000.
Applicants: New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: NYSEG–DCEC Attachment C Annual Update to be effective 1/1/2020.
Filed Date: 10/30/19.
Accession Number: 20191030–5102.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–231–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: MDU A&R Interconnection Agmt Rev 3 to be effective 12/30/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5107.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–232–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, SA No. 1803; Queue No. AE2–132 to be effective 9/30/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5112.
Comments Due: 5 p.m. ET 11/20/19.
Docket Numbers: ER20–233–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: Revisions to Operating Services Agreement with CPEC, Service Agreement No. 54 to be effective 1/1/2020.
Filed Date: 10/30/19.
Accession Number: 20191030–5117.
Comments Due: 5 p.m. ET 11/20/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24162 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR20–2–000]

MarkWest Hydrocarbon, L.L.C.; Notice of Request for Temporary Waiver

Take notice that on October 29, 2019, Markwest Hydrocarbon, L.L.C. (MarkWest) filed a petition seeking a temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations. This request seeks waiver with respect to natural gas liquids pipeline facilities in Kentucky and West Virginia, specifically applicant's MarkWest Ranger and Appalachia Liquids Pipeline System which is a pipeline connecting two natural gas processing plants in Kentucky and West Virginia with a natural gas liquids fractionator in Kentucky, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 27, 2019.

Dated: October 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24206 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14795–002]

Notice of Availability of Final Environmental Assessment; Shell Energy North America (US), L.P.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Hydro Battery Pearl Hill Pumped Storage Project, which would be located on Rufus Woods Lake, near Bridgeport, Douglas County, Washington and has prepared a Final Environmental Assessment (FEA) for the project. The project would be located on state lands except for the lower reservoir and power generation and pumping equipment which would be located on Rufus Woods Lake, a reservoir operated by the U.S. Army Corps of Engineers (Corps). The Corps, a cooperating agency for the preparation of this environmental assessment, is reviewing Shell's project for permits it would issue under sections 10 and 14 of the Rivers and Harbors act of 1899 and Section 404 of the Clean Water Act.

The FEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Ryan Hansen at (202) 502–8074 or at *ryan.hansen@ferc.gov.*

Dated: October 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24163 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2669–089]

Bear Swamp Power Company, LLC; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for the relicensing of the Bear Swamp Project, located on the Deerfield River, in Berkshire and Franklin Counties, Massachusetts, and has prepared a Draft Environmental Assessment (DEA) for the project.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2669–089.

For further information, contact Amy Chang at (202) 502–8250, or at *amy.chang@ferc.gov* mail to: *nicholas.palso@ferc.gov.*

Dated: October 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24205 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–21–000.

Applicants: Emmons-Logan Wind Interconnection, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Emmons-Logan Wind .Interconnection, LLC.

Filed Date: 10/31/19.

Accession Number: 20191031–5193.

Comments Due: 5 p.m. ET 11/21/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3297–014.

Applicants: Powerex Corp.

Description: Notice of Non-Material Change in Status of Powerex Corp.

Filed Date: 10/31/19.

Accession Number: 20191031–5102.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER19–2909–001.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Amendment to Submission of Initial Rate Schedule A to be effective 12/31/9998.

Filed Date: 10/31/19.

Accession Number: 20191031–5216.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–250–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: 3rd Quarter 2019 Revisions to OA, Schedule 12 and RAA, Schedule 17 to be effective 9/30/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5047.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–251–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: Att O–PSCo TBL 25—Deprec and Amort Rates Filing to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5052.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–252–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Operating Services Agreement with Alexandria Light & Power Utilities to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5073.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–253–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Operating Services Agreement with Detroit Lakes Public Utilities to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5074.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–254–000.

Applicants: Wabash Valley Power Association, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT, Att. L & CTOA, Att. A reflecting Wabash as a new TO (OATT) to be effective 12/31/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5082.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–255–000.

Applicants: AEP Texas Inc.

Description: Informational Filing and Notice of Cancellation of ERCOT Transmission Service Agreement (No. 451) of AEP Texas Inc.

Filed Date: 10/31/19.

Accession Number: 20191031–5088.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–256–000.

Applicants: Wabash Valley Power Association, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to CTOA, Att. A & OATT, Att. L reflecting Wabash a new TO (CTOA) to be effective 12/31/2019.

Filed Date: 10/31/19

Accession Number: 20191031–5093.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–257–000.

Applicants: Southwestern Electric Power Company.

Description: Informational Filing and Notice of Cancellation of Four Operations Agreements of Southwestern Electric Power Company.

Filed Date: 10/31/19.

Accession Number: 20191031–5097.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–258–000.

Applicants: Appalachian Power Company.

Description: § 205(d) Rate Filing: APCo-Seven Islands Small GIA to be effective 12/30/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5111.

Comments Due: 5 p.m. ET 11/21/19

Docket Numbers: ER20–260–000.

Applicants: California Power Exchange Corporation.

Description: § 205(d) Rate Filing: Rate Filing for Rate Period 36 to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5129.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–261–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: WP_ Depreciation Rates to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5165.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–262–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT Sch. 12-Appx A: Oct 2019 RTEP, 30-day Comments due to be effective 1/29/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5167.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–263–000.

Applicants: Doswell Limited Partnership.

Description: § 205(d) Rate Filing: Reactive Power Tariff Filing to be effective 12/1/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5170.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–264–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Nov 2019 Membership Filing to be effective 10/1/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5181.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–265–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: BPA AC Intertie Agreement 16th Revised to be effective 12/31/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5195.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–266–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Reserve Capacity Revisions to CCSF WDT SA (SA 275) to be effective 12/30/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5213.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–267–000.

Applicants: Gulf Power Company.

Description: § 205(d) Rate Filing: Cost-Based Rate Tariff to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5218.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–268–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE 2020 TRBAA Update to be effective 6/1/2019.

Filed Date: 10/31/19.

Accession Number: 20191031–5220.

Comments Due: 5 p.m. ET 11/21/19.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24202 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project Nos. 405–106, 405–121]

[Exelon Generation Company, LLC; Notice of Settlement Agreement

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* 405–106 and 405–121.

c. *Date Filed:* October 29, 2019.

d. *Applicant:* Exelon Generation Company, LLC.

e. *Name of Project:* Conowingo Hydroelectric Project.

f. *Location:* On the Susquehanna River, in Harford and Cecil Counties, Maryland and Lancaster and York Counties, Pennsylvania. The project does not occupy any federal land.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contacts:* Colleen Hicks, Manager, Regulatory and Licensing, Hydro, Exelon Power, 300 Exelon Way, Kennett Square, PA 19348, at (610) 765–6791 or *Colleen.Hicks@exeloncorp.com*; and David W. DeBruin, Jenner & Block LLP, 1099 New York Avenue NW, Washington, DC 20001, at (202) 639–6000 or *ddebruin@jenner.com*.

i. *FERC Contacts:* Emily Carter, (202) 502–6512 or *emily.carter@ferc.gov*; and Andy Bernick, (202) 502–8660 or *andrew.bernick@ferc.gov*.

j. Exelon Generation Corporation, LLC (Exelon) filed a Joint Offer of Settlement and Explanatory Statement (Settlement Agreement) on behalf of itself and the Maryland Department of the Environment (MDE). The Settlement Agreement provides for the resolution of all issues between the signatories associated with MDE's issuance of a water quality certification for the project pursuant to section 401 of the Clean Water Act (certification). The Settlement Agreement includes proposed protection, mitigation, and enhancement measures to address ecological, recreation, and water quality resources affected by the Conowingo Project. The Settlement Agreement also includes, conditioned on the Commission's approval of the Settlement Agreement and incorporation of proposed articles in a new license, a waiver of MDE's certification, and withdrawal of Exelon's February 28, 2019, petition for declaratory order regarding MDE's certification. Exelon requests the Commission approve the Settlement Agreement and incorporate the proposed license articles set forth in Attachment A of the Settlement Agreement, without modification or expansion, into a new, 50-year license for the Conowingo Project.

k. A copy of the Settlement Agreement is available for review on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support.

l. *Deadline for filing comments:* Comments on the Settlement Agreement are due on Tuesday, November 19, 2019. Reply comments are due on Monday, December 2, 2019.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–405–106 and –121.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24167 Filed 11–5–19; 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:		
CP18–548–000	10/15/2019	Chesapeake Utilities Corporation.
Exempt:		
1. CP17–495–000, CP17–494–000	10/15/2019	Advisory Council on Historic Preservation
2. CP18–46–000	10/18/2019	U.S. Senate.[1]
3. P–2800–048	10/21/2019	U.S. Congress.[2]
4. CP18–46–000	10/21/2019	U.S. Congress.[3]
5. CP15–558–000	10/21/2019	U.S. Congress.[4]
6. RP20–41–000	10/21/2019	U.S. Senate.[5]

[1] Senator Patrick Toomey.
[2] U.S. Congresswoman Lori Trahan, U.S. Senator Elizabeth Warren, and U.S. Senator Edward J. Markey.
[3] U.S. Congressman Brian Fitzpatrick.
[4] U.S. Congresswoman Bonnie Watson Coleman and U.S. Congressman Tom Malinowski.
[5] Senator Cory A. Booker.

Dated: October 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24164 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1073–002; ER10–2895–019; ER14–1964–010; ER16–287–005; ER13–2143–012; ER10–3167–011; ER13–203–011; ER17–482–004; ER19–1074–002; ER11–3942–020; ER11–2293–020; ER10–2917–019; ER19–1075–002; ER19–529–002; ER19–2429–001; ER13–1613–012; ER10–2918–020; ER10–2920–019; ER11–3941–017; ER10–2921–019; ER10–2922–019; ER13–1346–011; ER10–2966–019; ER11–2383–014; ER19–1076–002; ER12–161–019; ER12–2068–015; ER12–645–020; ER10–2460–015; ER10–2461–016; ER12–682–016; ER10–2463–015; ER11–2201–019; ER13–1139–019; ER13–17–013; ER14–25–015; ER14–2630–012; ER12–1311–015; ER10–2466–016; ER11–4029–015.

Applicants: Alta Wind VIII, LLC, Bear Swamp Power Company LLC, BIF II Safe Harbor Holdings LLC, BIF III Holtwood LLC, Black Bear Development Holdings, LLC, Black Bear Hydro Partners, LLC, Black Bear SO, LLC, BREG Aggregator LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Renewable Trading and Marketing LP, Brookfield Smoky Mountain Hydropower LLC, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Mesa Wind Power Corporation, Rumford Falls Hydro LLC, Safe Harbor Water Power Corporation, Windstar Energy, LLC, Bishop Hill Energy LLC, Blue Sky East, LLC, California Ridge Wind Energy LLC, Canadaigua Power Partners, LLC, Canadaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Imperial Valley Solar 1, LLC, Niagara Wind Power, LLC, Prairie Breeze Wind Energy LLC, Regulus Solar, LLC, Stetson Wind II, LLC, Vermont Wind, LLC, Stetson Holdings, LLC.

Description: Notice of Change in Status of the Brookfield Companies and TerraForm Companies, et. al.

Filed Date: 10/30/19.

Accession Number: 20191030–5243.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER19–2388–000.

Applicants: Marcus Hook 50, L.P.

Description: Report Filing: Refund Report to be effective N/A.

Filed Date: 10/30/19.

Accession Number: 20191030–5171.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–244–000.

Applicants: SR South Loving LLC.

Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Category Seller Change to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5205.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–245–000.

Applicants: Sun Streams, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5207.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–246–000.

Applicants: Windhub Solar A, LLC.

Description: Initial rate filing: MBR Application to be effective 10/31/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5210.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–247–000.

Applicants: Evergy Metro, Inc.

Description: § 205(d) Rate Filing: Notice of Succession Filing, Rate Schedules, Agreements & Tariffs to be effective 12/30/2019.

Filed Date: 10/30/19.

Accession Number: 20191030–5213.

Comments Due: 5 p.m. ET 11/20/19.

Docket Numbers: ER20–248–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 2020 RSBAA Update Filing to be effective 1/1/2020.

Filed Date: 10/31/19.

Accession Number: 20191031–5002.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–249–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: § 205(d) Rate Filing: OATT Attachment K—WestConnect Regional to be effective 1/1/2020.

Filed Date: 10/31/19.
Accession Number: 20191031–5025.
Comments Due: 5 p.m. ET 11/21/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24203 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2428–007; Project No. 10254–026; Project No. 10253–032]

Aquenergy Systems, LLC; Pelzer Hydro Company, LLC and Consolidated Hydro Southeast, LLC; Pelzer Hydro Company, LLC and Consolidated Hydro Southeast, LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the applications for licenses for the Piedmont (FERC Project No. 2428–007), Upper Pelzer (FERC Project No. 10254–026), and Lower Pelzer (FERC Project No. 10253–032) Hydroelectric Projects located on the Saluda River in Anderson and Greenville Counties, South Carolina, and has prepared a Final Environmental Assessment (FEA).

The FEA contains staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's website at *www.ferc.gov* using the ''eLibrary'' link. Enter one of the docket numbers, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Navreet Deo by telephone at 202–502–6304, or by email at *navreet.deo@ferc.gov.*

Dated: October 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24204 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–18–000.
Applicants: Impact Solar 1, LLC.
Description: Impact Solar 1, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/29/19.
Accession Number: 20191029–5035.
Comments Due: 5 p.m. ET 11/19/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–835–010.
Applicants: California Independent System Operator Corporation.
Description: Informational Compliance Filing of the California Independent System Operator Corporation.
Filed Date: 10/28/19.
Accession Number: 20191028–5201.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER15–356–012; ER19–2231–002; ER15–357–012; ER19–2232–002; ER10–1595–013; ER10–1598–013; ER10–1616–013; ER10–1618–013; ER18–1821–005.

Applicants: Chief Conemaugh Power, LLC, Chief Conemaugh Power II, LLC, Chief Keystone Power, LLC, Chief Keystone Power II, LLC, Crete Energy Venture, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, Rolling Hills Generating, L.L.C., Walleye Power, LLC.
Description: Notice of Non-Material Change in Status of Chief Conemaugh Power, LLC, et al.
Filed Date: 10/28/19.
Accession Number: 20191028–5214.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER16–2363–004; ER10–2192–034; ER10–2178–034; ER13–1536–018; ER11–2010–026; ER12–1829–017; ER12–1223–022.
Applicants: Bluestem Wind Energy, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation NewEnergy, Inc., Exelon Generation Company, LLC, Exelon Wind 4, LLC, Shooting Star Wind Project, LLC, Wildcat Wind, LLC.
Description: Supplement to December 28, 2019 Updated Market Power Analysis for the Southwest Power Pool Region of the Exelon SPP Entities, et al.
Filed Date: 10/23/19.
Accession Number: 20191023–5092.
Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER18–2397–004.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2019–10–28_Order 844 Compliance supplement filing to be effective 1/1/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5160.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER19–1641–002.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2019–10–28 RMR CPM Enhancements Compliance to be effective 9/27/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5180.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER19–2756–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–10–29_SA 3083 Lake Benton-NSP Substitute 1st Rev GIA (J790) to be effective 8/22/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5089.
Comments Due: 5 p.m. ET 11/19/19.

Docket Numbers: ER20–210–000.
Applicants: Citizens Sycamore-Penasquitos Transmission LLC.
Description: § 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Filing to be effective 1/1/2020.

Filed Date: 10/28/19.
Accession Number: 20191028–5179.
Comments Due: 5 p.m. ET 11/18/19.
Docket Numbers: ER20–211–000.
Applicants: Basin Electric Power Cooperative, Inc.
Description: Request for Extensions and Waivers of Certain NAESB Standards of Basin Electric Power Cooperative.
Filed Date: 10/28/19.
Accession Number: 20191028–5213.
Comments Due: 5 p.m. ET 11/18/19.
Docket Numbers: ER20–212–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Tariff Cancellation: DEC-Prosperity (RS No. 336) Cancellation to be effective 1/1/2020.
Filed Date: 10/29/19.
Accession Number: 20191029–5065.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–213–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-Central (RS No. 336) Amendment to be effective 1/1/2020.
Filed Date: 10/29/19.
Accession Number: 20191029–5068.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–214–000.
Applicants: New England Power Company.
Description: § 205(d) Rate Filing: Related Facilities Agreement with Deerfield Wind, LLC to be effective 10/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5092.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–215–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–29_SA 3267_Astoria Substation 1st Rev MPFCA (J493 J510) OTP to be effective 10/15/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5098.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–216–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) Rate Filing: KyMEA NITSA Service Agreement No. 23 to be effective 9/30/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5105.
Comments Due: 5 p.m. ET 11/19/19.
Docket Numbers: ER20–217–000.
Applicants: GridLiance West LLC.
Description: § 205(d) Rate Filing: TRBAA 2020 Annual Update to be effective 1/1/2020.
Filed Date: 10/29/19.
Accession Number: 20191029–5124.
Comments Due: 5 p.m. ET 11/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24170 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–19–000]

Grid-Enhancing Technologies; Supplemental Notice of Workshop

As announced in the Notice of Workshop issued on September 9, 2019, the Federal Energy Regulatory Commission (Commission) will convene a staff-led workshop in the above-referenced proceeding on Tuesday, November 5, 2019, from approximately 9:30 a.m. to 4:00 p.m., and Wednesday, November 6, 2019, from approximately 9:00 a.m. to 12:45 p.m. (Eastern Time). The workshop will be held at Commission headquarters, 888 First Street NE, Washington, DC 20426. The Chairman and Commissioners may attend and participate.

The purpose of this workshop is to discuss grid-enhancing technologies that increase the capacity, efficiency, or reliability of transmission facilities. Panelists and staff will discuss how grid-enhancing technologies are currently used in transmission planning and operations, the challenges to their deployment and implementation, and what the Commission can do regarding those challenges, including regulatory approaches such as incentives or requirements for the adoption of grid-enhancing technologies. These technologies include, but are not limited to: (1) Power flow control and transmission switching equipment; (2) storage technologies; and (3) advanced line rating management technologies. There will be an opportunity to submit written comments after the workshop. A notice setting the date when comments are due will be issued after the workshop.

The agenda and list of participants for this workshop is attached, including changes to panels 2 and 3. The workshop will be open for the public to attend in person, or to attend remotely via webcast. In-person attendees are encouraged to register on-line at: *http://www.ferc.gov/whats-new/registration/11-06-19-form.asp.* In-person attendees should allow time to pass through building security procedures before start time of the workshop. Although there is no registration deadline for in-person attendees, we strongly encourage attendees to register for the workshop as soon as possible, in order to avoid any delay associated with being processed by FERC security. Those who plan to attend the conference remotely via webcast must register by 5:00 p.m. Eastern Time on October 29, 2019. The webcast may not be available to those who do not register.

Information on the workshop (including a link to the webcast) will be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conference via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call 703–993–3100. The workshop will be transcribed. Transcripts will be available for a fee from Ace Reporting (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about this workshop, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8368, *Sarah.Mckinley@ferc.gov.*

Samin Peirovi (Technical Information), Office of Energy Policy and Innovation, (202) 502–8080, *Samin.Peirovi@ferc.gov.*

Dated: October 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24169 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR20–3–000.
Applicants: Gulf Coast Express Pipeline LLC.
Description: Tariff filing per 284.123(b),(e)/: Petition for NGPA Section 311 Rate Approval to be effective 9/25/2019.
Filed Date: 10/25/19.
Accession Number: 201910255029.
Comments/Protests Due: 5 p.m. ET 11/15/19.

Docket Numbers: RP19–1590–003.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing Compliance Filing Adoption of NAESB Version 3.1 to be effective 8/1/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5026.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–97–000.
Applicants: Paiute Pipeline Company.
Description: § 4(d) Rate Filing: Removal of Non-conforming TSA F30 and F49 to be effective 11/1/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5084.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–98–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: GPL Update Statement of Negotiated Rates to be effective 11/1/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5159.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–99–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Non-conforming Agreement—PSEG ERT 400259 to be effective 10/30/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5178.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–100–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102919 Negotiated Rates—DTE Energy Trading, Inc. H–1830–89 to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5002.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–101–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102919 Negotiated Rates—Castleton Commodities Merchant Trading L.P. H–4010–89 to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5003.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–102–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102919 Negotiated Rates—Twin Eagle Resource Management, LLC H–7300–89 to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5004.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–103–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102919 Negotiated Rates—Hartree Partners, LP H–7090–89 to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5011.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–104–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102918 Negotiated Rates—Mercuria Energy America, Inc. H–7540–89 to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5014.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–105–000.
Applicants: Viking Gas Transmission Company.
Description: Compliance filing 2018–2019 Gas Sales and Purchases Report to be effective N/A.
Filed Date: 10/29/19.
Accession Number: 20191029–5027.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–106–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Compliance filing 2018–2019 Gas Sales and Purchases Report.
Filed Date: 10/29/19.
Accession Number: 20191029–5030.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–107–000.
Applicants: OkTex Pipeline Company, L.L.C.
Description: Compliance filing 2018–2019 Gas Sales and Purchases Report.
Filed Date: 10/29/19.
Accession Number: 20191029–5031.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–108–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102919 Negotiated Rates—Emera Energy Services, Inc. R–2715–38 to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5032.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–109–000.
Applicants: Midwestern Gas Transmission Company.
Description: Compliance filing 2018–2019 Gas Sales and Purchases Report.
Filed Date: 10/29/19.
Accession Number: 20191029–5044.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–110–000.
Applicants: Midwestern Gas Transmission Company.
Description: Compliance filing 2018–2019 Cashout Report.
Filed Date: 10/29/19.
Accession Number: 20191029–5046.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–111–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Neg Rate Agreement Filing (BHSC #215933–FTMWIC) to be effective 12/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5064.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–112–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Colonial Gas releases to UGI to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5069.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–113–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Vol 2-Neg and Conforming Rate Agreements-Tenaska and Spotlight PLS to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5128.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–114–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (SWG 2019) to be effective 11/1/2019.
Filed Date: 10/29/19.
Accession Number: 20191029–5130.
Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: RP20–115–000.
Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (JERA 46435 to EDF 51653) to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5001.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–116–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 releases eff 11–1–2019) to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5002.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–117–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Atmos 45527 to Trans Louisiana 51695) to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5003.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–118–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—EQT ro UGI 8960463 eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5008.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–119–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—MC Global to Eco Energy 8960364 eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5041.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–120–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Apache 10–30–2019 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5067.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–121–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Gulfport 911377 release eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5083.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–122–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Baystate 510804 release eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5086.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–123–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Bay State 510066 release eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5092.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–124–000.
Applicants: Cimarron River Pipeline, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing 10–30–2019 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5103.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–125–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 Nov 1 Releases to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5113.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–126–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 510798 releases eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5131.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–127–000.
Applicants: Stagecoach Pipeline & Storage Company LLC.
Description: § 4(d) Rate Filing: Stagecoach Pipeline & Storage Company LLC—Filing of Negotiated Rate Agreement to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5159.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–128–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 510807 releases eff 11–1–19 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5161.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–129–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement (ConocoPhillips) to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5196.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–130–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—ConocoPhillips contract 911702 to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5201.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–131–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: § 4(d) Rate Filing: MRT Rate Case 2019 to be effective 12/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5202.
Comments Due: 5 p.m. ET 11/12/19.
Docket Numbers: RP20–132–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–10–30 8 Ks (4 new, 2 Segment 4 Segment 10) to be effective 11/1/2019.
Filed Date: 10/30/19.
Accession Number: 20191030–5212.
Comments Due: 5 p.m. ET 11/12/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24207 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–7–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on October 21, 2019, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed in the above referenced docket a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA) and its blanket certificate issued in Docket No. CP82–479–000. Southern Star requests authorization to abandon a delivery point (Location 495501) and approximately 1.6 miles of associated 3- and 4-inch-diameter lateral pipeline on Line Segment XW–004, all located in Ellsworth County, Kansas. Southern Star states that it has no firm contracts using Location 495501 as a primary delivery point and the only shipper to have delivered gas to that point in the last 12 months, Clearwater Enterprises, L.L.C., has provided written consent to the requested abandonment, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Cindy Thompson, Manager, Regulatory, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 56, Owensboro, Kentucky 42301, by phone at (270) 852–4655, or by email at *cindy.thompson@southernstar.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: October 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24168 Filed 11–5–19; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 14, 2019, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 10, 2019

B. Report

- Update on Credit Conditions

Dated: November 4, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–24354 Filed 11–4–19; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request Re: Information Collection for Innovation Pilot Programs (NEW)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC seeks to continue its engagement and collaboration with innovators in the financial, non-financial, and technology sectors to, among other things, identify, develop and promote technology-driven innovations among community and other banks in a manner that ensures the safety and soundness of FDIC-supervised and insured institutions. An innovation pilot program framework can provide a regulatory environment in which the FDIC, in conjunction with individual proposals collected from innovators, including banks, will provide tailored regulatory and supervisory assistance, when appropriate, to facilitate the testing of innovative and advanced technologies, products, services, systems, or activities. The FDIC invites the general public, including persons who may have an interest in participating in innovation pilot programs and other Federal agencies, to comment on the agency's collection of pilot program proposals by innovators, as required by the Paperwork Reduction Act of 1995. At the end of the comment period, any comments and recommendations received will be reviewed to determine the extent to which the collection of proposals should be modified prior to the submission to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments must be submitted on or before January 6, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *https://www.regulations.gov.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Jennifer Jones, Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the above address located on F Street NW, on business days between 7:00 a.m. and 5:00 p.m., EST.

All comments should reference ''Information Collection for Innovation Pilot Programs.'' A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, at the FDIC mailing address above or by phone at 202–898–6768.

SUPPLEMENTARY INFORMATION:

Proposal for the Following New Collection of Information

1. *Title:* Information Collection for Innovation Pilot Programs.

OMB Number: 3064–NEW.

Form Number: None.

Affected Public: FDIC-supervised institutions (state-chartered banks and savings institutions that are not members of the Federal Reserve System) and innovative companies that partner or plan to partner, or provide services to such institutions.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden: 3,000 hours.

General Description of Collection: The FDIC seeks to engage and collaborate with innovators in the financial, non-financial, and technology sectors to, among other things, identify, develop and promote technology-driven innovations among community and other banks in a manner that ensures the safety and soundness of FDIC-supervised and insured institutions. An innovation pilot program framework will provide a regulatory environment in which the FDIC, in conjunction with individual proposals collected from innovators, including banks, will provide tailored regulatory and supervisory assistance, when appropriate, to facilitate the testing of innovative and advanced technologies, products, services, systems, or activities.

While greater detail and the parameters of a planned innovation pilot program framework will be separately announced at a later date, innovators (banks and firms in partnership with banks) will be invited to voluntarily propose time-limited pilot programs, which will be collected and considered by the FDIC on a case-by-case basis. Innovators may request to participate by submitting proposals during a set time period for submissions. Applicants will propose the design and parameters of the pilot program tests, as well as any tailored regulatory and supervisory assistance needed from the FDIC. Collected proposals will be assessed, prioritized and identified for testing, either on their own or as part of a subject-area focused grouping of pilot programs.

The FDIC anticipates that proposals will involve cutting-edge innovations and novel approaches or applications involving a banking product, service, system, or activity that benefits and can lead to better outcomes for consumers through, for example, an increased range of products and services, reduced costs, or improved access to financial services, or that decreases operational, risk management, or compliance costs for insured depository institutions.

Accepted pilot programs may be conducted and monitored concurrently with a number of pilot programs selected in a given cohort with limited participants. Subject-area groupings could include pilot programs that match a general theme or product area of great promise or particular interest to the banking sector or the FDIC. This may be announced in advance of the collection or afterwards if multiple pilot programs proposals are found to share key attributes or defining characteristics (*e.g.,* similar product concept; banks of certain size; like customer focus).

Proposals will be collected from FDIC-supervised institutions (state-chartered banks and savings institutions that are not members of the Federal Reserve System), who may submit a pilot program proposal individually or together with companies that provide or aim to provide technologically driven products, services, or systems through direct contractual arrangements, partnerships, or joint ventures (this includes third-party service providers). Proposals may also be collected from innovators that are not themselves FDIC-supervised institutions and do not have a partnering institution but who may submit a pilot program proposal; however, the nonbank will be eligible to receive only a preliminary non-objection to its proposal conditioned on later submission (and collection) of the proposal in partnership with an FDIC-supervised institution.

The collection will be limited by eligibility for consideration. FDIC-supervised institutions that wish to participate in a pilot program must: (1) Have a demonstrated record of engaging in appropriate risk management; (2) be well-capitalized; (3) be well-rated for compliance and safety and soundness; and (4) not have significant pending supervisory or enforcement actions (or significant regulatory investigations). Other firms seeking to participate in a

pilot program must: (1) Be a U.S. domicile; (2) conduct all pilot program banking activity (products and services) through an FDIC-supervised institution partner; and (3) not involve persons who have been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–24209 Filed 11–5–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 19–08]

Possible Revocation of Passenger Vessel Operator Performance Certificate No. P1397 Great Northern & Southern Navigation Co., LLC dba French America Line; Order Granting Hearing and Directing Great Northern & Southern Navigation Co. LLC dba French America Line To Show Cause

Pursuant to 46 CFR 540.8(c) the Federal Maritime Commission grants a hearing and directs respondent Great Northern & Southern Navigation Co., LLC DBA French America Line, a certified passenger vessel operator, to show cause why its Performance Certificate should not be revoked for cause.

Based on information provided to it, the Commission's Bureau of Enforcement makes the following allegations:

Statement of Facts Constituting Basis for Commission Action

1. Great Northern & Southern Navigation Co., LLC dba French America Line (French America Line or FAL) is a Louisiana Limited Liability Company.

2. According to records submitted to the Commission's Bureau of Certification and Licensing (BCL), French America Line is said to maintain its principal offices at 700 Churchill Parkway, Avondale, LA 70094.

3. BCL records identify the principal of French America Line as Christopher Kyte, Chairman, and Manager Duane Kendall Grigsby (Ken Grigsby) as Chief Operating Officer.

4. Christopher Kyte has provided BCL with his address as 883 Island Drive, Suite 214, Alameda, CA 94502.

5. BCL records identify David Christopher Tidmore as Registered Agent for service of process for FAL.

6. Louisiana Secretary of State records also identify David Christopher Tidmore as Registered Agent for service of process for FAL, located at 3104 Roberta St. Metarie, LA 70003.

7. On October 4, 2016, FAL entered into an Escrow Agreement with KeyBank, N.A. for the purposes of providing proof of Financial Responsibility for Indemnification of Passengers in the Event of Nonperformance.

8. Upon receipt of the escrow agreement, BCL issued Performance Certificate No. P–1397 effective October 5, 2016.

9. French America Line is a Certificant operating as a passenger vessel operator (PVO) pursuant to Certificate (Performance) No. P–1397 since October 2016.

10. On October 26, 2016, FAL's sole vessel, the LOUISIANE, suffered a sanitary system failure, requiring FAL to cancel multiple sailings.

11. The escrow agreement requires FAL to submit weekly recomputations of unearned passenger revenue and refunds, and are used to adjust the amount in the escrow account accordingly.

12. The escrow agreement requires FAL submit audit reports that attest to the veracity of unearned passenger revenue recomputations on a quarterly basis.

13. The 2016 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2017.

14. The 2017 1st, 2nd, and 3rd Quarter Independent Audits were not received on or before the due dates of May 15, 2017, August 14, 2017, and November 14, 2017, respectively.

15. The Louisiana Secretary of State web page indicates that, on September 21, 2017, FAL changed its name to ''Great Northern & Southern Navigation Co LLC French America Line'' from ''Great Northern & Southern Navigation Co., LLC''. FAL failed to notify the Commission of this change.

16. By email correspondence dated December 22, 2017 to Tajuanda Singletary, Ken Grigsby requested information about the audit process and what FAL needed to provide.

17. Tajuanda Singletary responded to Ken Grigsby by email January 3, 2018 with paragraph 8 of the escrow agreement which detailed the requirements for the independent audit.

18. By correspondence emailed January 25, 2018 to FAL, BCL sent a notification letter to FAL of the Commission's intent to conduct a review of Unearned Passenger Revenue pursuant to 46 CFR part 540.

19. In the January 25, 2018 letter to FAL, BCL requested various financial documents to be submitted by February 1, 2018.

20. By correspondence emailed January 29, 2018 to BCL, Christopher Kyte requested a two-week extension to provide the documents. BCL granted extension to February 9, 2018.

21. The documents requested in the notice of review letter were not received by February 9, 2018. On February 12, 2018 BCL emailed Christopher Kyte, again requesting the documents.

22. The 2017 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2018.

23. By correspondence emailed February 21, 2018 to FAL, BCL again requested the documentation named in the January 25, 2018 notice of review letter that was not submitted by the February 9, 2018 extended deadline.

24. The 2018 1st Quarter Independent Audit for January, February, and March was not received on or before the due date of May 15, 2018.

25. By correspondence emailed May 18, 2018 to FAL, BCL notified FAL that it was not in compliance with the escrow agreement and gave a deadline of June 1, 2018 to come into compliance with the escrow agreement and provide BCL with the required reports, weekly recomputation certificates, statement of good standing with the state of Louisiana, and provide the current operating address of FAL.

26. By correspondence emailed May 31, 2018 to BCL, FAL responded to the May 18, 2018 notification stating that FAL remained at the same operating address of 700 Churchill Parkway, Avondale, LA 70094. FAL also requested an extension to submit the requested documents.

27. On June 6, 2018, BCL granted FAL's request for a deadline extension until June 30, 2018.

28. BCL did not receive the required recomputation certificates, requested documents, or independent reports by June 30, 2018.

29. On July 12, 2018, a conference call was held between BCL and FAL during which FAL agreed it would report to the FMC the progress of its independent auditor no later than the morning of Wednesday, July 18, 2018. The parties agreed that a final audit report would be made available to the FMC no later than Friday, July 27, 2018. BCL sent a follow-up email to FAL memorializing the conference call.

30. On July 16, 2018, Area Representative Eric Mintz visited the principal address of FAL at 700 Churchill Parkway, Avondale, LA 70094. FAL was not located at that address.

31. By correspondence emailed July 17, 2018, Mr. Scott Rojas, Director of Facilities and IT at the building located at 700 Churchill Parkway, Avondale, LA 70094 confirmed French America Line/Great Northern & Southern Navigation Co., LLC vacated that location the week of November 27, 2017.

32. BCL did not receive a final audit report on July 27, 2018 as agreed during the July 12, 2018 call.

33. The 2018 2nd Quarter Independent Audit for April, May, and June was not received on or before the due date of August 14, 2018.

34. By correspondence emailed August 27, 2018 to FAL, BCL informed FAL that it was still not in compliance with the escrow agreement and that the outstanding reports continued to be past due.

35. The 2018 3rd Quarter Independent Audit for July, August, and September was not received on or before the due date of November 14, 2018.

36. By correspondence mailed and emailed February 6, 2019 to FAL, BCL informed FAL it was not in compliance with the escrow agreement and requested FAL provide the necessary documentation to comply with the agreement, the FMC's regulations, and the requirements of the Louisiana Accountancy Act no later than April 9, 2019.

37. The 2018 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2019.

38. BCL did not receive the correct requested documents due April 9, 2019 per BCL's letter dated February 6, 2019.

39. By correspondence mailed and emailed April 10, 2019 to FAL, BCL provided notice to FAL of BCL's intent to revoke FAL's Performance Certificate.

40. The 2019 1st Quarter Independent Audit for January, February, and March was not received on or before the due date of May 15, 2019.

41. As of October 9, 2019, FAL was not in good standing with the Louisiana Secretary of State.

The Commission's Jurisdiction and Requirements of Law

42. Under 46 U.S.C. 41302(a), the Commission is empowered to investigate any conduct that the Commission believes to be in violation of Part A of Subtitle IV of Title 46 U.S. Code, 46 U.S.C. 40101–44101.

43. Through 46 U.S.C. 44106, 46 U.S.C. 41302(a) also applies to proceedings conducted by the Commission under Part C, 46 U.S.C. 44101–44106.

44. 46 U.S.C. 44102 provides:

> (a) Filing requirement. A person in the United States may not arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies unless the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.
>
> (b) Satisfactory evidence. To satisfy subsection (a), a person must file–
>
> (1) Information the Commission considers necessary; or
>
> (2) A copy of the bond or other security, in such form as the Commission by regulation may require.

45. The Commission's regulations at 46 CFR 540.8 provide:

> (c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

46. The Commission's implementing regulations at 46 CFR 540.3 provide:

> No person in the United States may arrange, offer, advertise, or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

47. The Commission's regulations at 46 CFR 540.8(b) provide that a Certificate (Performance) be denied, revoked, suspended, or modified for any of the following reasons:

> (1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);
>
> (2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;
>
> (3) Failure to comply with or respond to lawful inquiries, requests for information, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

Basis For Revocation or Suspension of Respondent's Certificate (Performance)

48. The Commission has previously found that passenger vessel operators are not entitled to a Certificate where an operator misled Commission staff and failed to respond to lawful inquiries. *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis–Possible Violations of Passenger Vessel Certification Requirements,* 27 S.R.R. 1069 (FMC 1997).

49. The Commission will also issue cease and desist orders based on a vessel operator's inability to establish its financial responsibility. *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis–Possible Violations of Passenger Vessel Certification Requirements,* 27 S.R.R. 1069 (FMC 1997); *American Star Lines, Inc., National Transatlantic Lines of Greece S.A. and Dimitri Anninos–Possible Violations of Passenger Vessel Certification Requirements,* 25 S.R.R. 1153 (FMC 1990).

50. FAL's false statements regarding its office address establish that revocation is proper under 46 CFR 540.8(b)(1).

51. FAL's failure to timely submit quarterly independent audits for the past three years, as required by the terms of its escrow agreement, establish that FAL is no longer qualified to hold a Certificate within the meaning of 46 U.S.C. 44102 and 46 CFR 540.8(b)(2).

52. FAL's failure to remain a Limited Liability Company in good standing with its state's authority, as warranted in its escrow agreement, establish that FAL is no longer qualified to hold a Certificate within the meaning of 46 U.S.C. 44102 and 46 CFR 540.8(b)(2).

53. FAL's failure to comply with information and document requests by Commission staff establish that revocation is proper under 46 CFR 540.8(b)(3).

Order

Now therefore, it is ordered That, pursuant to 46 U.S.C. 41302, 41304, 44106, and 46 CFR 540.8(c), Great Northern & Southern Navigation Co., LLC DBA French America Line is directed to show cause, within 25 days of publication of this Order in the **Federal Register**, why the Commission should not revoke its Certificate (Performance) inasmuch as the Certificant is otherwise not qualified to render passenger vessel services;

It is further ordered That this proceeding be limited to the submission of affidavits of fact, memoranda of law, and documentary evidence;

It is further ordered That any person having an interest and desiring to

intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 68 of the Commission's Rules of Practice and Procedure, 46 CFR 502.68. Such petition shall be accompanied by the petitioner's memorandum of law, affidavit of fact, and documentary evidence, if any, and shall be filed no later than the date fixed below;

It is further ordered That Great Northern & Southern Navigation Co., LLC DBA French America Line be named as Respondent in this proceeding. Affidavits of fact, memoranda of law, and documentary evidence shall be filed by Respondent and any intervenors in support of Respondent no later than November 26, 2019;

It is further ordered That the Commission's Bureau of Enforcement (BOE) be made a party to this proceeding;

It is further ordered That reply affidavits, memoranda of law, and documentary evidence shall be filed by BOE and intervenors in opposition to Respondent no later than December 11, 2019;

It is further ordered That:

(a) Should any party believe that the submission of testimony or additional evidence is required, that party must submit a request together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such testimony or other evidence cannot be submitted by affidavit; and

(b) Any request for submission of testimony or additional evidence shall be filed no later than December 11, 2019;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondent at its last known address;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 2 of the Commission's Rules of Practice and Procedure, 46 CFR 502.2, as well as mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR502.61, the final decision of the Commission in this proceeding shall be issued no later than February 27, 2020.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2019–24177 Filed 11–5–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Thursday, December 12, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *The Monongalia County Coal Company,* Docket Nos. WEVA 2015–509 et al. (Issues include whether the Judge erred in denying the Secretary of Labor the opportunity to present evidence of prior violations to support his allegation that repeated flagrant violations had occurred.).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 236–7472
Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: November 4, 2019.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–24344 Filed 11–4–19; 4:15 pm]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Outcome Measure Harmonization and Data Infrastructure for Patient Centered Outcomes Research in Depression.''

This proposed information collection was previously published in the **Federal Register** on August 22, 2019 and allowed 60 days for public comment. No substantive comments were received by AHRQ during these 60 days. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Outcome Measure Harmonization and Data Infrastructure for Patient Centered Outcomes Research in Depression

The Agency for Healthcare Research and Quality's (AHRQ) mission is to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within the U.S. Department of Health and Human Services and with other partners to make sure that the evidence is understood and used.

In support of this mission, AHRQ funded a prior project to harmonize the outcome measures collected across patient registries and routine clinical practice, with the goals of supporting the development of a robust data infrastructure that can consistently and efficiently collect high-quality data on outcome measures that are relevant to patients and clinicians and supporting patient-centered outcomes research and quality improvement. Harmonized outcome measures would also form the foundation for learning healthcare systems. Of note, AHRQ has supported the development of the Outcome Measures Framework (OMF). The OMF is a conceptual model for classifying outcomes that are relevant to patients and providers across most conditions. AHRQ, in collaboration with the U.S. Food and Drug Administration and the National Library of Medicine, recently

supported an effort to use the OMF as a content model for developing harmonized outcome measures in specific disease areas, including depression.

Major depressive disorder (MDD) is a common mental disorder that affects an estimated 16.2 million adults and 3.1 million adolescents in the United States. Characterized by changes in mood, cognitive function, and/or physical function that persist for two or more weeks, MDD can reduce quality of life substantially, impair function at home, work, school, and in social settings, and result in increased mortality due to suicide. MDD also is a major cause of disability, with an economic burden of approximately $210.5 billion per year in the United States.

Despite the burden of MDD and the availability of treatment, the condition is often undiagnosed and untreated. In 2016, the U.S. Preventive Services Task Force recommended screening for depression in the general adult population, including pregnant and postpartum women, and in adolescents. While routine screening is intended to improve diagnosis and treatment of MDD, many questions remain, such as about the comparative effectiveness of different treatment approaches, the incidence of adverse events, when to add medications for patients who do not respond to an initial course of treatment, how and why depression recurs, and how to classify and treat treatment-resistant depression. Patient registries capture a wealth of data on depression treatment patterns and outcomes in the United States and could serve as the foundation for a national research infrastructure to address these and other research questions. Yet, a lack of harmonization in the outcome measures collected by each registry makes it challenging, if not impossible, to link and compare data across registries and related efforts. As documented in the prior project, existing registries use different outcome measures (*e.g.,* remission as defined by the PHQ–9 vs. HAM–D) and capture data at different timepoints.

Depression registries offer an excellent opportunity to demonstrate the feasibility and value of implementing the harmonized outcome measures. Existing registries already capture some of the harmonized depression measures for quality reporting, although at different timepoints; capture of these measures and the additional measures at consistent intervals will enable the registries to generate more robust data suitable for research purposes.

AHRQ is now proposing to implement the harmonized depression outcome measures developed under the prior project in two patient registries (the PRIME Registry and PsychPRO) and a health system setting. The purpose of this project is to demonstrate that capturing the harmonized outcome measures in the clinical workflow and submitting these data to different registries can improve clinical care, reduce the burden of registry participation, and increase the utility of registry data for research purposes. The objectives of the project are to:

—Demonstrate that collection of the harmonized outcome measures is feasible, sustainable, and useful for clinicians participating in primary care and mental health patient registries.

—Demonstrate that collection of the harmonized outcome measures is feasible, sustainable, and useful for clinicians in a health system setting.

Evaluate whether collection of the harmonized measures increases the utility of registry data for research purposes.

The project is being conducted by AHRQ through its contractor, OM1, Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to the outcomes of such services. 42 U.S.C. 299a(a)(1) and (3).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Patient Health Questionnaire-9 (PHQ–9)—the PHQ–9 is a brief, 9-item scale that is completed by patients and reviewed by clinicians at three points during this project. The scale is used to measure depression severity, to monitor changes in depression severity over time, and to calculate the harmonized outcome measures for depression remission, response, recurrence, and suicide ideation and behavior.

(2) Frequency, Intensity, and Burden of Side Effects Ratings (FIBSER)—the FIBSER is a brief, 3-item scale that is completed by patients and reviewed by clinicians at three points during this project. The scale is used to measure the burden of side effects related to depression treatment and to calculate the harmonized outcome measure for adverse events.

(3) Clinician Survey—the clinician survey is a brief, 20-question survey that clinicians in the health system setting will be asked to complete once at the conclusion of the project. The survey captures information on the value of the harmonized outcome measures for informing patient care.

Users of the information captured in this project will fall into two categories: Clinicians providing care for patients with depression; and researchers using the de-identified data to answer a patient-centered outcomes research question. AHRQ will receive summary findings from the data analysis only; no patient-level data will be shared with AHRQ.

Estimated Annual Respondent Burden

A key objective of this project is to demonstrate that the harmonized outcome measures can be captured as part of the routine clinical workflow, with little to no added burden for clinicians and patients. The harmonized measures will be calculated primarily with existing data extracted from electronic medical records (EMRs). Extraction of these data will not represent an additional burden for clinicians. Patients participating in this project will be asked to complete up to two patient-reported outcome measures—the Patient Health Questionnaire-9 (PHQ–9) and the Frequency, Intensity, and Burden of Side Effects Ratings (FIBSER). Burden is estimated below for completion of these instruments by the patient respondent. Clinicians participating in the health system component of the project will be asked to complete the Clinician Survey. Burden is estimated below for completion of this survey by the clinician respondent.

Exhibit 1 shows the estimated annualized burden hours for the patient respondent's time to complete the PHQ–9 and FIBSER at three time points as part of this project and for the clinician respondent to complete the Clinician Survey at one time point during this project. The PHQ–9 is a brief, 9-item scale used to measure depression severity. The FIBSER is a brief, 3-item scale used to measure the burden of side effects related to depression treatment. The Clinician Survey is a brief, 20-question survey designed to assess the value of the harmonized outcome measures for informing patient care. The PHQ–9 is used in routine clinical practice to screen for depression and monitor changes in depression severity over time, as recommended by the U.S. Preventive Services Task Force. For some participants in this project, completion of the PHQ–9 is part of their existing clinical care routine and does not represent an extra burden. For

example, the PHQ–9 is already captured routinely for participants in the PsychPRO registry. The estimates below do not include participants in the PsychPRO registry for that reason.

Because the primary objective of this project is to determine the feasibility and value of extracting the relevant data and calculating the measures, a formal sample size has not been calculated. We estimate that the 20 participating sites in the two patient registries will each enroll 10 patients, for a total of 200 patients. We estimate that the 5 participating sites at the health system will each enroll 10 patients, for a total of 50 patients. We did not include the PsychPRO enrollment in the PHQ–9 estimates, as the PHQ–9 is already collected in this registry and does not represent extra burden. We also do not anticipate implementing the FIBSER at the health system sites. Therefore, the total number of respondents for the PHQ–9 is estimated at 150, and the total number of respondents for the FIBSER is estimated at 200. We anticipate that three clinicians associated with each of the five health system sites will complete the Clinician Survey. Therefore, the total number of respondents for the Clinician Survey is estimated at 15.

Based on existing literature, it is estimated that completion of the PHQ–9 takes, on average, 3 minutes, and the FIBSER takes, on average, 2 minutes to complete. Participants in the patient registries will be asked to complete the PHQ–9 and FIBSER three times over the course of a year, for a total time of 15 minutes per year. Participants from the health system will be asked to complete the PHQ–9 three times over the course of a year. Clinicians from the health system sites will be asked to complete the Clinician Survey once, at the conclusion of the project; the survey is designed to be completed in 5 minutes or less. If 150 respondents complete the PHQ–9 three times over the course of one year, the estimated annualized burden would be 22.5 hours. If 200 respondents complete the FIBSER three times over the course of one year, the estimated annualized burden would be 20 hours. If 15 clinicians complete the Clinician Survey once over the course of one year, the estimated annualized burden would be 1.25 hours. The total estimated annualized burden would be 43.75 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Minutes per response	Total burden hours
PHQ–9	150	3	3	22.5
FIBSER	200	3	2	20
Clinician Survey	15	1	5	1.25
Total	365			43.75

Exhibit 2 shows the estimated cost burden associated with the respondent's time to complete the PHQ–9, FIBSER, and Clinician Survey as part of this project. The total cost burden to respondents is estimated at an average of $1,110.93 annually. The duration of this project is one year.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
PHQ–9	150	22.5	*$24.98	$562.05
FIBSER	200	20	*24.98	499.6
Clinician Survey	15	1.25	#39.42	49.28
Total	365	42.5	24.98	1,110.93

*Based on the mean wages for all occupations, 00–0000. May 2018 National Occupational Employment and Wage Estimates. U.S. Department of Labor, Bureau of Labor Statistics. Available at: *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

#Based on the mean wages for Healthcare Practitioners and Technical Occupations, 29–0000. May 2018 National Occupational Employment and Wage Estimates. U.S. Department of Labor, Bureau of Labor Statistics. Available at: *https://www.bls.gov/oes/current/oes_nat.htm#29-0000.*

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 31, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–24194 Filed 11–5–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2019–0103]

Reporting of Pregnancy Success Rates from Assisted Reproductive Technology (ART) Programs; Proposed Additional Data Collection Fields; Request for Comment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the opening of a public docket to obtain comment and review of proposed additional data collection fields and reporting requirement modification for reporting of pregnancy success rates from assisted reproductive technology (ART) programs. This reporting is required by the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA).

DATES: Written comments must be received on or before January 6, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0103 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Mail: Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Mailstop S107–2, 4770 Buford Hwy. NE, Atlanta, Georgia 30341–3724. Attention: Assisted Reproduction Technology Surveillance and Research Team.

FOR FURTHER INFORMATION CONTACT: Jeani Chang, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–C107–2, Atlanta, Georgia 30341. Phone: (770) 488–6355. Email: *ARTinfo@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. In addition, CDC invites comments specifically on proposed additional data collection fields and reporting requirement modification for reporting of pregnancy success rates from assisted reproductive technology (ART) programs.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted.

Background

On August 26, 2015, HHS/CDC published a notice in the **Federal Register** (80 FR 51811) (Current Notice) announcing the overall reporting requirements of the National ART Surveillance System (NASS). The notice described who shall report to HHS/CDC; the process for reporting by each ART program; the data to be reported; and the contents of the published reports. CDC has already obtained approval from the Office of Management and Budget under the Paperwork Reduction Act to collect this information, which is needed to determine the annual pregnancy success rates for each clinic that provides ART services. This data collection is approved under OMB Control Number 0920–0556, expiration date: 08/31/2021. This information includes clinical information pertaining to the ART procedure, outcome information on resultant pregnancies and births, and information on factors that may affect outcomes, such as patient demographics, medical history, and infertility diagnosis. The purpose of this notice published [current date] is to apply consistent data collection requirements to various treatment options, including certain rare situations to improve quality of data. This notice provides opportunity for public review and comment for the proposed additional data collection fields.

Proposed Additional Data Collection Fields

Section III. What to Report

Section A. Patient Demographic Information

CDC is currently collecting information on race/ethnicity for oocyte source and pregnancy carrier. In the rare situation when a patient is not using her own oocytes (uses donor eggs) and does not carry the pregnancy (uses gestational carrier), the current data collection system will not capture patient race/ethnicity. CDC proposes adding these questions to the patient profile in the beginning of the questionnaire to help better understand the demographic profile of all ART users and accurately assess ART success rates in this rare situation. To reduce the reporting burden, the system will then pre-fill race/ethnicity of oocyte source, sperm source, or gestational carrier, if applicable.

Addition (for Patients Who Are Not Oocyte Source or Pregnancy Carrier)

Ethnicity (Hispanic, non-Hispanic, Refused, Unknown); Race (White, Black, Asian, Native Hawaiian/Pacific Islander, American Indian or Alaska Native, Refused, Unknown).

Section D. Oocyte Source and Carrier Information

CDC is currently collecting information on height, weight, smoking history, prior ART cycles, diagnostic tests, and the pregnancy history of a patient. However, this information is important regardless of oocyte source to better understand the role of these factors on ART success rates. CDC proposes adding these questions to the donor oocyte source profile.

Addition (for Oocyte Donors)

Height; Weight; History of Smoking; History of Prior Pregnancies and Births (Number of prior pregnancies [ectopic, spontaneous abortions], number of prior births [full term, preterm, live births, stillbirths]; History of Prior ART cycles (fresh, frozen); Maximum FSH Level (value in mIU/mL); Most Recent AMH Level (value in ng/mL, date).

Section H. Transfer Information

CDC is currently collecting the date of any previous oocyte retrieval that contributed to a reported embryo transfer cycle to allow for details of previous retrievals to be linked to current transfers. However, this information is only collected if egg retrieval and transfer occur in the same clinic. It is important to link retrievals and transfers whether the retrieval and

transfer occurred in the same clinic or when oocytes were retrieved in an ART clinic that is different from the ART clinic where the current transfer is taking place. Collection of the clinic name in which the previous retrieval took place (if different from the clinic performing the transfer) will allow for more complete linkage of embryo transfers to egg retrievals. This information will allow for a better understanding of the cumulative success rates over multiple ART treatment cycles. CDC therefore proposes adding this information for current fresh embryo transfers or thawed embryo transfers if the retrieval and transfer did not occur in the same clinic.

Addition (if Oocyte Retrieval Was Not Conducted at the Same Clinic as Transfer)

1. Fresh Embryo Transfer

Name of clinic if different from where oocyte retrieval took place.

2. Thawed Embryo Transfer

Name of clinic if different from where oocyte retrieval took place.

Proposed Reporting Requirement Modifications:

Section I. Who Reports

Sub-Section C. Reporting Responsibilities of ART Program

CDC currently requires that, when multiple programs are involved in one cycle, the requirement to report cycles lies with the ART program that accepts responsibility for the embryo culture or thawing the oocytes or embryos. However, when clinics are contracting with external embryo laboratories, these laboratories may not be recognizable to the consumer. Therefore, we are proposing to change the requirement to report cycles to the ART program that directs the clinical management of the cycle. Both current and modified guidelines are provided below.

Current: Multiple ART programs involved in one cycle—Different ART programs responsible for ovarian stimulation, oocyte retrieval, and/or embryo transfer.

The following guidelines should be used:

a. The requirement to report cycles lies with the ART program that accepts responsibility for the embryo culture. The ART programs involved must have a method in place to ensure that these cycles can be prospectively reported by the ART program required to report them. In addition, all canceled cycles must be reported by the ART program accepting responsibility for the embryo culture.

b. Cycles involving previously cryopreserved oocytes/embryos are to be reported by the ART program that accepts responsibility for thawing the oocytes/embryos.

Modification (to ensure more accurate reporting by modifying reporting responsibilities when more than one program is involved in one cycle): Multiple ART programs involved in one cycle—Different ART programs responsible for ovarian stimulation, oocyte retrieval, and/or embryo transfer.

The following guidelines should be used:

a. The requirement to report cycles lies with the ART program that directs the clinical management of the cycle, which would include (but is not limited to) multiple aspects of the treatment such as patient selection, pre-treatment counseling and selection of the specific treatment protocol. The ART programs involved must have a method in place to ensure that these cycles can be prospectively reported by the ART program required to report them. In addition, all canceled cycles must be reported by the same ART program.

b. Cycles involving previously cryopreserved oocytes/embryos are to be reported by the ART program that accepts responsibility for thawing the oocytes/embryos.

Dated: October 31, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–24174 Filed 11–5–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9119–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2019

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July through September 2019, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone Number
I CMS Manual Instructions	Ismael Torres	(410) 786-1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786-4481
III CMS Rulings	Tiffany Lafferty	(410)786-7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786-7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786-6877
VI Collections of Information	William Parham	(410) 786-4669
VII Medicare –Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786-2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786-2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786-7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786-7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786-3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan, MBA	(410) 786-3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786-3365
All Other Information	Annette Brewer	(410) 786-6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Dated: October 16, 2019.

Kathleen Cantwell,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: November 2, 2018 (83 FR 55174) February 19, 2019 (84 FR 4805), April 29, 2019 (84 FR 18040) and August 9, 2019 (84 FR 39323). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (July through September 2019)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Updates to Publication (Pub.) 100-04, Changes to the Laboratory National Coverage Determination (NCD) Edit Software for October 2019, use (CMS-Pub. 100-04) Transmittal No. 4330.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
125	Internet Only Manual (IOM) - Update to General Information, Eligibility, and Entitlement, Chapter 7 - Contract Administrative Requirements, Section 40.2 – Shared System Maintainer Responsibilities for Systems Releases, Section 40.3.11 Single Testing Contractor (STC) Non-Testable Conditions and Potential Testing Impacts Release Software Single Testing Contractor (STC) Non-Testable Conditions and Potential Testing Impacts
Medicare Benefit Policy (CMS-Pub. 100-02)	
259	Update to Coverage of Intravenous Immune Globulin for Treatment of Primary Immune Deficiency Diseases in the Home Coverage of Intravenous Immune Globulin for Treatment of Primary Immune Deficiency Diseases in the Home
260	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare National Coverage Determination (CMS-Pub. 100-03)	
	None

Medicare Claims Processing (CMS-Pub. 100-04)	
4329	Quarterly Update for the Temporary Gap Period of the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - October 2019
4330	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for October 2019
4331	October 2019 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
4332	Medicare Summary Notice (MSN) Changes to Assist Beneficiaries Enrolled in the Qualified Medicare Beneficiary (QMB) Program Qualified Medicare Beneficiary (QMB) Program
4333	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4334	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 25.3 Effective October 1, 2019
4335	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4336	New Waived Tests
4337	Implementation of the Medicare Performance Adjustment (MPA) for the Maryland Total Cost of Care (MD TCOC) Model Outpatient Provider Specific File Provider Specific File Payer Only Codes Utilized by Medicare
4338	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4339	Documentation of Medical Necessity of the Home Visit; and Physician Management Associated with Superficial Radiation Treatment Home Services (Codes 99341 - 99350) Physician Management Associated with Superficial Radiation Treatment
4340	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4341	October Quarterly Update to 2019 Annual Update of HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
4342	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4343	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4344	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4345	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4346	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
4347	4347 Quarterly Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
4348	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4349	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4350	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4351	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4352	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4353	Inpatient Rehabilitation Facility (IRF) Annual Update: Prospective Payment System (PPS) Pricer Changes for FY 2020 Payment Provisions Under IRF PPS
4354	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4355	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4356	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
4357	Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) Updates for Fiscal Year (FY) 2020 Annual Update Wage Index Determining the Cost-to-Charge Ratio
4358	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4359	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4360	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4361	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4362	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - October 2019 Update
4363	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - October 2019 Update
4364	Manual Update to Sections 1.2 and 10.2.1 in Chapter 18 of Publication (Pub.) 100-04
4365	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4366	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4367	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - October 2019 Update
4368	Inpatient Rehabilitation Facility (IRF) Annual Update: Prospective Payment System (PPS) Pricer Changes for FY 2020
4369	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4370	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
4371	Healthcare Provider Taxonomy Codes (HPTCs) October 2019 Code Set Update
4372	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4373	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4374	2020 Healthcare Common Procedure Coding System (HCPCS) Annual Update Reminder

4375	Instructions for Downloading the Medicare ZIP Code File for January 2020
4376	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE
4377	Claim Status Category and Claim Status Codes Update
4378	Home Health (HH) Patient-Driven Groupings Model (PDGM) – Revised and Additional Manual Instructions Home Health (HH) Patient-Driven Groupings Model (PDGM) - Revised and Additional Manual Instructions Changes in a Beneficiary's Payment Source Decision Logic Used by the Pricer on Claims HH Grouper Program HH Grouper Input/Output Record Layout HH Grouper Decision Logic and Updates Temporary Suspension of Home Health Services Billing Procedures for an Agency Being Assigned Multiple CCNs or a Change in CCN Payment Procedures for Terminated HHAs
4379	2020 Annual Update for the Health Professional Shortage Area (HPSA) Bonus Payments
4380	Pub. 100-04, Chapter 29 – Appeals Signature Requirement Changes
4381	Updates to Chapter 1 Payer Only Codes in the Medicare Claims Processing Manual
4382	Influenza Vaccine Payment Allowances - Annual Update for 2019-2020 Season
4383	October 2019 Integrated Outpatient Code Editor (I/OCE) Specifications Version 20.3
4384	Annual Clotting Factor Furnishing Fee Update 2020
4385	2020 Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Update
4386	October Quarterly Update for 2019 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
4387	October 2019 Update of the Hospital Outpatient Prospective Payment System (OPPS)
4388	Manual Updates to Chapters 1, 22, 24, 26, and 31 in Publication (Pub.) 100-04 Billing Form as Request for Payment Claims Forms CMS-1490S and CMS-1500 Monitoring Claims Submission Violations Handling Incomplete or Invalid Claims ASC X12 835 The Do Not Forward (DNF) Initiative Claim Adjustment Reason Codes ASC X12 Version 4010A1 EDI Enrollment Common Edits and Enhancement Module (CEM) Code Sets Requirements Mall Providers and Full-Time Equivalent Employee Self-Assessments Items 14-33 - Provider of Service or Supplier Information Patient's Request for Medical Payment Form CMS-1490S Eligibility Connectivity Workflow
4389	October 2019 Update of the Ambulatory Surgical Center (ASC) Payment System
4390	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4391	Implementation of the Medicare Performance Adjustment (MPA) for the Maryland Total Cost of Care (MD TCOC) Model Outpatient Provider Specific File Provider Specific File Payer Only Codes Utilized by Medicare
4392	Instructions for Retrieving the January 2020 Medicare Physician Fee Schedule Database (MPFSDB) Files through the CMS Mainframe Telecommunications System
4393	Internet Only Manual Update to Add New and Revise Sections of Publication 100-04, Chapter 11 Data Required on the Institutional Claim to A/B MAC (HHH Input/Output Record Layout Decision Logic Used by the Pricer on Claims
4394	Billing for Hospital Part B Inpatient Services Editing Of Hospital Part B Inpatient Services: Reasonable and Necessary Part A Hospital Inpatient Denials Editing Of Hospital Part B Inpatient Services: Other Circumstances in Which Payment Cannot Be Made under Part
4395	October 2019 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
4396	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - October 2019 Update
4397	Quarterly Update for the Temporary Gap Period of the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - January 2020
4398	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4399	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4400	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for January 2020
4401	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4402	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4403	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4404	January 2020 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
Medicare Secondary Payer (CMS-Pub. 100-05)	
127	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions

128	Electronic Correspondence Referral System (ECRS) New Consolidated Workload Search ECRS Web User Guide, Software Version 6.2 ECRS Web Quick Reference Card Version 1.0
Medicare Financial Management (CMS-Pub. 100-06)	
318	Notice of New Interest Rate for Medicare Overpayments and Underpayments -4th Qtr Notification for FY 2019
319	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
320	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
321	The Fiscal Intermediary Shared System (FISS) Submission of Copybook Files to the Provider and Statistical Reimbursement (PS&R) System PS&R System Data Elements Exhibit II: Medicare Credit Balance Report Detail Page
322	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
323	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
324	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
325	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare State Operations Manual (CMS-Pub. 100-07)	
191	Revisions to the State Operations Manual (SOM) Chapter 5 and Appendix V
192	Revisions to State Operations Manual (SOM), Appendix Q
193	Revisions to Medicare State Operations Manual (SOM) Chapter 2
Medicare Program Integrity (CMS-Pub. 100-08)	
890	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
891	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
892	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
893	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
894	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
895	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
896	Updates to Provider Enrollment Processing Instructions in Chapter 15 of Publication (Pub.) 100-0 Receipt/Review of Internet-Based PECOS Applications Paper Applications Internet-Based PECOS Applications General Principles – Paper and Internet-Based PECOS Applications Receiving Missing/Clarifying Data/Documentation Disposition of Registration Application Returns

	Rejections
897	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
898	Updates to Provider Enrollment Processing Instructions in Chapter 15 of Publication (Pub.) 100-08, Program Integrity Manual, and to the CMS-855R Processing Guide Final Adverse Actions Practice and Administrative Location Information Independent Diagnostic Testing Facility (IDTF) Standards Interpreting Physicians Supervising Physicians Processing Form CMS-855R Applications Processing Alternatives – Form CMS-855B and Form CMS-855I Processing Alternatives – Form CMS-855A Processing Alternatives – Form CMS-855O Processing Alternatives – Form CMS-855R Processing Alternatives – Form CMS-20134 Electronic Fund Transfers (EFT Revocation Letter Guidance Deceased Practitioners Change of Information Received Prior to or After the Revalidation Letter is Mailed Revalidation Extension Requests
899	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
900	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
901	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
902	Updates to Chapters 3, 4, 8, 15, and Exhibits of Publication (Pub.) 100-08 Prepayment Review of Claims Introduction Medicare Program Integrity Examples of Medicare Fraud Unified Program Integrity Contractor Procedural Requirements Investigations MEDIC Requests for Information From Outside Organizations Coordination with the Office of Inspector General UPIC and I-MEDIC Responsibilities Screening Leads Vetting Leads with CMS Conducting Investigations Guidelines for Incentive Reward Program Complaint Tracking Excluded Individuals Unified Program Integrity Contractor Responsibilities Guidelines for Processing Incoming Complaints Guidelines for Incentive Reward Program Complaint Tracking Overpayment Recovery Fraud Alerts

	Administrative Relief from Program Integrity Review in the Presence of a Disaster Provider/Supplier Contacts by the UPIC Case Coordination with UPICs Referral of Cases to the OIG/OI Immediate Advisements to the OIG/OI Continue to Monitor Provider and Document Case File Take Administrative Action on Cases Referred to and Declined/Returned by OIG/OI Refer to Other Law Enforcement UPICs and QIOs Administrative Sanctions Authority to Exclude Practitioners, Providers, and Suppliers of Services Identification of Potential Exclusion Cases Denial of Payment to an Excluded Party Monthly Notification of Sanction Actions Administrative Actions Generic Civil Monetary Penalty Case Contents Identity Theft Investigations and Victimized Provider Waiver of Liability Process Supplier Proof of Delivery Documentation Requirements Exceptions Proof of Delivery Requirements for Recently Eligible Medicare FFS Beneficiaries Joint Operating Agreement Vulnerabilities CMS Approval Recovery From Provider or Supplier Other Identified Revocations SMRC – UPIC JOA
903	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
904	Provider Enrollment Rebuttal Process Model Revalidation Deactivation Letter Model Deactivation Letter due to Inactive Provider/Supplier Letter Model Deactivation Letter for an Individual Provider Deactivations Rebuttal Process Rebuttal Submissions Rebuttal Model Letters Rebuttal Reporting Requirements
905	Update to Chapter 12 (The Comprehensive Error Rate Testing (CERT) Program) of Publication (Pub.) 100-08 Table of Contents/Chapter 12 Providing Feedback Information to the CERT Review Contractor Handling Overpayments and Underpayments Resulting from the CERT Finding Handling Appeals Resulting from CERT-Initiated Denials
906	Guidance Regarding the Use of Statistical Sampling for Overpayment Estimation

	Use of Statistical Sampling for Overpayment Estimation General Purpose The Purpose of Statistical Sampling Steps for Conducting Statistical Sampling Determining When Statistical Sampling May be Consultation with a Statistical Expert Use of Other Sampling Methodologies Probability Sampling Selection of Period for Review Defining the Universe, the Sampling Unit, and the Sampling Frame Composition of the Universe The Sampling Unit The Sample Frame Sampling Methodology Random Number Selection Determining Sample Size Documentation of Universe and Sample Frame Reserved for Future Use Worksheets Maintenance of Documentation The Point Estimate Calculation of the Estimated Overpayment Amount Actions to be Performed Following Selection of Provider or Supplier and Sample Notification of Provider or Supplier of the Review and Selection of the Review Site Written Notification of Review Determining Review Site Meetings to Start and End the Review Conducting the Review Recovery from Provider or Supplier Informational Copy to Primary GTL, Associate GTL, SME or CMS RO Corrective Actions Changes Resulting From Appeals Sampling Methodology Overturned Revised Initial Determination Resources (Non-Exhaustive List) Additional Discussion of Stratified Sampling and Cluster Sampling Stratified Sampling Cluster Sampling
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
	None
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None

Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Medicare Prescription Drug Benefit (CMS-Pub. 100-18)	
	None
Demonstrations (CMS-Pub. 100-19)	
229	Next Generation and Vermont ACO Model - AIPBP Reduction File and BE Modifications
One Time Notification (CMS-Pub. 100-20)	
2318	New Bills Pending Reports to Assist Medicare Administrative Contractors (MACs) with Monthly Status Report (MSR)
2319	Implementation to Send Pre-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2320	Integrated Outpatient Code Editor (IOCE) Claim Return Buffer Interface Changes Related to New Return Code Field Updates
2321	Fee For Service (FFS) Applications Upgrade Customer Information Control System (CICS) to Transaction Server (TS) v5.4 and Liberty Profile Functionality
2322	Possible Use of Session Initiation Protocol (SIP) at Medicare Administrative Contractors (MACs) - Analysis Only
2323	Appropriate Use Criteria (AUC) for Advanced Diagnostic Imaging – Educational and Operations Testing Period - Claims Processing Requirements
2324	Implementation to Send Pre-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2325	Implementation to Send Post-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2326	Oxygen Policy Update
2327	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
2328	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
2329	Automation of Part B Underpayment Processing of Recovery Audit Contractor (RAC) Adjustments
2330	Medicare Shared Savings Program (SSP) Skilled Nursing Facility (SNF) Affiliates' Requirement to Include Demonstration Code 77 on SNF Waiver Claims
2331	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process
2332	Health Insurance Portability and Accountability Act (HIPAA) Electronic Data Interchange (EDI) Front End Updates for January 2020
2333	Update Encounter Data Version of Combined Common Edit Module (CCEM) to Use Receipt Date
2334	Technical Change: Modification to Durable Medical Equipment (DME) Claims Cancellation Process
2335	Instructions for Use of Informational Remittance Advice Remark Code Alert on Laboratory Service Remittance Advices
2336	User CR: ViPS Medicare System (VMS) changes for Auto-Removal of Certificates of Medical Necessity (CMNs) associated with Super-Deleted Initial CMNs
2337	User CR: MCS - Enhance CA Screen to Display Initial Transactions on an Adjustment
2338	Bypassing Payment Window Edits for Donor Post-Kidney Transplant Complication Services
2339	User CR: ViPS Medicare System (VMS) Changes to Provide Cross Copy Functionality for Multiple SuperOp Events and Value Sets
2340	User Change Request: Fiscal Intermediary Standard System (FISS) - SC10 File Fix Utility Enhancement
2341	Shared System Enhancement 2018: Minimize Data Elements on Daily Extracts to Medicare Beneficiary Database (MBD) and Next Generation Desktop (NGD)
2342	Supplemental to Change Request (CR) 10829 Medicare Appeals System (MAS) Data Collection Web Services Pilot (DCP) Additional Appeals Reporting Requirements for the Pilot Jurisdictions (JD and J15)
2343	Expand Other Amounts Indicator to Carry Additional Values
2344	User Change Request: FISS - Bypass 38021 for New Patient Discharge Status
2345	Integrated Data Repository (IDR) Weekly Scheduled Full Provider Master File (PMF) Extracts
2346	User Change Request (CR): Fiscal Intermediary Shared System (FISS) - Add Tape Flags W, T, and O to the 6H Status Location (SLOC) Function
2347	User CR: ViPS Medicare System (VMS) to Report Claims Paid Outside of CWF
2348	International Classification of Diseases, 10th Revision (ICD-10) and Other Revisions to National Coverage Determination (NCDs)--January 2020 Update
2349	Solutions to the Medicare Administrative Contractor (MAC) Prepayment Review Reports
2350	User Change Request: Fiscal Intermediary Standard System (FISS) - Autopopulate the Line Item User Action Code for Hard Coded 59XXX Reason Codes
2351	User Change Request: Fiscal Intermediary Standard System (FISS) - Wage Index for End Stage Renal Disease (ESRD) Providers Incorrect on MAP1C15
2352	User Change Request: Fiscal Intermediary Standard System - Online PARM 6L Line Numbers
2353	User CR: MCS - Updates to Beneficiary Deliverable Logic for Internal/Clerk Duplicate Medicare Summary Notices (MSNs) and Temporary Addresses
2354	Utilizing the Blank Page on Odd-Numbered Medicare Summary Notices to Promote CMS Priorities: All MACs - This CR Rescinds and Fully Replaces CR 11140
2355	Implementation to Send Post-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2356	Utilizing Data from the USPS Secure Destruction Program to Suppress Mailing Medicare Summary Notices (MSNs) to Undeliverable Addresses: Implementation by All MACs - This CR Rescinds and Fully Replaces CR 11075
2357	Additional Instructions to Hospitals on the Election of a Medicare-Supplemental Security Income (SSI) Component of the Disproportionate

	Share (DSH) Payment Adjustment for Cost Reports that Involve SSI Ratios for Fiscal Year (FY) 2004 and Earlier, or SSI Ratios for Hospital Cost-Reporting Periods for Patient Discharges Occurring Before October 1, 2004
2358	Implementation of the Award for the Jurisdiction H Part A and Part B Medicare Administrative Contractor (JH A/B MAC)
2359	User CR: ViPS Medicare System (VMS) Changes to Provide Cross Copy Functionality for Multiple SuperOp Events and Value Sets
2360	Integrated Data Repository (IDR) Weekly Scheduled Full Provider Master File Extracts
2361	Solutions to the Medicare Administrative Contractor (MAC) Prepayment Review Reports
2362	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)--January 2020 Update
2363	Instructions Relating to the Self-Disallowance Requirement for Determining Jurisdiction over Appeals
2364	User Change Request: Fiscal Intermediary Standard System (FISS) – Autopopulate the Line Item User Action Code for Hard Coded 59XXX Reason Codes
2365	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
83	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (July through September 2019)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-3Q19QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (July through September 2019)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (July through September 2019)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Next Generation Sequencing (NGS) for Medicare Beneficiaries with Advanced Cancer	NCD 90.2	215	04/10/2019	02/15/2018

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (July through September 2019)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (July through September 2019)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (July through September 2019)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
St. Mary Medical Center – Long Beach 1050 Linden Avenue Long Beach, CA 90813 (Dignity Health)	1194840421	07/16/2019	CA
Barstow Community Hospital 820 E. Mountain View Street Barstow, CA 92311	1780655670	07/16/2019	CA
Fawcett Memorial Hospital 21298 Olean Boulevard Port Charlotte, FL 33952	100236	07/30/2019	FL
Franciscan Health Crown Point 1201 S. Main Street Crown Point, IN 46321	150126	07/30/2019	IN
PIH Health Hospital – Whittier 12401 Washington Blvd Whittier, CA 90602	050169	07/30/2019	CA
HCA Houston Healthcare Southeast 400 Spencer Highway Pasadena TX 77504	1147576698	08/20/2019	TX
The following facilities have editorial changes (in bold).			
Mercy Hospital 3663 South Miami Avenue Miami, FL 33133 (A Campus of Plantation General Hospital)	**100167**	08/26/2005	FL
TO: Franciscan Health Olympia Fields **From: St. James Hospital and Health Center** 20201 S. Crawford Avenue Olympia Fields, IL 60461	140172	06/27/2007	IL
FROM: Denton Regional Medical Center **TO: Medical City Denton** 3535 South I-35 East Denton, TX 76210	450634	05/12/2006	TX
FROM: Sutter General Hospital **TO: Sutter Valley Hospital** **2825 Capitol Avenue** Sacramento, CA 95816 (dba Sutter Memorial Hospital)	050108	03/23/2006	CA
FROM: St Edward Mercy Medical Center **TO: Mercy Hospital Fort Smith** 7301 Rogers Avenue Fort Smith, AR 72917	040062	09/15/2005	AR

Facility	Provider Number	Effective Date	State
FROM: Harton Regional Medical Center **TO: Tennova Healthcare Harton** 1801 N. Jackson Street Tullahoma, TN 37388	440144	02/28/2007	TN

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (July through September 2019)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (July through September 2019)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (July through September 2019)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (July through September 2019)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (July through September 2019)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet

our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
The following facilities have editorial changes (in bold).				
Old: NYU Medical Center, Tisch Hospital **New: NYU Langone Hospitals** 550 1ST Avenue New York, NY 10016 Other information: Joint Commission ID # 5820 Previous Re-certification Dates: 2014-01-14; 2016-03-08	330214	02/14/2012	03/28/2018	NY
Sentara Norfolk General Hospital 600 Gresham Drive Norfolk, VA 23507 Other information: Joint Commission ID # 6358 Previous Re-certification Dates: 2008-11-13; 2010-12-21; 2013-02-05; 2015-01-13; 2017-03-14	490007	11/10/2003	**04/20/2019**	VA
Old: Stony Brook University Hospital Medical Center **New: University Hospital (Stony Brook)** Health Sciences Center Suny Stony Brook Stony Brook, NY 11794-8503 Other information: Joint Commission ID # 5188	330393	03/02/2011	**05/08/2019**	NY
Previous Re-certification Dates: 2013-01-30; 2015-01-15; 2017-03-14				
Old: Virginia Commonwealth University Medical Center **New: Virginia Commonwealth University Health System** **1250 East Marshall Street** **Richmond, VA 23298-0510** Other information: Joint Commission ID # 6381 Previous Re-certification Dates: 2008-12-22; 2010-12-14; 2012-12-21; 2014-12-16; 2017-02-14	490032	04/08/2004	**04/10/2019**	VA
Old: Palmetto Health Richland **New: Palmetto Health** Palmetto Health 5 Richland Medical Park Drive Columbia, SC 29203 Other information: Joint Commission ID # 6588 Previous Re-certification Dates: 2015-04-21; 2017-06-06	420018	03/07/2013	**06/28/2019**	SC
Old: Lubbock County Hospital District **New: UMC Health System** 602 Indiana Ave. Lubbock, TX 79415 Other information: DNV GL Certificate #: 415087-2019-VAD	450686	06/17/2017	**06/19/2019**	TX

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
Old: Mercy Medical Center **New: Catholic Health Initiatives – Iowa, Corp.** 1111 6th Avenue Des Moines, IA 50314 Other information: Joint Commission ID # 8248 Previous Re-certification Dates: 2017-02-14	160083	01/15/2015	**03/27/2019**	IA
Cleveland Clinic Florida 3100 Weston Road Weston, FL 33331 Other information: **Joint Commission ID # 33451** **Previous Re-certification Dates: 2017-06-20**	100289	05/27/2015	**07/24/2019**	FL
Old: Mount Sinai Medical Center **New: Mount Sinai Hospital** **One Gustava L. Levy Place** New York, NY 10029-6574 Other information: **Joint Commission ID # 5829** **Previous Re-certification Dates: 2008-11-25; 2011-02-08; 2013-03-20; 2015-03-31; 2017-06-08**	330024	11/25/2003	**08/07/2019**	NY
Community Health Network, Inc. 1500 N. Ritter Avenue Indianapolis, IN 46219 Other information: **Joint Commission ID # 7172** **Previous Re-certification Dates: 2015-02-10; 2017-04-18**	150074	10/01/2014	**06/05/2019**	IN
Old: Massachusetts General Hospital **New: The General Hospital Corporation** 55 Fruit Street Boston, MA 02114 Other information: **Joint Commission ID # 5513** **Previous Re-certification Dates: 2008-12-03; 2011-01-19; 2013-02-13; 2015-01-06; 2017-02-28**	22071	12/15/2003	**05/22/2019**	MA
Loyola University Medical Center 2160 South First Avenue Maywood, IL 60153 Other information: **Joint Commission ID # 7288** **Previous Re-certification Dates: 2011-05-10; 2013-04-16; 2015-03-17; 2017-05-09**	140276	01/30/2004	**06/26/2019**	IL
Old: Mayo Clinic Hospital **New: Mayo Clinic Arizona** 5777 East Mayo Boulevard Phoenix, AZ 85054 Other information: **Joint Commission ID # 261796** **Previous Re-certification Dates: 2011-04-29; 2013-03-20; 2015-03-24; 2017-05-19**	030103	02/27/2009	**08/14/2019**	AZ

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
Old: Duke University Medical Center **New: Duke University Hospital** **2301 Erwin Road** Durham, NC 27710 Other information: **Joint Commission ID # 6490** **Previous Re-certification Dates: 2009-01-16; 2011-06-30; 2013-06-04; 2015-05-05; 2017-06-13**	340030	10/29/2003	**07/03/2019**	AL
Old: University of Alabama at Birmingham Health System **New: University of Alabama at Birmingham** **619 19TH S. South** Birmingham, AL 35249-1900 Other information: Joint Commission ID # 2814 Previous Re-certification Dates: 2008-12-09; 2011-04-22; 2013-04-09; 2015-04-07; 2017-05-16	010033	10/29/2003	**07/03/2019**	AL
Old: Memorial Hermann Hospital **New: Memorial Hermann – Texas** Medical Center 6411 Fannin Street Houston, TX 77030-1501 Other information: **Joint Commission ID # 9081** **Previous Re-certification Dates: 2013-03-19; 2015-04-14; 2017-05-24**	450068	04/10/2013	**06/26/2019**	TX
Old: Cedars-Sinai Medical Center **New: Cedars-Sinai Health System** 8700 Beverly Blvd. Los Angeles, CA 90048 Other information: **Joint Commission ID # 9792** **Previous Re-certification Dates: 2008-12-12; 2011-06-21; 2013-06-11; 2015-05-29; 2017-07-11**	050625	12/29/2003	**09/11/2019**	CA
Banner-University Medical Center Tucson Campus **1625 North Campbell** Tucson, AZ 85719 Other information: **Joint Commission ID # 9514**	030064	04/19/2017	**07/12/2019**	AZ

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (July through September 2019)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. For the purposes of this quarterly notice, we are providing only the specific updates to the listing of facilities for lung volume reduction surgery published in the 3 month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For

questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Date Approved	Date De-certified.	State
The following facility has editorial changes (in bold).				
Memorial Medical Center 701 North First Street Springfield, IL 62781-0001 Other information: Joint Commission ID #: 7431	14-0148	**07/13/2019**		IL

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (July through September 2019)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (July through September 2019)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2019–24235 Filed 11–5–19; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited OMB Review: Proposed Information Collection Activity; National Human Trafficking Training and Technical Assistance Center (NHTTAC) Evaluation Package (OMB #0970–0519)

AGENCY: Office on Trafficking in Persons; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Office on Trafficking of Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting expedited review of an information collection request from OMB for an increase in the number of respondents to the previously approved information collection, National Human Trafficking Training and Technical Assistance Center (NHTTAC) Evaluation Package (OMB #0970–0519, expiration 10/31/2021). This will increase the estimated burden hours from 689 hours to 9,495 hours. In addition, the previously approved SOAR Online participant feedback form has been restructured into a long and a short form to reduce burden for information collected on SOAR Online training participants outside of the NHTTAC learning management system. There are no changes requested to the items on any forms.

DATES: ACF is requesting that OMB approve this request under procedures for emergency processing by December 20, 2019.

ADDRESSES: Copies of the proposed collection of information can be obtained by emailing *infocollection@acf.hhs.gov.* All requests should identify the title of the information collection. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

SUPPLEMENTARY INFORMATION:

Description: ACF is requesting that OMB grant a 180 day approval for this request under procedures for expedited processing by December 20, 2019. A request for review under normal procedures will be submitted within 180 days of the approval for this request. These changes are requested due to the passage of the Stop, Observe, Ask, and Respond to Health and Wellness Act of 2018 (Pub. L. 115–398) which expands the SOAR to Health and Wellness Training Program. To meet the provisions of the SOAR to Health and Wellness Act of 2018, OTIP's NHTTAC must expand the administration of SOAR nationwide.

The NHTTAC delivers training and technical assistance (T/TA) to inform and deliver a public health response to trafficking. In applying a public health approach, NHTTAC holistically builds the capacity of communities to identify and respond to the complex needs of all individuals who have been trafficked and address the root causes that put individuals, families, and communities at risk of trafficking. This will ultimately help improve the availability and delivery of coordinated and trauma-informed services before, during, and after an individual's trafficking exploitation, regardless of their age, gender, nationality, sexual orientation, or type of exploitation.

NHTTAC hosts a variety of services, programs, and facilitated sessions to improve service provision to individuals who have been trafficked or who are at risk of trafficking, including The Human Trafficking Leadership Academy (HTLA); the Survivor Fellowship Program; the NHTTAC Call Center; both short-term and specialized T/TA requests (requests that take less than 3 hours or 3 or more hours to fulfill, respectively); OTIP-funded grantees; and information through NHTTAC's website, resources, and materials about trafficking.

Respondents: Individuals and organizations such as NHTTAC consultants, training and technical assistance participants, Human Trafficking Leadership Academy program participants, Survivor fellows, OTIP grantees, visitors to the NHTTAC website, NHTTAC-supported conference and meeting attendees, members of the National Advisory Council, and scholarship applicants.

Annual Burden Estimates: The following instruments have an increased number of respondents. The number of respondents for all other previously approved instruments remains the same. The increase in respondents increases the overall burden under OMB #0970–0519 from 689 hours to 9,495 hours.

Instrument	Original estimate—number of respondents	Updated estimate—number of respondents	Number of responses per respondent	Average burden hours per response	Updated annual burden hours
HTLA Fellowship Pre-Program Feedback	24	36	1	0.25	9
HTLA Fellowship Post-Program Feedback	24	36	1	0.25	9
OTIP Grantee Feedback Form	50	100	1	0.167	17
Short-Term T/TA Feedback Form	30	50	1	0.167	8
Specialized T/TA Feedback Form	50	100	1	0.25	25
Focus Group Demographic Survey	25	50	1	0.033	2
Focus Group Guide	25	50	1	0.75	38
Follow-up Feedback Form	300	500	1	0.133	67
Interview Guide	25	65	1	0.75	49
Pilot Feedback Form	25	50	1	0.15	8
SOAR Blended Learning Participant	30	130	1	0.15	20
SOAR Online Participant Feedback Long Form	1,500	5,300	1	0.1	530
SOAR Online Participant Feedback Short Form		1,000,000	1	0.0083	8,300
SOAR Organizational Feedback Form	20	40	1	0.133	5

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 22 U.S. Code 7104 and 22 U.S. Code 7105(c)(4).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–24200 Filed 11–5–19; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2778]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 6, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0298. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39

OMB Control Number 0910–0298—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the FD&C Act; (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive that meets the definition of a food-contact substance in section 409(h)(6) of the FD&C Act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The Agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

To determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use. We use this information to determine whether the food-contact substance meets the threshold criteria.

Description of Respondents: Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (*i.e.,* food packaging and food processing equipment) or of the articles themselves.

In the **Federal Register** of June 21, 2019 (84 FR 29209), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 170.39	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Threshold of regulation for substances used in food-contact articles	7	1	7	48	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments. We estimate that approximately seven requests per year will be submitted under the threshold of regulation exemption process of § 170.39, for a total of 336 hours. In the **Federal Register** of June 21, 2019, we estimated four requests per year. In reconsideration of the two to three requests that were received but did not become effective, we retain our previous estimate of seven requests per year, with

four of those requests becoming effective.

The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of FD&C Act (OMB control number 0910–0495) in that the use of a substance exempted by FDA is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (*e.g.,* use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both Agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and we would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances, which is on display at FDA's Dockets Management Staff and on the internet at *https://www.fda.gov/food/packaging-food-contact-substances-fcs/threshold-regulation-exemptions-substances-used-food-contact-articles*. Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the Agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: October 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24230 Filed 11–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2312]

Request for Nominations From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on the Allergenic Products Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Allergenic Products Advisory Committee (APAC) for the Center for Biologics Evaluation and Research notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on the APAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by December 6, 2019 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by December 6, 2019.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent via email to Prabhakara Atreya (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives must be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.* Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at: *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993–0002, 240–402–8006, Fax: 301–595–1307, email: *Prabhakara.Atreya@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative(s) to the following advisory committee:

I. Allergenic Products Advisory Committee

The APAC reviews and evaluates data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases, and makes appropriate recommendations to the Commissioner of Food and Drugs (the Commissioner) of its findings regarding the affirmation or revocation of biological product licenses; on the safety, effectiveness, and labeling of the products; on clinical and laboratory studies of such products; on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products; and on the quality and relevance of FDA's research programs which provide the scientific support for regulating these agents.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter via email stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a notification to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the APAC. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate, and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial

and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24233 Filed 11–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4763]

Agency Information Collection Activities; Proposed Collection; Comment Request; Assessment of Terms and Phrases Commonly Used in Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled ''Assessment of Terms and Phrases Commonly Used in Prescription Drug Promotion.''

DATES: Submit either electronic or written comments on the collection of information by January 6, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 6, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 6, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–4763 for ''Assessment of Terms and Phrases Commonly Used in Prescription Drug Promotion.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov. For copies of the questionnaire, contact:* Office of Prescription Drug Promotion (OPDP) Research Team, *DTCresearch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in

the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Assessment of Terms and Phrases Commonly Used in Prescription Drug Promotion

OMB Control Number 0910–New

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated, so that patients and healthcare providers can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform all three topic areas.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a direct-to-consumer survey conducted in 1999.

The present research involves assessment of how consumers and primary care physicians (PCPs) interpret terms and phrases commonly used in prescription drug promotion. This includes both what these terms and phrases mean to each population (*e.g.,* definitions) and what these terms and phrases imply (*e.g.,* about efficacy and safety). Some examples of interest include: ''natural'' or ''naturally-occurring,'' and ''targeted'' or ''targeted therapy.'' The full list for assessment will include approximately 30 terms and phrases for each population. To accommodate such a large number, presented terms and phrases will be accompanied by only limited context (terms within sentences and phrases within paragraphs, as opposed to full promotional materials). Understanding the most prevalent interpretations of these terms and phrases can help OPDP determine the impact of specific language in prescription drug promotion. For example, certain terms and phrases, when used without additional contextual information, might overstate the efficacy or minimize the risk of a product. Additionally, from a health literacy perspective, it is helpful to ascertain general understanding of such terms and phrases as this may aid in the development of best practices around communicating these concepts.

We plan to conduct this research in two phases. First, we will conduct formative semi-structured interviews with 30 members of each population (general population consumers and PCPs). Second, we will conduct nationally representative, probability-based surveys of more than 1,000 members of each population on the same topic.

Phase 1: Semi-Structured Interviews. In Phase 1 of the research, semi-structured interviews will be conducted by web conferencing using the itracks platform, an online and mobile market research service provider. This approach allows for the participant and interviewer to see each other and includes a whiteboard feature that can be used to show the terms, statements, or passages for participants to read and follow along as the interviewer reads them aloud. This may be helpful in cases where the statements or passages are long, which may make them difficult to understand when read aloud. In addition, the written information may be helpful as a reference as the discussion progresses.

Participation is estimated to take 1 hour. Participants will be recruited by email through itracks and its partner panels. All participants will be 18 years of age or older and must not have participated in a focus group or interview during the previous 3 months. Additionally, for the consumer sample, we will exclude individuals who work in healthcare or marketing settings because their knowledge and experiences may not reflect those of the average consumer. For the PCP sample, we will exclude individuals who spend less than 50 percent of their time on patient care. Department of Health and Human Services employees will be excluded from both respondent groups. We will start data collection with a soft launch of three interviews per segment (10 percent) to ensure that all processes are working well. Although we do not intend on making major changes to the interview guides as a result of these soft launch interviews, they will provide an opportunity to make minor changes (*e.g.,* adding interviewer notes). Measurement for this phase will consist of a thematic analysis using a matrix approach to identify themes and mental models common across participants.

Phase 2: Nationally Representative Surveys. In Phase 2 of the research, primarily closed-ended survey questions will be administered to each population. The closed-ended survey

format will allow the team to quantify the frequency or prevalence of certain interpretations or meanings among a nationally representative sample of the general U.S. consumer and physician populations. Final questions and response options will be informed by key interpretations discovered during the Phase 1 interviews. For the consumer survey, we will use a probability sample selected from an address-based sampling frame and conduct the survey using a web-based platform. For the PCP survey, we will obtain a probability sample from the American Medical Association Masterfile and will conduct the survey via mail. For each population, we chose the sampling frame and survey mode that has been shown to produce the highest quality results for that population with respect to coverage, response rates, and nonresponse bias. The same exclusion criteria as specified for Phase 1 will be maintained for Phase 2. Participation is estimated at 20 minutes.

We also plan to embed an experiment in the PCP mail survey. Research has shown that including a pen in the survey package can help to increase response rates and time to response, even potentially reducing the number of reminders required (Refs. 1 and 2). However, the shipping of pens can be costly and often pens are damaged in the mail (*e.g.,* ink can leak, etc.). To determine whether another token incentive might be as effective at increasing response rates, we will randomize half of the sample to receive a pen and half to receive a packet of sticky notes or other token incentive. We will compare response rates between the two groups to help inform methods for future studies.

We set our sample requirements to a 95 percent confidence interval and a 3 percent margin of error assuming an underlying proportion of 0.50 in the population (which is the most conservative estimate and overestimates the sample size relative to alternate proportions). These parameters are commonly used in quantitative survey research (Refs. 3 to 6) and offer balance between precision and cost. Thus, assuming a total U.S. population of roughly 250 million adults aged 18 or older (Ref. 7), we estimate the number of completed surveys to be 1,067 for the general population survey. Assuming a total population of 209,000 PCPs (Ref. 8), with the same 95 percent confidence interval and ±3 percent margin of error, we estimate the number of completes for the provider survey to be 1,062. These sample sizes would also allow us to detect a mean difference between ±0.15 and 0.30 points (Ref. 6).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual respondents	Hours per response	Total hours
General Population					
Phase 1: Screener completes (assumes 35% eligible).	85	1	85	0.08 (5 minutes)	7
Phase 1: Number of completes	30	1	30	1	30
Phase 2: Screener completes (assumes 90% eligible).	1,185	1	1,185	0.08 (5 minutes)	95
Phase 2: Number of completes	1,067	1	1,067 + 10% [2] = 1,174	0.34 (20 minutes)	399
PCP Population					
Phase 1: Screener completes (assumes 30% eligible).	104	1	104	0.08 (5 minutes)	8
Phase 1: Number of completes	30	1	30	1	30
Phase 2: Screener completes (assumes 90% eligible).	1,180	1	1,180	0.08 (5 minutes)	94
Phase 2: Number of completes	1,062	1	1,062 + 10% [2] = 1,168	0.34 (20 minutes)	397
Total					1,060

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] As with most online and mail surveys, it is always possible that some participants are in the process of completing the survey when the target number is reached and that those surveys will be completed and received before the survey is closed out. To account for this, we have estimated approximately 10 percent overage for both samples in the study.

II. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Bell, K., L. Clark, C. Fairhurst, et al, ''Enclosing A Pen Reduced Time to Response to Questionnaire Mailings.'' *Journal of Clinical Epidemiology,* 74:144–150, 2016.
2. Sharp, L., C. Cochran, S.C. Cotton, et al., ''Enclosing a Pen with a Postal Questionnaire Can Significantly Increase the Response Rate.'' *Journal of Clinical Epidemiology,* 59:747–754, 2006.
3. Bartlett, J.E., J.W. Kotrlik, and C.C. Higgins, ''Organizational Research: Determining Appropriate Sample Size in Survey Research.'' *Information Technology, Learning, and Performance Journal,* 19:43–50, 2001.
4. Cochran, W.G. (1997) *Sampling Techniques* (3rd ed.). New York: John Wiley & Sons.
5. Dillman, D.A., J.D. Smyth, and L.M. Christian. (2014) *internet, Phone, Mail, and Mixed-mode Surveys: The Tailored Design Method* (4th Ed.). Hoboken, NJ: John Wiley & Sons, Inc.
6. Krejcie, R.V. and D.W. Morgan, ''Determining Sample Size for Research Activities.'' *Educational and Psychological Measurement,* 30: 607–610, 1970.
7. *U.S. Census Bureau. (2017) ''National Population by Characteristics: 2010–2017.'' (Available at: *https://www.census.gov.*)
8. *Agency for Healthcare Research and Quality. (2011) ''The Number of Practicing Primary Care Physicians in the United States.'' Retrieved from *http://www.ahrq.gov/research/findings/*

factsheets/primary/pcwork1/index.html.

Dated: October 22, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24229 Filed 11–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice; correction.

SUMMARY: The original **Federal Register** Notice announcing the December 2019 Advisory Commission on Childhood Vaccines (ACCV) meeting indicated that this meeting would be held December 5–6, 2019. This meeting is not being conducted over two days, and instead will only take place only on December 5, 2019.

The ACCV will hold a public meeting on December 5, 2019, at 10:00 a.m. Eastern Time via Adobe Connect and telephone conference. This will not be an in-person meeting. The public can join the meeting by:

1. (Audio Portion) Calling the conference phone number: 800–988–0218 and providing the following information:

Leader Name: Ms. Tamara Overby
Password: 9302948

(Visual Portion) Connecting to the ACCV Adobe Connect Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/.* Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview using URL: *http://www.adobe.com/go/connectpro_overview.*

Information about the ACCV and the agenda for this public meeting can be obtained at the following website: *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.*

FOR FURTHER INFORMATION CONTACT: Annie Herzog, Program Analyst, Division of Injury Compensation Programs (DICP), HRSA, in one of three ways: (1) Send a request to the following address: Annie Herzog, Program Analyst, DICP, HRSA, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857; (2) call (301) 443–6593; or (3) send an email to *aherzog@hrsa.gov.* Meeting times could change. For the latest information regarding the meeting, including start time, please check the ACCV website at: *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.*

This meeting will only take place on December 5, 2019 and is not being conducted over two days (December 5–6, 2019) as stated previously in the **Federal Register** *(FR Doc. 2019–00439 Filed 1–30–19).*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–24166 Filed 11–5–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169)—Extension

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act at 42 U.S.C. 10801 *et seq.,* authorized funds to the same protection and advocacy (P&A) systems created under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, known as the DD Act (as amended in 2000, 42 U.S.C. 15001 *et seq.*]. The DD Act supports the Protection and Advocacy for Developmental Disabilities (PADD) Program administered by the Administration on Intellectual and Developmental Disabilities (AIDD) within the Administration on Community Living. AIDD is the lead federal P&A agency. The PAIMI Program supports the same governor-designated P&A systems established under the DD Act by providing legal-based individual and systemic advocacy services to individuals with significant (severe) mental illness (adults) and significant (severe) emotional impairment (children/youth) who are at risk for abuse, neglect and other rights violations while residing in a care or treatment facility.

In 2000, the PAIMI Act amendments created a 57th P&A system—the American Indian Consortium (the Navajo and Hopi Tribes in the Four Corners region of the Southwest). The Act, at 42 U.S.C. 10804(d), states that a P&A system may use its allotment to provide representation to individuals with mental illness, as defined by section 42 U.S.C. 10802 (4)(B)(iii) residing in the community, including their own home, *only,* if the total allotment under this title for any fiscal year is $30 million or more, *and* in such cases an eligible P&A system *must* give priority to representing PAIMI-eligible individuals, as defined by 42 U.S.C. 10802(4)(A) and (B)(i).

The Children's Health Act of 2000 (CHA) also referenced the state P&A system authority to obtain information on incidents of seclusion, restraint and related deaths [see, CHA, Part H at 42 U.S.C. 290ii–1]. PAIMI Program formula grants awarded by SAMHSA go directly to each of the 57 governor-designated P&A systems. These systems are located in each of the 50 states, the District of Columbia, the American Indian Consortium, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

The PAIMI Act at 42 U.S.C. 10805(7) requires that each P&A system prepare and transmit to the Secretary of The Department of Health and Human Services (HHS) and to the head of its State mental health agency a report by January 1. This report describes the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council (the PAIMI Advisory Council or PAC) that describes the activities of the council and its independent assessment of the operations of the system.

SAMHSA proposes revisions to its annual PAIMI Program Performance Report (PPR), including the advisory council section, at this time for the following reasons: (1) The revisions revise the PAIMI PPR, as appropriate, for consistency with the annual reporting requirements under the PAIMI Act and Rules [42 CFR part 51]; (2) The revisions simplify the electronic data entered by state P&A systems; (3) SAMHSA will reduce wherever feasible the current reporting burden by removing any information that does not facilitate evaluation of the programmatic and fiscal effectiveness of a state P&A system; (4) The updated electronic version will expedite SAMHSA's ability to prepare the biennial report; (5) The updated electronic version will improve SAMHSA's ability to generate reports, analyze trends and more expeditiously provide feedback to PAIMI programs.

The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Program Performance Report	57	1	20	1,140
Advisory Council Report	57	1	10	570
Total	57			1,710

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 14E57B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov*. Written comments should be received by January 6, 2020.

Summer King,

Statistician.

[FR Doc. 2019–24232 Filed 11–5–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW01000.L144000000.FR0000.241A; 14110008; TAS: 18X; N–60081 MO #4500129834]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined certain public lands in Pershing County, Nevada, and has found them suitable for classification for conveyance to Pershing County under the provisions of the R&PP Act, as amended, Section 7 of the Taylor Grazing Act, and Executive Order No. 6910. The lands consist of 10 acres, must conform to the official plat of survey, and are legally described below. Pershing County proposes to continue use of the land as a cemetery, and to maintain, preserve, and improve the cemetery.

DATES: Submit written comments regarding this classification on or before December 23, 2019. Comments may be mailed or hand delivered to the BLM office address below, or faxed to (775) 623–1740. The BLM will not consider comments received by telephone or email.

ADDRESSES: Mail written comments to David Kampwerth, Field Manager, BLM Humboldt River Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

Information including but not limited to a development and management plan and documentation relating to compliance with applicable environmental and cultural resource laws, is available for review during business hours, 7:30 a.m. to 4:30 p.m. Pacific Standard Time, Monday through Friday, except during Federal holidays, at the BLM Humboldt River Field Office at the address above.

FOR FURTHER INFORMATION CONTACT: Debbie Dunham, Realty Specialist, by telephone at 775–623–1598, or by email at *blm_nv_email_winnemucca_district_office@blm.gov*. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pershing County has not applied for more than the 6,400-acre limitation for recreation uses in a year, nor for more than 640 acres for each of the programs involving public resources other than recreation. Pershing County has submitted a statement in compliance with the applicable regulations. The lands under consideration are not needed for any Federal purposes. The lands examined and identified as suitable for conveyance under the R&PP Act are legally described as:

Mount Diablo Meridian, Nevada

T. 30 N, R. 34 E,
Sec. 24, SW¼NW¼SE¼SW¼,
SE¼NW¼SE¼SW¼,
NE¼SW¼SE¼SW¼,
NW¼SW¼SE¼SW¼.
The area described contains 10 acres.

Conveyance of the lands for recreational or public purposes use is in conformance with the BLM Winnemucca District Resource Management Plan dated May 2015, and would be in the public interest.

All interested parties will receive a copy of this Notice once it is published in the **Federal Register**. A copy of the **Federal Register** Notice will be published in the newspaper of local circulation once a week for three consecutive weeks. The regulations at 43 CFR 2741 addressing requirements and procedures for conveyances under the R&PP Act do not require a public meeting.

Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including locations under the mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or 18 months from the date of this notice, whichever occurs first.

The conveyance of the land, will be subject to the following terms, conditions, and reservations:

1. Rights-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. All mineral deposits in the land so patented, and the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations as established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights.

4. Lease or conveyance of the parcel is subject to valid existing rights.

5. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupation on the leased/patented lands.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

7. A limited reversionary provision stating that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan. No portion of the land shall, under any circumstance, revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development and use as a cemetery, while maintaining, preserving, and improving the cemetery. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly relating to the suitability of the lands for the use as a cemetery, while maintaining, preserving, and improving the cemetery.

Any adverse comments will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on January 6, 2020. The lands will not be offered for conveyance until after the classification becomes effective.

Before including your address, phone number, email address, or other personal identifying information in any comment, be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2741.5)

David Kampwerth,

Field Manager, Humboldt River Field Office.

[FR Doc. 2019–24221 Filed 11–5–19; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1121]

Certain Earpiece Devices and Components Thereof; Commission Determination To Vacate the Domestic Industry Finding as to One Asserted Patent; Remand the Investigation in Part to the Presiding Administrative Law Judge for Further Proceedings as to That Asserted Patent; and Extend the Target Date; Issuance of a General Exclusion Order, a Limited Exclusion Order, and Cease and Desist Orders as to the Other Five Asserted Patents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the presiding administrative law judge's (''ALJ'') domestic industry finding with respect to U.S. Patent No. 9,398,364 (''the '364 patent''), remand the investigation in part to the ALJ for further proceedings with respect to that patent consistent with its concurrently issued opinion and remand order, and extend the target date for completion of the investigation. The Commission has also determined to issue: (1) A general exclusion order prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (''the '852 patent''); claims 1 and 8 of U.S. Patent No. 9,036,853 (''the '853 patent''); claims 1 and 6 of U.S. Patent No. 9,042,590 (''the '590 patent''); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (''the '287 patent''); (2) a limited exclusion order prohibiting respondent V4ink Inc. (''V4ink'') from importing certain earpiece devices and components thereof that infringe claim 1 of U.S. Patent No. 8,311,253 (''the '253 patent''); and (3) cease and desist orders against certain respondents that were found in default or had not participated in the above-captioned investigation. The investigation is terminated with respect to these five patents.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. 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 this investigation on June 29, 2018, based on a complaint filed on behalf of Bose Corporation (''Bose'') of Framingham, Massachusetts. 83 FR 30,776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and

components thereof by reason of infringement of one or more claims of the '852, '853, '590, '253, '287, and '364 patents. The complaint further alleges that an industry in the United States exists as required by section 337.

The notice of investigation named fourteen respondents: (1) 1MORE USA, Inc. (''1MORE'') of San Diego, California; (2) APSkins of Seattle, Washington; (3) Beeebo Online Limited (''Beeebo'') of North Las Vegas, Nevada; (4) iHip of Edison, New Jersey; (5) LMZT LLC of Brooklyn, New York; (6) Misodiko of ShenZhen, GuangDong, China; (7) Phaiser LLC (''Phaiser'') of Houston, Texas; (8) Phonete of Shenzhen, China; (9) REVJAMS of New York, New York; (10) SMARTOMI Products, Inc. of Ontario, California; (11) Spigen, Inc. of Irvine, California; (12) Sudio AB of Stockholm, Sweden; (13) Sunvalley Tek International, Inc. of Fremont, California; and (14) TomRich of Shenzhen, China. The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation.

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent SMARTOMI Products, Inc. to V4ink. On October 29, 2018, the ALJ granted the motion. *See* Order No. 10 (Oct. 29, 2018), *not rev'd by* Comm'n Notice (Nov. 23, 2018); 83 FR 61168 (Nov. 28, 2018); 83 FR 62900 (Dec. 6, 2018). Bose filed and served its amended complaint on February 21, 2019.

During the course of the investigation, Bose settled with the following respondents: APSkins; Zeikos, Inc.; LMZT LLC; Spigen, Inc.; Sudio AB; and Sunvalley Tek International, Inc. *See* Order Nos. 8 and 9 (Oct. 19, 2018), *not rev'd by* Comm'n Notice (Nov. 9, 2018); Order No. 11 (Oct. 29, 2018), *not rev'd by* Comm'n Notice (Nov. 27, 2018); Order No. 12 (Nov. 26, 2018), *not rev'd by* Comm'n Notice (Dec. 19, 2018); Order Nos. 14 and 15 (Feb. 21, 2019), *not rev'd by* Comm'n Notice (Mar. 11, 2019). In addition, with the exception of Spigen, Inc., consent orders were issued against all of these respondents. *Id.* Thus, the investigation has been terminated with respect to these six respondents.

Five other respondents have been found in default pursuant to Commission Rule 210.16, 19 CFR 210.16: Beeebo; Misodiko; Phaiser; V4ink; and TomRich (collectively, ''the Defaulting Respondents''). *See* Order No. 7 (Sep. 20, 2018); Order No. 13 (Dec. 11, 2018), *not rev'd by* Comm'n Notice (Dec. 21, 2018).

On February 8, 2019, Bose moved for summary determination of a violation of section 337. Bose filed a corrected motion on March 1, 2019. Thereafter, Bose filed several replacement exhibits and a supplemental index.

The remaining three respondents, 1MORE, Phonete, and REVJAMS (collectively ''the Non-Participating Respondents''), have not submitted any response, appeared, or otherwise participated in the investigation despite being served with the complaint or amended complaint, and the motion for summary determination of violation. The three Non-Participating Respondents and the five Defaulting Respondents were the subject of Bose's motion for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose's motion in substantial part and supporting the requested remedy of a general exclusion order.

On June 28, 2019, the ALJ issued the subject ID and his Recommended Determination (''RD'') on remedy and bonding. The ID grants in part Bose's motion for summary determination of a violation of section 337. Specifically, the ALJ found, *inter alia,* that Bose established that the importation requirement is satisfied as to each Defaulting Respondent and Non-Participating Respondent and each accused product; that other than infringement of claim 7 of the '852 patent with respect to the Misodiko, Phonete, and TomRich products, Bose established infringement of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; claims 1, 7, and 8 of the '287 patent; and claims 1 and 11 of the '364 patent; and that Bose satisfied the domestic industry requirement for each asserted patent. In addition, the ALJ recommended that the Commission issue a general exclusion order, cease and desist orders, and impose a 100 percent bond during the period of Presidential review. No petitions for review were filed.

On August 14, 2019, the Commission determined to review the ID in part and requested briefing on one issue it determined to review, and on remedy, the public interest, and bonding. 84 FR 43159–161 (Aug. 20, 2019). Specifically, the Commission determined to review and reverse the ID's finding that Bose has established infringement of claim 7 of the '852 patent with respect to Beeebo's Dodocool Earhooks. The Commission also determined to review the ID's finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent. The Commission further determined to review and take no position on the ID's finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraph 337(a)(3)(C) with respect to the asserted patents. The Commission determined not to review the remainder of the ID. The Commission's determination resulted in finding a violation of section 337 by reason of infringement of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; and claims 1, 7, and 8 of the '287 patent; and the satisfaction of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to these patents.

On August 28, 2019, Bose and OUII filed initial written submissions regarding the issue on review, and on remedy, the public interest, and bonding. That same day, non-party Anker Innovations Limited (''Anker'') filed a written submission concerning remedy. On September 5, 2019, Bose filed a response to Anker's submission.

Having examined the record of this investigation, including the ID and the submissions received, the Commission has determined to vacate the ID's finding that Bose has demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent. Accordingly, the Commission has determined to remand the investigation in part to the ALJ for further proceedings with respect to the '364 patent consistent with the Commission's concurrently issued opinion and remand order. The target date is extended to December 2, 2019. Commissioner Schmidtlein does not join the decision to remand the investigation. Instead, she would affirm on modified grounds the determination that Bose demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent.

As for the remaining asserted patents, the Commission has determined that the appropriate form of relief in this investigation is: (a) A general exclusion order prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent; (b) a limited exclusion order prohibiting respondent V4ink from importing certain earpiece devices and

components thereof that infringe claim 1 of the '253 patent; and (c) cease and desist orders prohibiting respondents 1MORE, Beeebo, Phaiser, REVJAMS, V4ink, Misodiko, Phonete, and TomRich from further importing, selling, and distributing infringing products in the United States. The Commission has also determined that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of these remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the exclusion orders. The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is hereby terminated with respect to the '852, '853, '590, '287, and '253 patents.

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 31, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–24193 Filed 11–5–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–610 and 731–TA–1425–1426 (Final)]

Refillable Stainless Steel Kegs From China and Germany; Supplemental Schedule for the Final Phase of Anti-Dumping and Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch (202) 205–2387, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Effective June 4, 2019, the Commission established a general schedule for the conduct of the final phase of its investigations on refillable stainless steel kegs from China, Germany, and Mexico,[1] following preliminary determinations by the U.S. Department of Commerce (''Commerce'') that imports of refillable stainless steel kegs were being subsidized by the government of China,[2] and imports of refillable stainless steel kegs from China, Germany, and Mexico were being sold at less than fair value (LTFV) in the United States.[3] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 2019 (84 FR 28070). The hearing was held in Washington, DC, on August 14, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel. On August 19, 2019, Commerce issued a final affirmative determination with respect to imports of refillable stainless steel kegs from Mexico.[4] The Commission issued its final affirmative determination regarding LTFV imports from Mexico on October 3, 2019 (84 FR 54174, October 9, 2019).

On October 24, 2019, Commerce issued its final affirmative determination that imports of refillable stainless steel kegs were being subsidized by the government of China,[5] and imports of refillable stainless steel kegs from China and Germany were being sold at LTFV in the United States.[6] Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping and countervailing duty investigations on imports of refillable stainless steel kegs from China and Germany.

This supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce's final antidumping and countervailing duty determinations is November 8, 2019. Supplemental party comments may address only Commerce's final antidumping and countervailing duty determinations regarding imports of refillable stainless steel kegs from China and Germany. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of these investigations regarding subject imports from China and Germany will be placed in the nonpublic record on November 18, 2019; and a public version will be issued thereafter.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 31, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–24179 Filed 11–5–19; 8:45 am]

BILLING CODE 7020–02–P

[1] 84 FR 28070 (June 17, 2019).

[2] 84 FR 13634 (April 5, 2019).

[3] 84 25745 (June 4, 2019); 84 FR 25736 (June 4, 2019); and 84 FR 25738 (June 4, 2019).

[4] 84 FR 42894 (August 19, 2019).

[5] 84 FR 57005 (October 24, 2019).

[6] 84 FR 57010 (October 24, 2019) and 84 FR 57008 (October 24, 2019).

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2019 Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor

ACTION: Notice.

SUMMARY: The Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.,* thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter, the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Signed in Washington, DC, October 31, 2019.

John Pallasch,

Assistant Secretary for Employment and Training.

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin:

Transmitted herewith are an original and one copy of two separate certifications regarding unemployment compensation laws, for the 12-month period ending on October 31, 2019. One certification is required with respect to the ''normal'' federal unemployment tax credit under Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other certification is required with respect to the ''additional'' tax credit pursuant to Section 3303 of the IRC. Both certifications list all 50 states as well as the District of Columbia, Puerto Rico, and the Virgin Islands.

Sincerely,

EUGENE SCALIA

Enclosures

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON, D.C.

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3304(c) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2019, in regard to the unemployment compensation laws of those states, which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, D.C., on October 31, 2019.

EUGENE SCALIA

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON, D.C.

CERTIFICATION OF STATE UNEMPLOYMENT COMPENSATION LAWS TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3303(b)(1) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2019:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah

Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code, subject to the limitations of Section 3302(c) of the Code.

Signed at Washington, D.C., on October 31, 2019.

EUGENE SCALIA

[FR Doc. 2019–24216 Filed 11–5–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

AGENCY: Divison of Federal Employees' Compensation, Office of Workers' Compensation Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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. 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.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 6, 2020.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Anjanette Suggs, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax, (202) 354–9660, or email to *suggs.anjanette@dol.gov.* Please use only one method of transmission for comments (mail or email).

SUPPLEMENTARY INFORMATION:

I. Background: The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include enhancing the quality and utility of information the Federal government requires and minimizing the paperwork and reporting burden of affected entitities. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if there is not a current valid OMB control number (44 U.S.C. 3512).

The DOL is requesting an approval of an extension of this information collection. This information collection is essential to the mission of DOL and the Office of Workers' Compensation Programs (OWCP), to monitor and assure the appropriate use of opioids and compounded drugs in treating employment-related injuries under the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*

The FECA statute grants OWCP discretion to provide an injured employee the ''services, appliances, and supplies prescribed or recommended by a qualified physician'' which OWCP considers ''likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.'' 5 U.S.C. 8103. In other words, OWCP is mandated to provide medical supplies and services—including prescription drugs such as opioids and compounded drugs—that it considers medically necessary. 20 CFR 10.310. The FECA statute and implementing regulations are not primarily focused on managing doctor/patient decisions relating to medication therapy and, with the exception of few limitations on fentanyl (an opioid) and other controlled substances, the FECA program policy on pharmacy benefits has generally been a policy of payment for prescribed medications in accordance with a fee schedule based on a percentage of the average wholesale price (AWP) for drugs identified by a National Drug Code (NDC). See 20 CFR 10.809. To this end, the FECA program has a prior authorization policy (based on medical necessity) for opioid and compounded drugs utilizing the pre-authorization authority already contained in its regulations at 20 CFR 10.310(a) and § 10.800(b).

Information collected on the CA–26 and the CA–27, require an injured worker's treating physician to answer a number of questions about the prescribed opioids and/or compounded drugs and certify that they are medically necessary to treat the work-related injury. The responses to the questions on the forms are intended to ensure that treating physicians have considered non-opioid and non-compounded drug alternatives, and are only prescribing the most cost effective and medically necessary drugs. The forms also permit OWCP to more easily track the volume, type, and characteristics of opioids and compounded drugs authorized by the FECA program. The forms serve as a means for injured workers to continue receiving opioids and compounded drugs only where medically necessary and simultaneously give OWCP greater oversight in monitoring their appropriate use and gather additional data about their use.

II. Review Focus: The 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: The DOL seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Authorization and Certification/Letter of Medical Necessity.

OMB Number: 1240–0055.

Agency Number: CA–26 and CA–27.

Affected Public: Individuals or households; Businesses or other for-profit.

Total Respondents: 45,600.

Total Annual Responses: 45,600.

Estimated Total Burden Hours: 22,800.

Estimated Time per Response: 30 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Ajanette Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2019–24078 Filed 11–5–19; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–078)]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Wednesday, November 20, 2019, 8:30 a.m. to 5:30 p.m.; and Thursday, November 21, 2019, 8:30 a.m. to 1:00 p.m., Local Time.

ADDRESSES: Hilton Cocoa Beach Oceanfront, Grand Ballroom, 1550 North Atlantic Ave. Cocoa Beach, Florida, 32931.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Designated Federal Official, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–4297, or *jj.miller@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

The agenda for the meeting includes the following topics:

- Update on U.S. Space-Based Positioning, Navigation and Timing (PNT) Policy and Global Positioning System (GPS) modernization.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture alternatives with a focus on affordability.
- Examine methods in which to Protect, Toughen, and Augment (PTA) access to GPS/Global Navigation Satellite Systems (GNSS) services in key domains for multiple user sectors.
- Assess economic impacts of GPS/GNSS on the United States and in select international regions, with a consideration towards effects of potential PNT service disruptions if radio spectrum interference is introduced.
- Review the potential benefits, perceived vulnerabilities, and any proposed regulatory constraints to accessing foreign Radio Navigation Satellite Service (RNSS) signals in the United States and subsequent impacts on multi-GNSS receiver markets.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international GNSS.
- Examine emerging trends and requirements for PNT services in U.S. and international fora through PNT Board technical assessments, including back-up services for terrestrial, maritime, aviation, and space users.

Carol J. Hamilton,

Advisory Committee Management Officer (Acting), National Aeronautics and Space Administration.

[FR Doc. 2019–24201 Filed 11–5–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Transportation Safety Board, Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Emily T. Carroll, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza SW, Washington, DC 20594–0001, (202) 314–6233.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards (PRB). The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the 2019 Performance Review Board of the National Transportation Safety Board (NTSB): Mr. Edward Benthall, Chief Financial Officer, National Transportation Safety Board, PRB Chair.

Ms. Barbara A. Czech, Deputy Director, Office of Research and Engineering, National Transportation Safety Board.

Mr. Jerold Gidner, Principal Deputy Special Trustee, Office of the Special Trustee for American Indians, Department of Interior.

Ms. Claudia J. Postell, Associate Commissioner, Office of Civil Rights and Equal Opportunity, Social Security Administration.

Mr. Paul S. Sledzik, Deputy Managing Director, National Transportation Safety Board.

Ms. Katherine Herrera, Deputy Technical Director, Defense Nuclear Facilities Safety Board (alternate).

Ms. Susan A. Kantrowitz, Director, Office of Administration, National Transportation Safety Board (alternate).

Dated: November 1, 2019.

LaSean R. McCray,

Alternate Federal Register Liaison.

[FR Doc. 2019–24217 Filed 11–5–19; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006367; NRC–2019–0213]

Perma-Fix Northwest Richland, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an export license (XW025), requested by Perma-Fix Northwest Richland, Inc. (PFNW). On September 27, 2019, PFNW filed an application with the NRC for a license to export radioactive waste. The request seeks NRC approval for the export of low-level radioactive waste to Italy. The NRC is providing notice of the opportunity to request a hearing on PFNW's revised application. The request seeks the NRC's approval of the application authorizing the export of radioactive waste to Italy.

DATES: Comments must be filed by December 6, 2019. Requests for a hearing or a petition for leave to intervene must be filed by December 6, 2019.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0213. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: hearing.docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gary Langlie, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9076, email: *Gary.Langlie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2019–0213 or Docket No. 11006367 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0213.
- *NRC's Public Website:* Go to *https://www.nrc.gov* and search for XW025, Docket No. 11006367, or Docket ID NRC–2019–0213.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The export license application from PFNW is available in ADAMS under Accession No. ML19280A054.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0213 or Docket No. 11006367 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On September 27, 2019, NRC received an application from Perma-Fix Northwest Richland, Inc. (PFNW) requesting a license for a specific export license (XW025) for the export of low-level radioactive waste to Italy (ADAMS Accession No. ML19280A054).

In accordance with paragraph 110.70(b) of title 10 of the *Code of Federal Regulation* (10 CFR) the NRC is noticing the receipt of an export license application submitted by PFNW on September 27, 2019, for the export of Italian-origin radioactive waste from the State of Washington to Italy.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

The NRC is noticing the request to issue the license to export radioactive waste; opening the opportunity for public comment; and opening the opportunity to file a request for a hearing or petition for leave to intervene for a period of 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520. Hearing requests and intervention petitions must include the information specified in 10 CFR 110.82(b).

IV. Electronic Submission (E-Filing)

A request for a hearing or petition for leave to intervene must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant

has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The information concerning this application for an export license follows.

NRC Export License Application

[Description of material]

Name of applicant, date of application, date received, Application No., Docket No., ADAMS accession No.	Material type	Total quantity	End use	Country of destination
Perma-Fix Northwest Richland, Inc. (PFNW), September 27, 2019, October 7, 2019, XW025, 11006367, ML19280A054.	The radioactive waste consists of personal protective equipment, plastic, paper, and small quantities of glass contaminated primarily with carbon-14, hydrogen-3, and trace amounts of other mixed fission product radionuclides. The exported waste stream will be a solid form and consist of contaminated residual ash and residual metal or non-combustible material that cannot be recycled.	Not to exceed 0.1 terabecquerel (TBq).	Storage or disposal by the original generator.	Italy.

Dated at Rockville, Maryland, this 31th day of October 2019.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

[FR Doc. 2019–24199 Filed 11–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390 and 50–391; NRC–2019–0220]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Revisions to Technical Specification Table 3.3.5–1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–90 and NPF–96, issued to Tennessee Valley Authority, for operation of the Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2. The amendments would correct unbalanced voltage relay instrumentation values.

DATES: Submit comments by December 6, 2019. Requests for a hearing or petition for leave to intervene must be filed by January 6, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0220. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1627, email: *Kimberly.Green@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0220 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0220.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The licensee's amendment request dated October 23, 2019, is available in ADAMS under Accession No. ML19296C538.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0220 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov,* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–90 and NPF–96, issued to Tennessee Valley Authority, for Watts Bar, Units 1 and 2, located in Rhea County, Tennessee.

The amendments would revise the Watts Bar Technical Specification (TS) Table 3.3.5–1, ''LOP DG Start Instrumentation,'' Function 5, ''6.9 kV Emergency Bus Undervoltage (Unbalanced Voltage),'' values for the allowable value (AV) for the unbalanced voltage relay (UVR) low trip voltage, the AV for the UVR high trip time delay, and the trip setpoint for the UVR high trip time delay. These amendments would correct erroneous values issued in Amendment Nos. 128 and 31, dated August 27, 2019 (ADAMS Accession No. ML18277A110).

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed changes correct the TS to reflect the UVR setpoint calculation. The Trip Setpoint and Allowable Value changes restore the UVR instrumentation function to its analyzed design, and so the probability of an accident previously evaluated is not affected. The changes to the Trip Setpoint will ensure that there is acceptable margin to the associated analytical limit, and the Allowable Values will provide proper indicators of degraded channel performance. Thus, the consequences of an accident with the incorporation of these changes will not be increased.

Based on the above, it is concluded that the proposed changes to no involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes correct the TS to reflect the UVR setpoint calculation. The proposed changes ensure the affected UVR channels are in conformance with the existing plant design, and will operate as credited in and as constrained by existing accident analyses.

Based on the above, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes correct the TS to reflect the UVR setpoint calculation. The changes result in ensuring the Trip Setpoint has acceptable margin to the associated analytical limits, and that the Allowable Values will provide proper indicators of degraded channel performance. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside of the design basis.

Based on the above, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-

recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission. For further details with

respect to this action, see the application for license amendment dated October 23, 2019.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Dated at Rockville, Maryland, this 31st day of October 2019.

For the Nuclear Regulatory Commission.

Kimberly J. Green,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–24198 Filed 11–5–19; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice—December 4, 2019 Public Hearing

TIME AND DATE: 1:00 p.m., Wednesday, December 4, 2019.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW, Washington, DC.

STATUS: Hearing OPEN to the Public at 1:00 p.m.

MATTERS TO BE CONSIDERED: This will be a Public Hearing, held in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, November 26, 2019. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, November 26, 2019. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the December 11, 2019, Board meeting will be posted on OPIC's website.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Catherine F. I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Authority: 5 U.S.C. 552b.

Dated: October 31, 2019.

Catherine F. I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2019–24276 Filed 11–4–19; 11:15 am]

BILLING CODE 3210–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: November 1, 2019, at 11:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Items.
2. Personnel Matter.

On November 1, 2019, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2019–24294 Filed 11–4–19; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87434; File No. SR–NYSEArca–2019–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the iShares Commodity Curve Carry Strategy ETF Under NYSE Arca Rule 8.600–E

I. Introduction

On March 1, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares Commodity Curve Carry Strategy ETF, a series of the iShares U.S. ETF Trust. The proposed rule change was published for comment in the **Federal Register** on March 20, 2019.[3] On April 18, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] On May 1, 2019, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On June 18, 2019, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On September 10, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85312 (March 14, 2019), 84 FR 10369.

[4] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-12/srnysearca201912-5393880-184151.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 85758, 84 FR 19978 (May 7, 2019). The Commission designated June 18, 2019 as the date by which the Commission would 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] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 86136, 84 FR 29555 (June 24, 2019).

change, as modified by Amendment No. 1.[9] On September 12, 2019, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.[10] The Commission has received no comment letters on the proposal.

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Summary of the Exchange's Description of the Proposal, as Modified by Amendment No. 2 [11]

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by iShares U.S. ETF Trust (''Trust''), which is registered with the Commission as an open-end management investment company.[12] The Fund is a series of the Trust.

BlackRock Fund Advisors (''Adviser'') will be the investment adviser for the Fund.[13] BlackRock Investments, LLC will be the distributor for the Fund's Shares. State Street Bank and Trust Company will serve as the administrator, custodian and transfer agent for the Fund.

A. Fund Investments

According to the Exchange, the investment objective of the Fund will be to seek to provide exposure, on a total return basis, to a group of commodities with higher carry than a broad universe of commodities. The Fund will be actively managed and will seek to achieve its investment objective in part [14] by, under normal market conditions,[15] investing in listed and over-the-counter (''OTC'') swaps, including total return swaps referencing the ICE BofAML Commodity Carry Total Return Index (''Reference Benchmark'').[16] The Fund is expected to establish new swaps contracts on an ongoing basis and replace expiring contracts.[17] Swaps subsequently entered into by the Fund may have terms that differ from the swaps the Fund previously held. The Fund expects generally to pay a fixed payment rate and certain swap related fees to the swap counterparty and receive the total return of the Reference Benchmark, including, in the event of negative performance by the Reference Benchmark, negative return (*i.e.,* a payment from the Fund to the swap counterparty). In seeking total return, the Fund additionally will aim to generate interest income and capital appreciation through a cash management strategy consisting primarily of cash, cash equivalents,[18] and fixed income securities other than cash equivalents, as described below.

The Reference Benchmark is currently composed of 18 futures contracts on physical agricultural, energy, precious metals, and industrial metals commodities listed on U.S. regulated futures exchanges or non-U.S. futures exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').[19] The Fund expects to obtain a substantial amount of its exposure to the carry strategy by entering into total return swaps that pay the returns of the commodity futures contracts referenced in the Reference Benchmark. The Reference Benchmark includes the 10 futures contracts on commodities having the highest degree of backwardation or lowest degree of contango [20] among the Reference Benchmark universe.[21]

The Fund (through its Subsidiary (as defined below)) may hold the following listed derivative instruments: futures, options, and swaps on the Reference Benchmark or commodities (which commodities are from the same sectors as those included in the Reference Benchmark); currencies; U.S. and non-U.S. equity securities; fixed income securities (as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E, but excluding Short-Term Fixed Income Securities (as defined below)); interest rates; U.S. Treasuries; or a basket or index of any of the foregoing (collectively, ''Listed Derivatives''). Listed Derivatives will comply with the criteria in Commentary .01(d) of NYSE Arca Rule 8.600–E.

The Fund (through its Subsidiary) may hold the following OTC derivative instruments: Forwards, options, and swaps on the Reference Benchmark or commodities (which commodities are

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[9] In Amendment No. 2, the Exchange: (1) Modified its description of the Reference Benchmark (as defined below); (2) modified the description and definition of Short-Term Fixed Income Securities (as defined below); (3) limited the Fund's holdings in non-convertible corporate debt securities to 30% of the weight of Fund's collective holdings in cash equivalents and Short-Term Fixed Income Securities; and (4) made other technical and conforming changes. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-12/srnysearca201912-6099440-191987.pdf*.

[10] *See* Securities Exchange Act Release No. 86945, 84 FR 49158 (September 18, 2019). The Commission extended the date by which the Commission shall approve or disapprove the proposed rule change to November 15, 2019.

[11] For a complete description of the Exchange's proposal, as amended, *see* Amendment No. 2, *supra* note 9.

[12] According to the Exchange, on December 3, 2018, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940 (''1940 Act'') relating to the Fund (File Nos. 333–179904 and 811–22649) (''Registration Statement''). In addition, the Exchange states that the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[13] According to the Exchange, the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Exchange also represents that the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Investment Advisers Act of 1940 relating to codes of ethics.

[14] The Fund's investment objective will also be achieved by investing in cash, cash equivalents, Commodity Investments, Fixed Income Securities and Short-Term Fixed Income Securities (each as defined or described below).

[15] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

[16] Although the Fund may hold swaps on the Reference Benchmark, or direct investments in the same futures contracts as those included in the Reference Benchmark, the Fund is not obligated to invest in any futures contracts included in, and does not seek to replicate the performance of, the Reference Benchmark.

[17] Swaps on the Reference Benchmark are included in ''Commodity Investments'' as defined below.

[18] Cash equivalents are the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[19] The commodity futures included in the Reference Benchmark are traded on the CME Group, ICE Futures U.S., ICE Futures Europe, Inc. and the London Metal Exchange (''LME''). ICE Futures U.S., ICE Futures Europe, Inc., and CME are members of the Intermarket Surveillance Group (''ISG''). The Exchange represents that it has in place a CSSA with the LME.

[20] According to the Exchange, if the price for the new futures contract is less than the price of the expiring contract, then the market for the commodity is said to be in ''backwardation,'' and the term ''contango'' is used to describe a market in which the price for a new futures contract is more than the price of the expiring contract.

[21] The Reference Benchmark universe can have a minimum of 12 and a maximum of 25 contracts on physical agricultural, energy, precious metals, and industrial metals commodities. Reference Benchmark universe constituent futures contracts and weights are set annually and the weights are rebalanced monthly, taking into account the liquidity of the constituent futures contracts and the value of the global production of each underlying commodity.

from the same sectors as those included in the Reference Benchmark); currencies; U.S. and non-U.S. equity securities; fixed income securities (as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E, but excluding Short-Term Fixed Income Securities); interest rates; or a basket or index of any of the foregoing (collectively, ''OTC Derivatives,'' [22] and together with Listed Derivatives, ''Commodity Investments'').[23]

The Fund may hold cash, cash equivalents, and fixed income securities other than cash equivalents, as described further below.

Specifically, the Fund may invest in Short-Term Fixed Income Securities (as defined below) other than cash equivalents on an ongoing basis for cash management purposes.[24] Short-Term Fixed Income Securities will have a maturity of no longer than 397 days and include only the following: (i) Money market instruments; (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures); (vi) repurchase agreements; and (vii) sovereign debt obligations of non-U.S. countries excluding emerging market countries [25] (''Non-U.S. Sovereign Debt'') (collectively, ''Short-Term Fixed Income Securities''). Any of these securities may be purchased on a current or forward-settled basis.[26]

The Fund also may invest in fixed income securities as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E,[27] other than cash equivalents and Short-Term Fixed Income Securities, with remaining maturities longer than 397 days (''Fixed Income Securities''). Such Fixed Income Securities will comply with requirements of Commentary .01(b) to NYSE Arca Rule 8.600–E.[28]

The Fund may also hold ETNs [29] and ETFs.[30]

The Fund's exposure to Commodity Investments is obtained by investing through a wholly-owned subsidiary organized in the Cayman Islands (''Subsidiary'').[31] The Fund controls the Subsidiary, and the Subsidiary is advised by the Adviser and has the same investment objective as the Fund. In compliance with the requirements of Sub-Chapter M of the Internal Revenue Code of 1986, the Fund may invest up to 25% of its total assets in the Subsidiary. The Subsidiary is not an investment company registered under the 1940 Act and is a company organized under the laws of the Cayman Islands. The Trust's Board of Trustees (''Board'') has oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund's role as sole shareholder of the Subsidiary.

The Fund's Commodity Investments held in the Subsidiary are intended to provide the Fund with exposure to broad commodities. The Subsidiary may hold cash and cash equivalents.

B. Investment Restrictions

The Fund and the Subsidiary will not invest in securities or other financial instruments that have not been described in the proposed rule change.

The Fund's holdings in non-convertible corporate debt securities shall not exceed 30% of the weight of Fund's holdings in cash equivalents and Short-Term Fixed Income Securities, collectively.

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Reference Benchmark.

C. Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Board. In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

According to the Exchange, the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. Additionally, the Adviser understands that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser further believes that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value

[22] Examples of OTC Derivatives the Fund may invest in include swaps on commodity futures contracts similar to those found in the Reference Benchmark and options that correlate to the investment returns of commodities without investing directly in physical commodities.

[23] As discussed below under ''Application of Generic Listing Requirements,'' the Fund's and the Subsidiary's holdings in OTC Derivatives will not comply with the criteria in Commentary .01(e) of NYSE Arca Rule 8.600–E.

[24] As discussed under ''Application of Generic Listing Requirements'' below, investments in Short-Term Fixed Income Securities will not comply with the requirements of Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E.

[25] According to the Exchange, an ''emerging market country'' is a country that, at the time the Fund invests in the related fixed income instruments, is classified as an emerging or developing economy by any supranational organization such as the International Bank of Reconstruction and Development or any affiliate thereof or the United Nations, or related entities, or is considered an emerging market country for purposes of constructing a major emerging market securities index.

[26] To the extent that the Fund and the Subsidiary invest in cash and Short-Term Fixed Income Securities that are cash equivalents (*i.e.,* that have maturities of less than 3 months) as specified in Commentary .01(c) to NYSE Arca Rule 8.600–E, such investments will comply with Commentary .01(c) and may be held without limitation. Non-convertible corporate debt securities and Non-U.S. Sovereign Debt are not included as cash equivalents in Commentary .01(c).

[27] Commentary .01(b) to NYSE Arca Rule 8.600–E defines fixed income securities as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSEs''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

[28] Among the Fixed Income Securities in which the Fund may invest are commodity-linked notes.

[29] ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities). All ETNs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETNs.

[30] For purposes of the filing, the term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[31] The Exchange represents that all statements related to the Fund's investments and restrictions are applicable to the Fund and Subsidiary collectively.

(''NAV''), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Exchange states that the Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives.

D. Application of Generic Listing Requirements

The Exchange states that the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Exchange represents that, other than Commentary .01(b)(1)–(4) (with respect to Short-Term Fixed Income Securities) and .01(e) (with respect to OTC Derivatives) to NYSE Arca Rule 8.600–E, the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600–E.

According to the Exchange, the Fund's investments in Short-Term Fixed Income Securities will not comply with the requirements set forth in Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E.[32] The Exchange states that while the requirements set forth in Commentary .01(b)(1)–(4) include rules intended to ensure that the fixed income securities included in a fund's portfolio are sufficiently large and diverse, and have sufficient publicly available information regarding the issuances, the Exchange asserts that any concerns related to non-compliance are mitigated by the types of instruments that the Fund would hold. The Exchange represents that the Fund's Short-Term Fixed Income Securities primarily would include those instruments that are included in the definition of cash and cash equivalents,[33] but are not considered cash and cash equivalents because they have maturities of three months or longer. The Exchange also states that all Short-Term Fixed Income Securities, including non-convertible corporate debt securities [34] and Non-U.S. Sovereign Debt (which are not cash equivalents as enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E), are less susceptible than other types of fixed income instruments both to price manipulation and volatility and that the holdings as proposed are generally consistent with the policy concerns which Commentary .01(b)(1)–(4) is intended to address. According to the Exchange, because the Short-Term Fixed Income Securities will consist of high-quality fixed income securities described above, the policy concerns that Commentary .01(b)(1)–(4) are intended to address are otherwise mitigated and that the Fund should be permitted to hold these securities in a manner that may not comply with Commentary .01(b)(1)–(4).

The Exchange states that the Fund's portfolio with respect to OTC Derivatives will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E.[35] Specifically, the Exchange states that up to 60% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC Derivatives. The Exchange states that the Adviser believes that it is important to provide the Fund with additional flexibility to manage risk associated with its investments and, depending on market conditions, it may be critical that the Fund be able to utilize available OTC Derivatives to efficiently gain exposure to the multiple commodities markets that underlie the Reference Benchmark, as well as commodity futures contracts similar to those found in the Reference Benchmark. The Exchange states that OTC Derivatives can be tailored to provide specific exposure to the Fund's Reference Benchmark, as well as commodity futures contracts similar to those found in the Reference Benchmark, allowing the Fund to more efficiently meet its investment objective.[36] The Exchange further asserts that, if the Fund were to gain commodity exposure exclusively through the use of listed futures, the Fund's holdings in Listed Derivatives would be subject to position limits and accountability levels established by an exchange, and such limitations would restrict the Fund's ability to gain efficient exposure to the commodities in the Reference Benchmark, or futures contracts similar to those found in the Reference Benchmark, thereby impeding the Fund's ability to satisfy its investment objective.

The Exchange represents that the Adviser and its affiliates actively monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis. With respect to the Fund's (and the Subsidiary's) investments in derivatives on the Reference Benchmark or commodities (which commodities are from the same sectors as those included in the Reference Benchmark), the Exchange states that the Reference Benchmark provides broad-based exposure to commodities as an asset class, as it includes 10 futures contracts from a universe currently composed of 18 physical commodities in agricultural, energy, livestock, precious metals, and industrial metals. In addition, the Exchange states that the Adviser represents that futures on all commodities in the Reference Benchmark are traded on futures exchanges that are members of the ISG or with which the Exchange has in place a CSSA.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as

[32] Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E requires that the components of the fixed income portion of a portfolio meet the following criteria initially and on a continuing basis: (1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more; (2) no component fixed-income security (excluding Treasury Securities and GSEs) shall represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSEs) shall not in the aggregate account for more than 65% of the fixed income weight of the portfolio; (3) an underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a); and (4) component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[33] *See supra* note 18.

[34] The Exchange notes that the Fund's holdings in non-convertible corporate debt securities will not exceed 30% of the weight of the Fund's holdings in cash equivalents and Short-Term Fixed Income Securities, collectively.

[35] Commentary .01(e) to NYSE Arca Rule 8.600–E provides that, on an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives (calculated as the aggregate gross notional value of the OTC derivatives).

[36] As an example, the Exchange states that the Reference Benchmark includes 10 futures contracts, which may not be sufficiently liquid and would not provide the commodity exposure the Fund requires to meet its investment objective if the Fund were to invest in the futures directly. The Exchange states that a total return swap can be structured to provide exposure to the same futures contracts as exist in the Reference Benchmark, as well as commodity futures contracts similar to those found in the Reference Benchmark, while providing sufficient efficiency to allow the Fund to more easily meet its investment objective.

modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[37] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[38] which requires (among other things) that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

According to the Exchange, other than Commentary .01(b)(1)–(4) with respect to Short-Term Fixed Income Securities and Commentary .01(e) with respect to OTC Derivatives, the Fund's portfolio will meet all other requirements of Commentary .01 to NYSE Arca Rule 8.600–E, and the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E.

The Fund's investments in Short-Term Fixed Income Securities will not meet the requirements for fixed income securities set forth in Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E.[39] The Commission, however, believes that the limited nature of the Fund's investment in, and certain restrictions on, the Short Term Fixed Income Securities helps to mitigate concerns regarding the Shares being susceptible to manipulation because of the Fund's investment in the Short Term Fixed Income Securities.[40] Specifically, the Exchange states that Short-Term Fixed Income Securities primarily will include instruments that are included in the definition of cash equivalents,[41] but are not considered cash equivalents because they have maturities of three months or longer. As proposed, the Fund's investments in Short-Term Fixed Income Securities will also include non-convertible corporate debt securities, but such holdings would be limited to 30% of the weight of Fund's holdings in cash equivalents and Short-Term Fixed Income Securities, collectively. In addition, the Fund's investments in Short-Term Fixed Income Securities would include sovereign debt, but would exclude sovereign debt obligations of emerging market countries. Further, the Fund will invest in Short Term Fixed Income Securities for cash management purposes only, and the Short Term Fixed Income Securities in which the Fund may invest will have maturities of no longer than 397 days.[42]

In addition, the Fund's investments in OTC Derivatives will not comply with Commentary .01(e) to NYSE Arca Rule 8.600–E, which requires that no more than 20% of the assets of the Fund be invested in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives). In the alternative, the Exchange proposes that up to 60% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC Derivatives.[43] The Exchange states that it may be necessary for the Fund to utilize OTC Derivatives in order to more efficiently hedge its portfolio or to meet its investment objective.[44]

The Commission, however, believes that certain factors help to mitigate concerns that the Fund's investment in OTC Derivatives will make the Shares more susceptible to manipulation. Specifically, with respect to OTC Derivatives on the Reference Benchmark (or on the commodities underlying the futures contracts included in the Reference Benchmark), the Exchange represents that the Reference Benchmark includes 10 futures contracts from a universe currently composed of 18 physical commodities in agriculture, energy, livestock, precious metals, and industrial metals, and that futures on all of the commodities in the Reference Benchmark are traded on futures exchanges that are members of the ISG or with which the Exchange has in place a CSSA. Moreover, on a daily basis, the Fund will be required to disclose on its website the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E(c)(2), to the extent applicable,[45] and the website information will be publicly available at no charge.[46]

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio holdings or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[47] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act[48] and the rules and regulations thereunder applicable to a national securities exchange.

[37] 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).

[38] 15 U.S.C. 78f(b)(5).

[39] *See supra* note 32.

[40] The Commission notes that all the fixed income securities the Fund may invest in other than those included in Short-Term Fixed Income Securities and cash equivalents will comply with the requirements of Commentary .01(b) to NYSE Arca Rule 8.600–E, and the cash equivalents the Fund may invest in will comply with the requirements of Commentary .01(c). *See supra* Section II.A.

[41] *See supra* note 18.

[42] *See supra* Section II.A.

[43] The Exchange represents that the Adviser and its affiliates actively monitor counterparty credit risk exposure for OTC derivatives and evaluate counterparty credit quality on a continuous basis. *See supra* Section II.D. Moreover, the Exchange states that investments in derivative instruments will be made in accordance with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Board. In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. *See supra* Section II.C.

[44] *See supra* Section II.D.

[45] NYSE Arca Rule 8.600–E(c)(2) requires that the website for each series of Managed Fund Shares disclose the following information regarding the Disclosed Portfolio, to the extent applicable: (A) Ticker symbol; (B) CUSIP or other identifier; (C) description of the holding; (D) with respect to holdings in derivatives, the identity of the security, commodity, index or other asset upon which the derivative is based; (E) the strike price for any options; (F) the quantity of each security or other asset held as measured by (i) par value, (ii) notional value, (iii) number of shares, (iv) number of contracts, and (v) number of units; (G) maturity date; (H) coupon rate; (I) effective date; (J) market value; and (K) percentage weighting of the holding in the portfolio.

[46] *See* Amendment No. 2, *supra* note 9, at 17.

[47] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[48] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–12 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–2019–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–12 and should be submitted on or before November 27, 2019.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. The Commission notes that Amendment No. 2 clarified the proposed rule change, including the permitted investments of the Fund. Such changes did not raise any new issues and assisted the Commission in evaluating whether the Exchange's proposal to list and trade the Shares is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[49] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–NYSEArca–2019–12), as modified by Amendment No. 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24188 Filed 11–5–19; 8:45 am]

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[49] 15 U.S.C. 78s(b)(2).

[50] *Id.*

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87436; File No. 10–237]

MEMX LLC; Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

October 31, 2019.

On September 9, 2019, MEMX LLC (''MEMX'' or ''Applicant'') filed with the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act. On October 23, 2019, MEMX submitted Amendment No. 1 to its Form 1 application.[1] MEMX's Form 1 application, as amended, provides detailed information on how it proposes to satisfy the requirements of the Exchange Act.

The Commission is publishing this notice to solicit comments on MEMX's Form 1 application. The Commission will take any comments it receives into consideration in making its determination about whether to grant the Applicant's request to register as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to MEMX are satisfied.[2]

As discussed in the Form 1 application, MEMX would be a subsidiary of its parent company, MEMX Holdings, LLC (''MEMX Holdings''), which would directly hold 99.5% of the equity of MEMX and indirectly hold the other 0.5% of the equity of MEMX through its 100% ownership of MEMX SubCo LLC.[3] In turn, MEMX Holdings would be owned by a group of nine investors that include broker-dealers, retail brokers, and banks, eight of which have the ability to appoint a director to the board of MEMX Holdings.[4] Three of those investors also would have the ability to nominate a director to the board of MEMX on a rotating schedule.[5]

The governing documents for MEMX can be found in Exhibit A to MEMX's Form 1 application, and a listing of the officers and directors of MEMX can be found in Exhibit J. The governing documents for MEMX Holdings and MEMX SubCo LLC can be found in Exhibit C to MEMX's Form 1 application. One notable novel governance provision in the LLC Agreement of MEMX Holdings concerns quorum requirements for the board of directors that would require the presence of certain named investor-

[1] In Amendment No. 1, Applicant submitted updated portions of its Form 1 application, including Exhibits A–5 (Second Amended and Restated LLC Agreement of MEMX LLC), B (Rules of MEMX), C–2 (Third Amended and Restated LLC Agreement of MEMX Holdings LLC), and C–4 (Amended and Restated LLC Agreement of MEMX SubCo LLC).

[2] 15 U.S.C. 78s(a).

[3] A similar ownership structure exists for MEMX Execution Services LLC, which would act as an optional outbound routing broker for MEMX.

[4] *See* Exhibit B (Directors and Observers Schedule) to the Third Amended and Restated LLC Agreement of MEMX Holdings.

[5] *See* ''Exchange Director Nominating Member'' as defined in Article 1.1 of the Third Amended and Restated LLC Agreement of MEMX Holdings. *See also* Exhibit J (Exchange Director Nomination Rotation) to the Third Amended and Restated LLC Agreement of MEMX Holdings.

appointed directors to have a quorum to conduct business.[6]

With respect to its trading system, the Form 1 application further provides that MEMX would operate a fully automated electronic trading platform for the trading of National Market System stocks through unlisted trading privileges with a continuous automated matching function. MEMX would not maintain a physical trading floor. Liquidity would be derived from orders to buy and orders to sell submitted to MEMX electronically by its registered broker-dealer members from remote locations. MEMX would have one class of membership open to registered broker-dealers, and also would allow members to register under MEMX rules as market makers on MEMX and be subject to certain specified requirements and obligations set forth in MEMX's proposed rules.

According to the Applicant, it ''intends for its System to be relatively simple, without many of the complex order types or instructions available on other national securities exchanges.'' [7] While MEMX's proposed rulebook generally conforms to the rules of other exchanges,[8] one novel feature of MEMX's proposed trading rules is an optional feature on random replenishment for reserve orders that would vary the time intervals of each replenishment.[9]

A more detailed description of the manner of operation of MEMX's proposed system can be found in Exhibit E to the Applicant's Form 1 application. The proposed rulebook for the proposed exchange can be found in Exhibit B to MEMX's Form 1 application. A complete set of forms concerning membership and access can be found in Exhibit F to MEMX's Form 1 application.

MEMX's Form 1 application, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as in the Commission's Public Reference Room. Interested persons are invited to submit written data, views, and arguments concerning the Applicant's Form 1, including whether the application is consistent with the Exchange 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 10–237 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 10–237. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to MEMX's Form 1 filed with the Commission, and all written communications relating to the application 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 10–237 and should be submitted on or before December 23, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

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[6] *See* Article VIII, Section 8.6 of the Third Amended and Restated LLC Agreement of MEMX Holdings.

[7] Form 1, Exhibit E at 16.

[8] *See, e.g.,* Rulebook of Cboe EDGX Exchange, Inc., *available at https://cdn.cboe.com/resources/regulation/rule_book/EDGX_Rulebook.pdf.*

[9] *See* Proposed MEMX Rule 11.6(k)(1)(A).

[10] 17 CFR 200.30–3(a)(71)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87431; File No. SR–MIAX–2019–46])

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 31, 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 22, 2019, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on August 23, 2019 (SR–MIAX–2019–38). That filing has been withdrawn and replaced with the current filing (SR–MIAX–2019–46).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule in order to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange is also refiling its proposal in order to address certain points raised in the only comment letter received by the Commission on the Exchange's prior proposal to increase connectivity fees.[3]

In order to determine the Exchange's baseline costs associated with providing network connectivity services, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services. (For the avoidance of doubt, no expense amount was allocated twice.) The Exchange is presenting the results of its cost review in a way that corresponds directly with the Exchange's 2018 Audited Unconsolidated Financial Statements, the relevant sections of which are attached [sic] hereto as Exhibit 3, which are publicly available as part of the Exchange's Form 1 Amendment.[4] The purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fee increases are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the network connectivity services and will not result in excessive pricing or supra-competitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members[5] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, MIAX PEARL, LLC (''MIAX PEARL''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[6] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[7] The Commission received one comment letter on the proposal.[8] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[9] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[10]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[11] The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[12] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[13] The Commission received one comment letter on the proposal.[14] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[15] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[16]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be

[3] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Secretary, Commission, dated October 9, 2019 (''Third IEX Letter,'' as further described below).

[4] *See* the complete Audited Unconsolidated Financial Statements of Miami International Securities Exchange, LLC as of December 31, 2018, and the Audited Unconsolidated Financial Statements of MIAX PEARL, LLC as of December 31, 2018, which are listed under Exhibit D of MIAX Form 1 Amendment 2019–7 Annual Filing at *https://www.sec.gov/Archives/edgar/vprr/1900/19003680.pdf.*

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 83786 (August 7, 2018), 83 FR 40106 (August 13, 2018) (SR–MIAX–2018–19) (the ''First Proposed Rule Change'').

[7] *Id.*

[8] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association (''Healthy Markets''), to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[9] *See* Securities Exchange Act Release No. 34–84175 (September 17, 2018), 83 FR 47955 (September 21, 2018) (SR–MIAX–2018–19) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 84398 (October 10, 2018), 83 FR 52264 (October 16, 2018) (SR–MIAX–2018–19) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[12] *See* Securities Exchange Act Release No. 84357 (October 3, 2018), 83 FR 50976 (October 10, 2018) (SR–MIAX–2018–25) (the ''Second Proposed Rule Change'') (Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

[13] *Id.*

[14] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter'').

[15] *See supra* note 12.

[16] *Id.*

approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[17]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[18] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[19] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[20] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[21]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [22] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[23]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[24]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[25] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[26] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[27]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[28] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that

[17] *See* Securities Exchange Act Release No. 84650 (November 26, 2018), 83 FR 61705 (November 30, 2018) (SR–MIAX–2018–25) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[18] *See* Securities Exchange Act Release No. 85318 (March 14, 2019), 84 FR 10363 (March 20, 2019) (SR–MIAX–2019–10) (the ''Third Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[21] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[22] *See* IEX Letter, pg. 1.

[23] *See* Second Healthy Markets Letter, pg. 2.

[24] *See* SR–MIAX–2019–10.

[25] *See* Securities Exchange Act Release No. 85836 (May 10, 2019), 84 FR 22205 (May 16, 2019) (SR–MIAX–2019–23) (the ''Fourth Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

[26] *Id.*

[27] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[28] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[29]

The Exchange refiled the Proposed Fee Increases on June 26, 2019, designating the Proposed Fee Increases immediately effective.[30] The Fifth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[31] The Fifth Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change, and primarily through the inclusion of anticipated revenue figures associated with the provision of network connectivity services.

The Commission received three comment letters on the Fifth Proposed Rule Change.[32]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supra-competitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[33]

The Exchange refiled the Proposed Fee Increases on August 23, 2019, designating the Proposed Fee Increases immediately effective.[34] The Sixth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[35] The Sixth Proposed Rule Change provided greater detail and clarity concerning the Exchange's cost methodology as it pertains to the Exchange's expenses for network connectivity services, using a line-by-line analysis of the Exchange's general expense ledger to determine what, if any, portion of those expenses supports the provision of network connectivity services.

The Commission received only one comment letter on the Sixth Proposed Rule Change, twelve days after the comment period deadline ended.[36] Of note, no member of the Exchange commented on the Sixth Proposed Rule Change. Also, no issuer or other person using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no industry group that represents members, issuers, or other persons using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no operator of an options market commented on the Sixth Proposed Rule Change. Also, no operator of a high performance, ultra-low latency network, which network can support access to three distinct exchanges and provides premium network monitoring and reporting services to customers, commented on the Sixth Proposed Rule Change. Rather, the only comment letter came from an operator of a single equities market (equities market structure and resulting network demands are fundamentally different from those in the options markets),[37] which operator also has a fundamentally different business model (and agenda) than does the Exchange. That letter—the Third IEX Letter—called for, among other things, the Exchange to explain its basis for concluding that it incurred substantially higher costs to provide lower-latency connections and further describe the nature and closeness of the relationship between the identified costs and connectivity products and services as stated in the Exchange's cost allocation analysis.

On October 22, 2019, the Exchange withdrew the Sixth Proposed Rule Change.[38]

The Exchange is now refiling the Proposed Fee Increases to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange is also refiling its proposal in order to address certain points raised in the Third IEX Letter. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supra-competitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for

[29] *See* SR–MIAX–2019–23.

[30] *See* Securities Exchange Act Release No. 86342 (July 10, 2019), 84 FR 34012 (July 16, 2019) (SR–MIAX–2019–31) (the ''Fifth Proposed Rule Change'').

[31] *Id.*

[32] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Fourth SIFMA Letter'').

[33] *See* SR–MIAX–2019–31.

[34] *See* Securities Exchange Act Release No. 86836 (August 30, 2019), 84 FR 46997 (September 6, 2019) (SR–MIAX–2019–38) (the ''Sixth Proposed Rule Change'').

[35] *Id.*

[36] *See supra* note 3.

[37] *See infra* pages 17 to 19 (describing the differences in equity market structure and options market structure).

[38] *See* SR–MIAX–2019–38.

the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [39] in general, and furthers the objectives of Section 6(b)(4) of the Act [40] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [41] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [42]

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. Further, of the number of Members that connect directly to MIAX, many such Members do not purchase market data from MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. For example, the following are not Members of MIAX: The D.E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

The argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX or its affiliates, MIAX PEARL and MIAX Emerald, they do not purchase connectivity to MIAX, and they do not purchase market data from MIAX. The Exchange recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(4).

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[43] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

There is competition for connectivity to MIAX and its affiliates. MIAX competes with nine (9) non-Members who resell MIAX connectivity. These are resellers of MIAX connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX and/or MIAX PEARL. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX and/or MIAX PEARL. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX, constraining the price that MIAX is able to charge for connectivity to its Exchange.

The Exchange[44] and MIAX PEARL[45] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX, MIAX PEARL, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX PEARL, or both. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory because the connectivity pricing is directly related to the relative costs to the Exchange to provide those respective services, and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Approximately just less than half of MIAX and MIAX PEARL Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and also generally do not require the high touch network support services provided by the Exchange. Accordingly, these connections consume the least resources of the Exchange and are the least costly to the Exchange to provide. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth and also generally do require the high touch network support services provided by the Exchange. Accordingly, these connections consume the most resources of the Exchange and are the most costly to the Exchange to provide. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the resources consumed by the respective type of connection—lowest resource consuming members pay the least, and highest resource consuming members pays the most, particularly since higher resource consumption translates directly to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative. 10Gb connections are less costly to provide than 10Gb ULL connections, which require greater network support services.

With respect to options trading, the Exchange had only a 3.87% market share of the U.S. options industry in September 2019 in Equity/Exchange Traded Fund (''ETF'') classes according to the OCC.[46] For September 2019, the

[43] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

[44] The Exchange has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

[45] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[46] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation,

Exchange's affiliate, MIAX PEARL, had only a 5.30% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[47] For September 2019, the Exchange's affiliate, MIAX Emerald, had only a 0.81% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[48] The Exchange is not aware of any evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, see the R2G Services LLC (''R2G'') letter based on BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[49] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 45 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[50] Nasdaq ISE, LLC has approximately 100 members,[51] and NYSE American LLC has over 80 members.[52] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 45 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018, particularly in light of the R2G disconnection example cited above.[53] In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX and MIAX PEARL; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[54] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[55] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand. Therefore, the Exchange believes that the Proposed Fee Increases are fair,

available at *https://www.theocc.com/webapps/exchange-volume.*

[47] *Id.*

[48] *Id.*

[49] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[50] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[51] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[52] *See https://www.nyse.com/markets/american-options/membership#directory.*

[53] *See supra* note 49.

[54] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

[55] *See supra* note 49.

equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives according to the Exchange's costs to provide such alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the actual costs to the Exchange to provide network connectivity and the respective connection options, including the costs associated with providing the different levels of service associated with the respective connections.

Further, the Exchange believes that the fees are equitably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange. Also, these firms account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 75% of the volume on the Exchange. For example, for all of September 2019, approximately 4.8 million contracts of the 6.4 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. The Exchange further believes that the fees are equitably allocated, as the amount of the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb or 10Gb ULL network connection. Pursuant to its extensive cost review described above, the Exchange believes that the average cost to provide a 10Gb/10Gb ULL network connection is approximately 4 to 6 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb/10Gb ULL connection are not 4 to 6 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb/10Gb ULL connection which cause it to be 4 to 6 times more costly to provide than the 1Gb connection. As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of research and development (''R&D'') effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb and 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure as well as network monitoring and support services in order to provide the network connectivity services, since it last filed to increase its connectivity fees in December 2016, which became effective on January 1, 2017.[56] Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to expanding its Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since it last increased its connectivity fees on January 1, 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have

[56] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Connectivity Fees).

increased over 10% since the last time the Exchange increased its connectivity fees on January 1, 2017. As these network connectivity-related expenses increase, MIAX and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since January 1, 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in data center costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with the Exchange consuming connectivity/content from the equities markets in order to operate the Exchange, causing the Exchange to effectively pay its competitors for this connectivity. While the Exchange and MIAX PEARL have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX and MIAX PEARL. Accordingly, the total projected MIAX and MIAX PEARL connectivity revenue as a result of the proposed increase, on an annualized basis, is less than the total annual actual MIAX and MIAX PEARL connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the increase in actual costs to the Exchange (since January 2017) versus the projected increase in annual revenue.

The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own and operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives calls from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including calls from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since January 1, 2017 and are loss leaders for the Exchange to provide these added benefits for Members and non-Members.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, which are designed to recover those costs, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 Audited Unconsolidated Financial Statements, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitutes the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX and MIAX PEARL associated with providing network connectivity services versus the total projected annual revenue of both exchanges collected for providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services (that is, the shared network connectivity of MIAX and MIAX PEARL, but excluding MIAX Emerald) was approximately $19.3 million. The $19.3 million in total annual expense is comprised of the following, all of which is directly related to the provision of network connectivity services by MIAX and MIAX PEARL to their respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX and MIAX PEARL to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX and MIAX PEARL to provide the network connectivity services. All such expenses are more fully-described below, and are

mapped to the MIAX and MIAX PEARL 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements''). The $19.3 million in total annual expense is directly related to the provision of network connectivity services and not any other product or service offered by the Exchange. It does not, as the Third IEX Letter baselessly claims, include general costs of operating matching systems and other trading technology. (And as stated previously, no expense amount was allocated twice.) As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. Thus, the Exchange is acutely aware of and can isolate the actual costs associated with providing such a service to its customers, a significant portion of which relates to the premium, value-add customer network monitoring and support services that accompany the service, as fully-described above. IEX, on the other hand, does not offer such a network, and thus has no legal basis to offer a qualified opinion on the Exchange's costs associated with operating such a network. In fact, IEX differentiates itself as a provider of low cost connectivity solutions to an intentionally delayed trading platform—quite the opposite from the Exchange. Thus, there is no relevant comparison between IEX network connectivity costs and the Exchange's network connectivity costs, and IEX's attempt to do so in the Third IEX Letter is ill-informed and self-serving.[57]

For 2018, total third-party expense, relating to fees paid by MIAX and MIAX PEARL to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $5,052,346. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX and MIAX PEARL trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX and MIAX PEARL office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[58] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion that actually supports the provision of network connectivity services and no expense amount is allocated twice). Accordingly, MIAX and MIAX PEARL do not allocate their entire information technology and communication costs to the provision of network connectivity services.

For 2018, total internal expense, relating to the internal costs of MIAX and MIAX PEARL to provide the network connectivity services, was $14,271,870. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the provision of network connectivity for trading; and (3) occupancy costs for leased office space for staff that support the provision of network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion that supports the provision of network connectivity services), and no expense amount is allocated twice. Accordingly, MIAX and MIAX PEARL do not allocate their entire costs contained in those line items to the provision of network connectivity services.

MIAX's and MIAX PEARL's employee compensation and benefits expense relating to providing network connectivity services was $5,264,151, which is only a portion of the $11,997,098 (for MIAX) and $8,545,540 (for MIAX PEARL) total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's depreciation and amortization expense relating to providing network connectivity services was $8,269,048, which is only a portion of the $6,179,506 (for MIAX) and $4,783,245 (for MIAX PEARL) total expense for depreciation and amortization that is stated in the 2018 Financial Statements.

[57] *See* Third IEX Letter, pg. 5.

[58] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

MIAX's and MIAX PEARL's combined occupancy expense relating to providing network connectivity services was $738,669, which is only a portion of the $945,431 (for MIAX) and $581,783 (for MIAX PEARL) total expense for occupancy that is stated in the 2018 Financial Statements.

Accordingly, the total projected MIAX and MIAX PEARL combined revenue for providing network connectivity services, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX and MIAX PEARL combined expense for providing network connectivity services during 2018 of approximately $19.3 million. MIAX and MIAX PEARL project comparable combined expenses for providing network connectivity services for 2019, as compared to 2018.

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX and MIAX PEARL. Stated differently, no expense amount of the Exchange is allocated twice.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[59] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[60] While MIAX's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[61]

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.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[62] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

[59] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[60] *Id.*

[61] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[62] *See supra* note 59.

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,[63] and Rule 19b–4(f)(2)[64] 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–MIAX–2019–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2019–46 and should be submitted on or before November 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Jill M. Peterson,

Assistant Secretary.

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[63] 15 U.S.C. 78s(b)(3)(A)(ii).

[64] 17 CFR 240.19b–4(f)(2).

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87435; File No. SR–CboeEDGX–2019–064]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 21.23 (Complex Solicitation Auction Mechanism)

October 31, 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 23, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to adopt Rule 21.23. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change permits use of its Solicitation Auction Mechanism (''SAM'') for complex orders. Specifically, the proposed rule change adopts Rule 21.23, which describes how complex orders may be submitted to and will be processed in a SAM Auction (''C–SAM'' or ''C–SAM Auction''). Complex orders will be processed and executed in a C–SAM Auction pursuant to proposed Rule 21.23 in a similar manner as simple orders are processed and executed in a SAM Auction pursuant to Rule 21.21.[3] C–SAM will provide market participants with an opportunity to receive price improvement for their larger-sized complex orders. The proposed rule change is substantially the same as the complex order solicitation price improvement mechanism of Cboe

[3] The Exchange notes the Securities and Exchange Commission (the ''Commission'') recently approved Rule 21.21 regarding the Exchange's SAM Auction, which the Exchange intends to make available upon approval of this rule filing. *See* Securities Exchange Act Release No. 87060 (September 23, 2019), 84 FR 51211 (September 27, 2019) (SR–CboeEDGX–2019–047).

Options, as well as other options exchanges.[4]

The Exchange believes the similarity of C–SAM to SAM, AIM, and C–AIM and the mechanisms of other exchanges will allow the Exchange's proposed price improvement functionality to fit seamlessly into the options market and benefit market participants who are already familiar with this similar functionality. The Exchange also believes this will encourage Options Members to compete vigorously to provide the opportunity for price improvement for complex orders in a competitive auction process.

An Options Member (the ''Initiating Member'') may electronically submit for execution a complex order it represents as agent (''Agency Order'') against a solicited complex order(s) (which cannot have a Capacity of F for the same EFID as the Agency Order)[5] (a ''Solicited Order'') if it submits the Agency Order for electronic execution into a C–SAM Auction pursuant to proposed Rule 21.23. The Agency Order and Solicited Order cannot both be for the accounts of a customer. The Exchange believes it is appropriate for such customer-to-customer crosses to be submitted to a C–AIM Auction pursuant to Rule 21.22, as that rule contains a provision for Customer-to-Customer Immediate AIM Crosses for complex orders. For purposes of proposed Rule 21.23, the term ''SBBO'' means the synthetic best bid or offer[6] at the particular point in time applicable to the reference.[7]

Unlike simple SAM, there is no restriction on the solicited order being for the account of any Options Market Maker registered in the applicable series on the Exchange, as there are no Market Maker appointments to complex strategies. With respect to the simple markets, appointed Market Makers have a variety of obligations related to providing liquidity and making competitive markets in their appointed classes. Therefore, prohibiting Market-Makers from being solicited in a simple SAM Auction may encourage those Market-Makers to provide liquidity in that auction to provide liquidity through responses, as well as quotes on the Book that may have the opportunity to execute against the Agency Order. Because Market-Makers have no obligations to provide liquidity to complex markets (and there is no quoting functionality available in the complex order book (''COB'')), appointed Market-Makers are on equal footing with all other market participants with respect to C–SAM Auctions. Permitting Market-Makers to be solicited provides all market participants with the opportunity to provide liquidity to execute against Agency Orders in C–SAM Auctions in the same manner (both through solicitation, responses, and interest resting on the COB). Rule 21.22 similarly does not restrict appointed Market-Makers from being solicited to participate on the contra-side of C–AIM Auctions.[8]

The Exchange does not believe permitting an appointed Market-Maker to be solicited for a C–SAM Auction provides the Market-Maker with any advantages with respect to its potential quotes in the applicable series in the Simple Book. Rule 18.4 prohibits any Options Member from misusing material nonpublic information, and requires Options Members to have policies and procedures designed to prevent the misuse of material nonpublic information. When a market participant is solicited to be the contra-side in a crossing auction, the knowledge of that auction is not yet public. If an appointed Market-Maker was solicited for a C–SAM Auction and modified its quotes in the Simple Book in the applicable series in response to that auction, the Exchange may determine that to be a violation of Rule 18.4. Such an action would only impact C–SAM Auction execution prices if those quotes were at the BBO in the applicable series. This is true for any Options Member solicited for a C–SAM Auction that modified the prices of any orders it has resting in the applicable legs in the Simple Book or in the applicable complex strategy resting in the COB, as C–SAM permissible execution prices are based on all interest resting in the Simple Book.

As defined, the Solicited Order may be comprised of multiple orders, in which case they must total the same size as the Agency Order. This will accommodate multiple contra-parties and increase the opportunities for customer orders to be submitted into a C–SAM Auction with the potential for price improvement, since the Solicited Order must stop the full size of the Agency Order. This will have no impact on the execution of the Agency Order, which may trade against multiple contra-parties depending on the final execution price(s), as set forth in proposed paragraph (e). The Exchange notes that with regard to order entry, the first order submitted into the system is marked as the agency side and the second order is marked as the initiating/contra-side. Additionally, the Solicited Order will always be entered as a single order, even if that order consists of multiple contra-parties, which are allocated their portion of the trade in a post-trade allocation.[9]

The Initiating Member may initiate a C–SAM Auction if all of the following conditions are met:

- The Agency Order may be in any class of options traded on the Exchange.[10]
- The Initiating Member must mark an Agency Order for C–SAM Auction processing.[11]
- The smallest leg of the Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The Solicited Order must be for (or must total, if the Solicited Order is comprised of multiple solicited orders) the same size as the Agency Order. The System handles each of the Agency Order and the Solicited Order as an all-or-none (''AON'') order.[12]

[4] *See* Cboe Options Rule 5.40; *see also, e.g.,* Nasdaq ISE, LLC (''ISE'') Options 3, Section 11(e).

[5] Because the Solicited Order cannot be facilitated by the Initiating Member, the Exchange proposes to add these systematic blocks, and will also conduct surveillance for compliance with the rule that prevents the Solicited Order from being a facilitation. Additionally, bulk messages (the equivalent of quoting functionality) are not available for complex orders. *See* Rule 21.20(b).

[6] The SBBO is calculated using the best displayed price for each component of a complex strategy from the Simple Book. *See* Rule 21.20(a)(11).

[7] *See* proposed introductory paragraph to Rule 21.23. This proposed paragraph is the same as the corresponding paragraph for simple SAM (introductory paragraph to Rule 21.21), except it refers to SBBO rather than the national best bid or offer (''NBBO''). There is no NBBO for complex orders, as complex orders may be executed without consideration of any prices for the complex strategy that might be available on other exchanges trading the same complex strategy. *See* Rule 21.20(c)(2)(E). Additionally, executions of legs of complex orders are exceptions to the prohibition of trade-throughs. *See* Rule 27.2(b)(8).

[8] Cboe Options Rule 5.40 similarly does not prohibit appointed Market-Makers from being solicited. *See also* NYSE American, LLC (''American'') Rule 971.2NY(a)(1) (which permits all users except customers from being solicited as the contra-party).

[9] *See* Rule 21.22, introductory paragraph; *see also* Cboe Options Rule 5.40, introductory paragraph; and ISE Regulatory Information Circular 2014–013 (which states that the contra-side order submitted into a crossing mechanism (including the ISE solicited order mechanism) may consist of one or more parties).

[10] *See* proposed Rule 21.23(a)(1). Cboe Options Rule 5.40(a)(1) permits Cboe Options to make C–SAM available on a class-by-class basis. The Exchange does not believe it currently needs this flexibility.

[11] *See* proposed Rule 21.23(a)(2); *see also* Cboe Options Rule 5.40(a)(2).

[12] *See* proposed Rule 21.23(a)(3); *see also* Cboe Options Rule 5.40(a)(3). The Exchange notes Rule 21.21(a)(3) requires the Initiating Member to designate the Agency Order and Solicited Order as AON. However, C–SAM functionality will

Continued

• The price of the Agency Order and Solicited Order must be in an increment of $0.01.[13]

• The Initiating Member may not designate an Agency Order or Solicited Order as Post Only.[14]

• The Initiating Member may only submit an Agency Order to a C–SAM Auction after the complex order book (''COB'') opens.[15]

The System rejects or cancels both an Agency Order and Solicited Order submitted to a C–SAM Auction that do not meet these conditions.[16]

The proposed introductory paragraph for Rule 21.23 is the same as the corresponding paragraph for C–AIM Auctions in Rule 21.22, which is the Exchange's price improvement crossing auction for complex Agency Orders of all sizes and substantially similar to the Exchange's C–SAM Auctions, except C–AIM Auctions permit facilitations and customer-to-customer immediate crosses, while C–SAM Auctions only permit solicitations of larger-sized orders and do not permit customer-to-customer immediate crosses, as set forth above.[17]

The Solicited Order must stop the entire Agency Order at a price that satisfies the following:

• If the Agency Order is to buy (sell) and (a) the applicable side of the BBO on any component of the complex strategy represents a Priority Customer order on the Simple Book, the stop price must be at least $0.01 better than the SBB (SBO); or (b) the applicable side of the BBO on each component of the complex strategy represents a non-Priority Customer order or quote on the Simple Book, the stop price must be at or better than the SBB (SBO). This ensures the execution price of the Agency Order will improve the SBBO if there is a Priority Customer order in any of the legs on the Simple Book. The proposed rule change protects Priority Customers in any of the component legs of the Agency Order in the Simple Book. By permitting a Priority Customer Agency Order to trade at the SBBO if there is a resting non-Priority Customer order in the Book, the proposed rule change also protects Priority Customer orders submitted into a C–SAM Auction. The Exchange believes the proposed rule change is consistent with general customer priority principles.[18]

• If the Agency Order is to buy (sell) and a buy (sell) complex order rests on the COB, the stop price must be at least $0.01 better than the bid (offer) of the resting complex order, unless the Agency Order is a Priority Customer order and the resting order is not a Priority Customer, in which case the stop price must be at or better than the bid (offer) of the resting complex order. This ensures the execution price of the Agency Order will improve the price of any resting Priority Customer complex orders on the COB, and that the execution price of a Priority Customer Agency Order will not be inferior to the price of any resting non-Priority Customer complex orders on the COB. The proposed rule change protects Priority Customers on the same side of the COB as the current rule does. By permitting a Priority Customer Agency Order to trade at the same price as a resting non-Priority Customer order, the proposed rule change also protects Priority Customer orders submitted into a C–SAM Auction. Application of this check at the initiation of a C–SAM Auction may result in the Agency Order executing at a better price, since the stop price must improve any same-side complex orders (with the exception of a Priority Customer Agency Order and a resting non-Priority Customer order described above). The proposed rule change is consistent with general customer priority principles.[19]

• If the Agency Order is to buy (sell) and (a) the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book, the stop price must be at least $0.01 better than the SBO (SBB), or (b) the BBO of each component of the complex strategy represents a non-Priority Customer order on the Simple Book, the stop price must be at or better than the SBO (SBB). This ensures the execution price of the Agency Order will improve the price of any Priority Customer orders resting in the Simple Book at the opposite side of the SBBO, and not be through the opposite side of the SBBO.[20]

• If the Agency Order is to buy (sell) and the best-priced sell (buy) complex order on the COB represents (a) a Priority Customer complex order, the stop price must be at least $0.01 better than the SBO (SBB); or (b) a complex order that is not a Priority Customer, the stop price must be at or better than the price of the resting complex order. This ensures the execution price of the Agency Order will improve the price of any Priority Customer complex orders resting in the COB at the same price as the stop price, and not be through the price of any other complex order resting in the COB.[21]

These proposed price checks are consistent with the permissible execution prices as set forth in proposed paragraph (e), as described below. The System rejects or cancels both an Agency Order and Solicited Order submitted to a C–SAM Auction that do not meet the conditions in this paragraph (b).[22]

Upon receipt of an Agency Order that meets the above conditions, the C–SAM Auction process commences. One or more C–SAM Auctions in the same complex strategy may occur at the same time. C–SAM Auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have overlapping components. A C–SAM Auction may be ongoing at the same time as a SAM Auction in any component of the complex strategy.

To the extent there is more than one C–SAM Auction in a complex strategy underway at a time, the C–SAM Auctions conclude sequentially based on the exact time each C–SAM Auction commenced, unless terminated early pursuant to proposed paragraph (d). In the event there are multiple C–SAM Auctions underway that are each terminated early pursuant to proposed paragraph (d), the System processes the

automatically handle any orders submitted to the Exchange on a C–SAM message as AON, and thus will not require the Initiating Member to include an instruction on the orders for them to be handled as AON. The Exchange intends to amend Rule 21.21 in a separate rule filing to conform to the proposed provision.

[13] *See* proposed Rule 21.23(a)(4). Cboe Options Rule 5.40(a)(4) permits Cboe Options to apply different minimum increments for C–SAM on a class-by-class basis. The Exchange does not believe it currently needs this flexibility.

[14] *See* proposed Rule 21.23(a)(5); *see also* Cboe Options Rule 5.40(a)(5).

[15] *See* proposed Rule 21.23(a)(6); *see also* Cboe Options Rule 5.40(a)(6).

[16] *See* proposed Rule 21.23(a). Proposed paragraph (a) is the same as the corresponding paragraph for simple SAM (see Rule 21.21(a)), except the proposed rule change does not provide that an Initiating Member may not submit an Agency Order if the NBBO is crossed (unless the Agency Order is a SAM ISO. As noted above, there is no NBBO for complex orders, and the legs of complex orders are not subject to the restriction on NBBO trade-throughs. Additionally, the proposed rule change references the opening of the COB rather than the market open, as the opening of the COB is when complex orders may begin trading.

[17] The proposed introductory paragraph is also substantially the same as the introductory paragraph in Rule 21.21, which is the rule describing the Exchange's simple SAM Auction.

[18] *See also* Rule 21.22(b)(1). General principles of customer priority ensure the execution price of complex orders will not be executed at prices inferior to the SBBO or at a price equal to the SBBO when there is a Priority Customer at the BBO for any component.

[19] *See also* Rule 21.22(b)(2).

[20] *See also* Rule 21.22(b)(3).

[21] There is no corresponding provision in Rule 21.22(b), because orders submitted into C–AIM auctions do not have AON contingencies, and Agency Orders submitted into those auctions may trade against both the contra-side order and other contra-side interest.

[22] Proposed Rule 21.23(b) is virtually identical to Cboe Options Rule 5.40(b), except the Cboe Options rule accounts for the possibility that there may be a different minimum increment other than $0.01.

C–SAM Auctions sequentially based on the exact time each C–SAM Auction commenced. If the System receives a simple order that causes a SAM Auction and C–SAM Auction (or multiple SAM and/or C–SAM Auctions) to conclude pursuant to proposed paragraph (d) and Rule 21.21(d), the System first processes SAM Auctions (in price-time priority) and then processes C–SAM Auctions (in price-time priority). At the time each C–SAM Auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) and takes into account all C–SAM Auction responses and unrelated orders and quotes in place at the exact time of conclusion.[23]

The Exchange currently permits concurrent AIM Auctions in the same series (for Agency Orders of 50 or more contracts), concurrent SAM Auctions in the same series, and concurrent C–AIM Auctions in the same complex strategy,[24] and thus believes it is appropriate to similarly permit concurrent C–SAM Auctions in the same complex strategy. The Exchange believes it is appropriate to permit concurrent C–SAM Auctions in the same complex strategy for the same reasons it permits concurrent C–AIM Auctions for larger-sized orders, and for the same reasons it permits concurrent simple AIM and SAM Auctions to occur. Different complex strategies are essentially different products, as orders in those strategies cannot interact, just as orders in different series or classes cannot interact. Therefore, the Exchange believes concurrent C–SAM Auctions in different complex strategies is appropriate given that concurrent simple AIM Auctions in different series or different classes may occur. Similarly, while it is possible for a complex order to leg into the Simple Book, a complex order may only execute against simple orders if there is interest in each component in the appropriate ratio for the complex strategy. A simple order in one component of a complex strategy cannot on its own interact with a complex order in that complex strategy. Therefore, the Exchange believes it is appropriate to permit concurrent SAM and C–SAM Auctions that share a component. As proposed, C–SAM Auctions will ensure that Agency Orders execute at prices that protect Priority Customer orders in the Simple Book and that are not inferior to the SBBO at the conclusion of the C–SAM Auction, even when there are concurrent simple and complex auctions occurring. The proposed rule change sets forth how any auctions with overlapping components will conclude if terminated due to the same event.

The Exchange notes it is currently possible for auctions in a component leg and a complex strategy containing that component (such as a simple AIM Auction in the component and a C–AIM in the complex strategy that contains that component) to occur concurrently. While these auctions may be occurring at the same time, they will be processed in the order in which they are terminated (similar to how the System will process auctions as proposed above). In other words, suppose there is an AIM Auction in a series and a C–AIM in a complex strategy for which one of the components is the same series both occurring, which began and will terminate in that order, and each of which last 100 milliseconds. While it is possible for both auctions to terminate nearly simultaneously, the System will still process them in the order in which they terminate. When the AIM Auction terminates, the System will process it in accordance with Rule 21.19, and the auctioned order may trade against any resting interest (in addition to the contra-side order and responses submitted to that AIM Auction, which may only trade against the order auctioned in that AIM pursuant to Rule 21.19). The System will then process the C–AIM Auction when it terminates, and the auctioned order may trade against any resting interest (in addition to the contra-side order and responses submitted to that C–AIM Auction, which may only trade against the Agency Order auctioned in that C–AIM), pursuant to Rule 21.22.

The System initiates the C–SAM Auction process by sending a C–SAM Auction notification message detailing the side, size, price, Capacity, Auction ID, and complex strategy of the Agency Order to all Options Members that elect to receive C–SAM Auction notification messages. C–SAM Auction notification messages are not included in OPRA.[25] A C–SAM Auction will last for a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than one second.[26] An Initiating Member may not modify or cancel an Agency Order or Solicited Order after submission to a C–SAM Auction.[27]

Any User other than the Initiating Member (the response cannot have the same EFID as the Agency Order)[28] may submit responses to a C–SAM Auction that are properly marked specifying size, side of the market, and the Auction ID for the C–SAM Auction to which the User is submitting the response. A C–SAM Auction response may only participate in the C–SAM Auction with the Auction ID specified in the response.[29]

- The minimum price increment for C–SAM responses is $0.01. The System rejects a C–SAM response that is not in a $0.01 increment.[30]
- C–SAM responses are capped at the following prices that exist at the conclusion of the C–SAM Auction: (i) The better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB; or (ii) $0.01 lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order. The System executes these C–SAM responses, if possible, at the most

[23] *See* proposed Rule 21.23(c)(1); *see also* Rule 21.22(c)(1) and Cboe Options Rule 5.40(c)(1). Proposed paragraph (c)(1) is the same as the corresponding paragraph for simple SAM (see Rule 21.21(c)(1)), except the proposed change adds how the System will handle ongoing auctions that include an overlapping component (whether that component is the subject of an ongoing simple SAM Auction or part of a complex strategy for which a different C–SAM Auction is ongoing).

[24] *See* Rules 21.19(c)(1), 21.21(c)(1), and 21.22 (c)(1); *see also* Cboe Options Rule 5.40(c)(1).

[25] *See* proposed Rule 21.23(c)(2); *see also* Rule 21.22(c)(2) and Cboe Options Rule 5.40(c)(2). The proposed C–SAM Auction notification message is the same as the corresponding message for simple SAM (see Rule 21.21(c)(2)), except the proposed rule change indicates the notification message for a C–SAM Auction will include the complex strategy rather than the series.

[26] *See* proposed Rule 21.23(c)(3); *see also* Rule 21.22(c)(3) and Cboe Options Rule 5.40(c)(3). The proposed C–SAM Auction period is also the same as the auction period for simple SAM (see Rule 21.21(c)(3)). The Exchange will make announce the length of the C–SAM Auction period to Options Members pursuant to Rule 16.3.

[27] *See* proposed Rule 21.23(c)(4); *see also* Rule 21.22(c)(4) and Cboe Options Rule 5.40(c)(4). The proposed C–SAM Auction notification message is the same as the corresponding provision for simple SAM (see Rule 21.21(c)(4)), except it includes the complex strategy rather than the series.

[28] Permitting the Initiating Member to respond to a C–SAM Auction would be inconsistent with the purpose of the auction, which is to cross solicited interest, rather than facilitated interest. Similar to the restriction that the Solicited Order cannot be for the Initiating Member, the Exchange proposes to add a systematic block, but will conduct surveillance for compliance with the rule that prevents the response from being for the Initiating Member (so that a response cannot be used in place of a facilitation order).

[29] *See* proposed Rule 21.23(c)(5); *see also* Rule 21.22(c)(5) and Cboe Options Rule 5.40(c)(5). The proposed provisions regarding C–SAM responses are the same as the provisions regarding SAM responses, except as set forth below. *See* Rule 21.21(c)(5).

[30] *See* proposed Rule 21.23(c)(5)(A); *see also* Rule 21.22(c)(5)(A). The proposed minimum increment for C–SAM responses is the same as the minimum increment for SAM responses. *See* Rule 21.21(c)(5)(A). Cboe Options Rule 5.40(c)(5)(A) provides Cboe Options with flexibility to apply a different minimum increment to C–SAM responses. The Exchange does not currently believe it needs this flexibility.

aggressive permissible price not outside the SBBO at the conclusion of the C–SAM Auction or price of the resting complex order. This will ensure the execution price is at or better than the SBBO (or better than the SBBO if any component is represented by a Priority Customer order) or prices of resting complex orders (or better than the best-priced resting complex order if represented by a Priority Customer complex order) at the end of the C–SAM Auction as set forth in proposed Rule 21.23(e). Therefore, as proposed, the price at which any response may be entered (and thus be executed) will ultimately not be through the SBBO or the best-priced resting orders on the COB at the conclusion of the C–SAM Auction.[31]

• A User may submit multiple C–SAM responses at the same or multiple prices to a C–SAM Auction. The System aggregates all of a User's complex orders on the COB and C–SAM responses for the same EFID at the same price.[32] The Exchange believes this is appropriate since all interest at a single price is considered for execution against the Agency Order at that price, and can then together be subject to the size cap, as discussed below. This (combined with the proposed size cap described below) will prevent an Options Member from submitting multiple orders or responses at the same price to obtain a larger pro-rata share of the Agency Order.

• The System caps the size of a C–SAM response, or the aggregate size of a User's complex orders on the COB and C–SAM responses for the same EFID at the same price, at the size of the Agency Order (*i.e.,* the System ignores size in excess of the size of the Agency Order when processing the C–SAM Auction). The Exchange believes this will prevent an Options Member from submitting an order or response with an extremely large size in order to obtain a larger pro-rata share of the Agency Order.[33]

• C–SAM responses must be on the opposite side of the market as the Agency Order. The System rejects a C–SAM response on the same side of the market as the Agency Order.[34]

• C–SAM responses are not visible to C–SAM Auction participants or disseminated to OPRA.[35]

• A User may modify or cancel its C–SAM responses during the C–SAM Auction.[36]

Pursuant to proposed Rule 21.23(d), a C–SAM Auction concludes at the earliest to occur of the following times:

• The end of the C–SAM Auction period;

• upon receipt by the System of an unrelated non-Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price better than the stop price;

• upon receipt by the System of an unrelated Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price equal to or better than the stop price;

• upon receipt by the System of an unrelated non-Priority Customer order or quote that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be better than the stop price;

• upon receipt by the System of a Priority Customer order in any component of the complex strategy that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be equal to or better than the stop price;

• upon receipt by the System of a simple non-Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be better than the stop price, or a Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be equal to or better than the stop price;

• upon receipt by the System of an order that would cause the SBBO to be a price not permissible under the Limit Up-Limit Down Plan or Regulation SHO, provided, however, that in such instance, the C–SAM Auction concludes without execution;

• the market close; and

• any time the Exchange halts trading in the complex strategy or any component of the complex strategy, provided, however, that in such instance, the C–SAM Auction concludes without execution.[37]

The Exchange proposes to conclude the C–SAM Auction in response to the incoming orders described above, as they would cause the SBBO or the best-priced complex order on the same side of the market as the Agency Order to be better priced than the stop price, or cause the stop price to be the same price as the SBBO with a Priority Customer order on the BBO for a component or a Priority Customer complex order on the COB. Similarly, the incoming orders described above would cause the opposite side SBBO to be at or better than the stop price. These events would create circumstances under which a C–SAM Auction would not have been initiated, and therefore, the Exchange believes it is appropriate to conclude a C–SAM Auction when they exist.

Additionally, the proposed rule change would conclude a C–SAM Auction in response to an incoming order that would cause the SBBO to be at a price not permissible under the Limit Up-Limit Down Plan or Regulation SHO,[38] and would conclude the C–SAM Auction without execution. This will ensure that the stock leg of a stock-option order submitted into a C–SAM Auction does not execute at a price not permissible under that plan or regulation. This is consistent with current C–SAM functionality to ensure that stock legs do not trade at prices not permissible under the Limit Up-Limit Down Plan or Regulation SHO, and the proposed rule change codifies this in the Rules.

If the System receives an unrelated market or marketable limit complex order (against the SBBO or the best price of a complex order resting in the COB), including a Post Only complex order, on the opposite side of the market during a C–SAM Auction, the C–SAM Auction does not end early, and the System executes the order against interest outside the C–SAM Auction or posts the complex order to the COB. If contracts remain from the unrelated complex order at the time the C–SAM Auction ends, they may be allocated for execution against the Agency Order

[31] *See* proposed Rule 21.23(c)(5)(B); *see also* Rule 21.22(c)(5)(B) and Cboe Options Rule 5.40(c)(5)(B). This proposed provision is similar to the corresponding provision for SAM responses, except it refers to the SBBO and prices of complex order rather than the NBBO. *See* Rule 21.21 (c)(5)(B).

[32] *See* proposed Rule 21.23(c)(5)(C); *see also* Rule 21.22(c)(5)(C) and Cboe Options Rule 5.40(c)(5)(C). This is the same as the corresponding provision for simple SAM, except it proposes to aggregate responses with complex order interest rather than simple order interest. *See* Rule 21.21(c)(5)(C).

[33] *See* proposed Rule 21.23(c)(5)(D); *see also* Rule 21.22(c)(5)(D) and Cboe Options Rule 5.40(c)(5)(D). This is the same as the corresponding provision for simple SAM, except it proposes to aggregate responses with complex order interest, and cap aggregate complex size, rather than simple order interest. *See* Rule 21.21(c)(5)(D).

[34] *See* proposed Rule 21.23(c)(5)(E); *see also* Rule 21.22(c)(5)(E) and Cboe Options Rule 5.40(c)(5)(E). This is the same as the corresponding provision for simple SAM. *See* Rule 21.21(c)(5)(E).

[35] *See* proposed Rule 21.23(c)(5)(F); *see also* Rule 21.22(c)(5)(H) and Cboe Options Rule 5.40(c)(5)(F). This is the same as the corresponding provision for simple SAM. *See* Rule 21.21(c)(5)(F).

[36] *See* proposed Rule 21.23(c)(5)(G); *see also* Rule 21.22(c)(5)(I) and Cboe Options Rule 5.40(c)(5)(G). This is the same as the corresponding provision for simple SAM. *See* Rule 21.21(c)(5)(G).

[37] *See* proposed Rule 21.23(d). The proposed events that cause a C–SAM Auction to conclude are the same as those that cause a C–AIM Auction to conclude (*see* Rule 21.22(d)) and the same as those that cause a C–SAM Auction to conclude on Cboe Options (*see* Cboe Options Rule 5.40(d)). Additionally, they are similar to those that cause a simple SAM Auction to conclude, except are based on the entry of simple or complex orders that impact the SBBO or the best available prices on the same side of the COB rather than the BBO. *See* Rule 21.21(d).

[38] *See* Rule 21.20(f)(2)(B).

pursuant to proposed paragraph (e).[39] Because these orders may have the opportunity to trade against the Agency Order following the conclusion of the C–SAM Auction, which execution must still be at or better than the SBBO and the best-priced complex orders on the COB, the Exchange does not believe it is necessary to cause a C–SAM Auction to conclude early in the event the Exchange receives such orders. This will provide more time for potential price improvement, and the unrelated complex order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side interest.[40]

At the conclusion of the C–SAM Auction, the System executes the Agency Order against the Solicited Order or contra-side complex interest (which includes complex orders on the COB and C–SAM responses) at the best price(s) as follows. Any execution price(s) must be at or between the SBBO and the best prices of any complex orders resting on the each side of the COB at the conclusion of the C–SAM Auction.[41] The Agency Order will execute against the Solicited Order if there are no Priority Customer complex orders resting on the COB on the opposite side of the Agency Order at or better than the stop price and the aggregate size of contra-side interest at an improved price(s) is insufficient to satisfy the Agency Order.[42] The System will execute the Agency Order against contra-side interest (and will cancel the Solicited Order) if (a) there is a Priority Customer complex order resting on the COB on the opposite side of the Agency Order at or better than the stop price and the aggregate size of that order and other contra-side interest is sufficient to satisfy the Agency Order or (b) the aggregate size of contra-side interest at an improve price(s) is sufficient to satisfy the Agency Order.[43]

The System will cancel an Agency Order and Solicited Order with no execution if:

- Execution of the Agency Order against the Solicited Order would not be (1) at or between the SBBO at the conclusion of the SAM Auction; (2) better than the SBBO if there is a Priority Customer order in any leg component in the Simple Book; (3) at or better than the best-priced complex resting on the COB; or (4) better than the best-priced complex order resting on the COB if it is a Priority Customer complex order;
- there is a Priority Customer complex order resting on the COB on the opposite side of the Agency Order at or better than the stop price, and the aggregate size of the Priority Customer complex order and any other contra-side interest is insufficient to satisfy the Agency Order; or
- there is a non-Priority Customer complex order resting on the COB on the opposite side of the Agency Order at a price better than the stop price, and the aggregate size of the resting complex order and any other contra-side interest is insufficient to satisfy the Agency Order.[44]

Executions following a C–SAM Auction for a complex Agency Order are subject to the complex order price restrictions and priority in Rule 21.20(f)(2).[45] The System cancels or rejects any unexecuted C–SAM responses (or unexecuted portions) at the conclusion of the C–SAM Auction.[46]

The Agency Order will only execute against the Solicited Order or C–SAM responses and complex orders resting in the COB, and will not leg into the Simple Book, at the conclusion of a C–SAM Auction. As proposed, the execution prices for an Agency Order will always be better than the SBBO existing at the conclusion of the C–SAM Auction if it includes a Priority Customer order on any leg, as well as better than the best-priced complex order resting on the COB if it is a Priority Customer complex order, and thus is consistent with general customer priority principles with respect to complex orders, pursuant to which complex orders may only trade against complex interest at prices that improve the BBO of any component that is represented by a Priority Customer order.[47]

The Simple Book and the COB are separate, and orders on each do not interact unless a complex order legs into the Simple Book. As a result, the System is not able to calculate the aggregate size of complex auction responses and complex orders on the COB and the size of simple orders in the legs that comprise the complex strategy at each potential execution price (as executions may occur at multiple prices) prior to execution of an order following an auction for complex orders. If the Exchange were to permit legging into the Simple Book following a C–SAM Auction in accordance with its current complex order allocation in Rule 21.20, the System would first look to determine whether there are Priority Customer orders resting in the Simple Book at the final auction price(s) (and in the applicable ratio), and whether there was sufficient interest at improved prices to satisfy the Agency Order. The System would then look back at C–SAM responses and complex orders resting in the COB to determine whether there is interest at that price level that could execute against the Agency Order. Finally, the System would then look back at the Simple Book to determine whether any non-Priority Customer orders in the legs are able to trade against the Agency Order. The System would need to do this at each price level, and then determine whether there were any Priority Customer orders resting on the Simple Book that are part of the SBBO or COB at the stop price, and determine whether there was sufficient size at improved prices, or sufficient size with any Priority Customer orders at the stop price, to satisfy the Agency Order.

The amount of aggregate interest available to execute against the Agency Order is relevant in a C–SAM Auction with respect to the allocation of contracts against the Agency Order and other interest because of the all-or-none nature of the Agency Order. Because the System will not be able to determine the aggregate size of contra-side interest (including simple and complex) at improved prices, it would not be able to determine whether the Agency Order would execute against the Solicited Order or other contra-side interest.

[39] *See* proposed Rule 21.23(d). Similarly, market or marketable limit simple orders on the opposite side of the Agency Order will not cause an AIM Auction, SAM Auction, or a C–AIM Auction to end. *See* Rules 21.19(d); 21.21(d); and 21.22(d) (respectively); *see also* Cboe Options Rule 5.40(d).

[40] This is the same as the corresponding provision for C–AIM Auctions (*see* Rule 21.22(d)(2)), and similar to the corresponding provision for simple SAM Auctions (*see* Rule 21.21(d)(2)).

[41] Additionally, if there is a Priority Customer order representing any leg of the SBBO in the Simple Book, the execution price must be better than the SBBO, in accordance with complex order priority. *See* Rule 21.20(f)(2) in the shell Rulebook. Additionally, any execution price must be better than the price of any resting Priority Order complex order on the COB. As further discussed below, as proposed, an execution may only occur at such a price.

[42] *See* proposed Rule 21.23(e)(1); *see also* Cboe Options Rule 5.40(e)(1).

[43] *See* proposed Rule 21.23(e)(2); *see also* Cboe Options Rule 5.40(e)(2). The Agency Order will execute against contra-side interest at each price level to the price at which the balance of the Agency Order can be fully executed first against Priority Customer complex orders on the COB (in time priority) and then against remaining contra-side interest (including non-Priority Customer orders in the COB and SAM responses) in a pro-rata manner.

[44] *See* proposed Rule 21.23(e)(3); *see also* Cboe Options Rule 5.40(e)(3).

[45] *See* proposed Rule 21.23(e)(4); *see also* Cboe Options Rule 5.40(e)(4).

[46] *See* proposed Rule 21.23(e)(5); *see also* Cboe Options Rule 5.40(e)(5).

[47] *See* proposed Rule 21.23(e)(5).

The Exchange notes there would be significant technical complexities associated with reprogramming priority within the System to permit Agency Orders to leg into the Simple Book following a C–SAM Auction and allocate the Agency Order in a manner consistent with standard priority principles and crossing auctions, while making the most crossing functionality available to Options Members. The proposed rule change will ensure the Agency Order executes in accordance with the C–SAM allocation principles, which provide Priority Customers with priority over the Solicited Order (and other contra-side interest) but also provide for the Solicited Order to execute against the Agency Order if there is no price improvement and no Priority Customer interest present. The Exchange believes providing this functionality will encourage Options Members to submit large complex orders into C–SAM Auctions and provide customer orders with opportunities for price improvement. It will also ensure orders (including Priority Customer orders) on the Simple Book are protected in accordance with standard complex order priority principles, as an Agency Order will only be permitted to execute at prices that do not trade at the SBBO existing at the conclusion of the C–SAM Auction if it includes a Priority Customer order on any leg, and that do not trade through the SBBO existing at the conclusion of the C–SAM Auction.

As noted above, the stop price of the Agency Order must be better than the same and opposite side of the SBBO if there is a Priority Customer order at the BBO in any component of the complex strategy. Additionally, the stop price must be better than the price of any Priority Customer order resting at the top of the COB on either side of the Agency Order. Further, a C–SAM Auction concludes upon receipt of an unrelated Priority Customer order in any component of the complex strategy that would post to the Simple Book and cause the SBBO on either side of the Agency Order to be equal to or better than the stop price, or upon the receipt of an unrelated Priority Customer complex order on either side of the Agency Order that post to the COB with a price equal to or better than the stop price. Additionally, any execution prices at the conclusion of the C–SAM Auction are subject to the standard complex order priority, which will ensure an Agency Order must execute at a price that improves the SBBO if there is a Priority Customer order at the BBO in any leg.[48] Therefore, the proposed rule change protects Priority Customer orders in the Simple Book even though Agency Orders may not leg into the Simple Book.

Proposed Rule 21.23, Interpretations and Policies .01 and .02 state:

- Prior to entering Agency Orders into a C–SAM Auction on behalf of customers, Initiating Members must deliver to the customer a written notification informing the customer that his order may be executed using the C–SAM Auction. The written notification must disclose the terms and conditions contained in proposed Rule 21.23 and be in a form approved by the Exchange.

Under Rule 21.23, Initiating Members may enter contra-side orders that are solicited. C–SAM provides a facility for Members that locate liquidity for their customer orders. Members may not use the C–SAM Auction to circumvent Rule 21.19 or 21.22 limiting principal transactions. This may include, but is not limited to, Members entering contra-side orders that are solicited from (a) affiliated broker-dealers or (b) broker-dealers with which the Member has an arrangement that allows the Members to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal.[49]

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.[50] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[51] 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)[52] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change will provide market participants with access to an auction mechanism for execution of complex orders, which will provide them with greater flexibility in pricing complex orders and may provide more opportunities for price improvement. C–SAM as proposed will function in a substantially similar manner as SAM for simple orders, the Exchange's current solicitation price improvement mechanism for larger orders—the proposed differences relate primarily to basing the price and execution of the Agency Order on the SBBO and the COB, rather than on the NBBO, and to ensure execution prices are consistent with complex order priority principles. Additionally, C–SAM as proposed will function in a substantially similar manner as C–AIM, the Exchange's current price improvement mechanism for all-sized complex orders. C–SAM provides equal access to the exposed Agency Orders for all market participants, as all Options Members that subscribe to the Exchange's data feeds will have the opportunity to interact with orders submitted into C–SAM Auctions.[53] C–SAM will benefit investors, because it is designed to provide investors seeking to execute larger-sized complex orders with opportunities to access additional liquidity and receive price improvement. It will provide Options Members with a facility in which to execute customers' complex orders, potentially at improved prices. The proposed rule change may result in increased liquidity available at improved prices for complex orders, with competitive final pricing out of the Initiating Member's control. The Exchange believes C–SAM will promote and foster competition and provide more options contracts with the opportunity for price improvement.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because other options exchanges similarly permit larger-sized

[48] If there was a Priority Customer order resting at the BBO in any leg of a complex strategy in the Simple Book, and a complex order was submitted to the Exchange (outside of a C–SAM Auction) with a price one minimum increment better than the SBBO, that complex order would not be able to execute against interest in the leg markets (including the Priority Customer order).

[49] These provisions are virtually identical to the ones applicable to simple SAM Auctions. *See* Rule 21.21, Interpretations and Policies .01 and .02; *see also* Cboe Options Rule 5.40, Interpretations and Policies .01 and .02.

[50] 15 U.S.C. 78f(b).

[51] 15 U.S.C. 78f(b)(5).

[52] *Id.*

[53] Any Options Member can subscribe to the options data disseminated through the Exchange's data feeds.

complex orders to be submitted into their solicitation mechanisms.[54] The general framework of the proposed C–SAM Auction process (such as the eligibility requirements, the auction response period, the same-side stop price requirements, response requirements, and auction notification process),[55] is substantively the same as the framework of the SAM Auction for simple orders, except to account for the differences between simple and complex orders, as described above. The Exchange believes using the same general framework for the simple and complex auctions will benefit investors, as it will minimize confusion regarding how the auction mechanisms work.

Further, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic price improvement solicitation mechanism for larger-sized complex orders, while providing an opportunity for price improvement for Agency Orders and ensuring that Priority Customers on the Simple Book and the COB are protected. C–SAM Auction functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

The Exchange believes the proposed rule change will result in efficient trading and reduce the risk for investors that seek access to additional liquidity and price improvement for complex orders by providing additional opportunities to do so. The proposed priority and allocation rules in the C–SAM Auction are consistent with the Exchange's current complex order priority principles, pursuant to which complex orders may only trade against complex interest at prices that improve the BBO of any component that is represented by a Priority Customer order.[56] This will ensure a fair and orderly market by protecting Priority Customer orders on the Simple Book while still affording the opportunity for price improvement for complex orders during each C–SAM Auction commenced on the Exchange. The proposed allocation is also consistent with the allocation principles for the simple SAM Auction, which ensures protection of Priority Customer orders resting on the Simple Book.[57] In a simple SAM Auction, the Solicited Order cannot execute if there is a Priority Customer order resting on the Book at a price at or better than the stop price. Similarly, in a C–SAM Auction, the Solicited Order will not execute if there is a Priority Customer complex order resting on the COB at a price at or better than the stop price.

The purpose of C–SAM is to provide a facility for Options Members that locate liquidity for their larger-sized customer orders to execute these orders (and potentially obtain better prices). An Initiating Member that provides or locates interest to execute against its customer orders at the best then-available price (or better) will receive in exchange for that effort execution priority over non-Priority Customers (who do not expend similar efforts to trade against the Agency Order and do not provide price improvement) to trade against a specified percentage of the Agency Order at the stop price. The Exchange believes the proposed rule change promotes just and equitable principles of trade, because it will protect Priority Customer complex orders resting on the COB while encouraging Options Members to continue to provide or locate liquidity against which their customers may execute their complex orders. The Exchange believes this may also encourage non-Priority Customers to submit interest at improved prices if they seek to execute against Agency Orders.

By keeping the priority and allocation rules for a C–SAM Auction similar to the allocation used for a simple SAM Auction on the Exchange and consistent with current complex order priority, the proposed rule change reduces the ability of market participants to misuse the C–SAM Auction to circumvent standard priority rules in a manner that is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade on the Exchange. The proposed execution and priority rules will allow orders to interact with interest in the COB, and will allow interest on the COB to interact with option orders in the price improvement mechanism in an efficient and orderly manner. The Exchange believes this interaction of orders will benefit investors by increasing the opportunity for complex orders to receive executions, while also enhancing the execution quality for orders resting on the COB.

The proposed C–SAM Auction eligibility requirements are reasonable and promote a fair and orderly market and national market system, because they are the same as the eligibility requirements for a simple SAM Auction, except the proposed rule change excludes the requirement related to the NBBO, because there is no NBBO for complex orders, and the legs of complex orders are not subject to the restriction on NBBO trade-throughs. Additionally, the proposed rule change references the opening of the COB rather than the market open, as the opening of the COB is when complex orders may begin trading. These are minor differences that relate solely to underlying differences between simple and complex orders.[58]

The proposed rule that an Initiating Member may not designate an Agency Order or Solicited Order as Post Only protects investors, because it provides transparency regarding functionality that will not be available for C–SAM. The Exchange believes this is appropriate, as the purpose of a Post Only complex order is to not execute upon entry and instead rest in the COB, while the purpose of submitting orders to a C–SAM Auction is to receive an execution following the auction and not enter the COB. Pursuant to proposed Rule 21.23, an Agency Order will fully execute against contra-side interest (the Solicited Order or other contra-side complex interest), and thus there cannot be remaining contracts in an Agency Order to enter the COB. Similarly, the Solicited Order may only execute against the Agency Order at the conclusion of a C–SAM Auction, and thus will not enter the COB.

The Exchange believes the proposed rule change to permit the Solicited Order to be comprised of multiple orders that total the size of the Agency Order may increase liquidity and opportunity for Agency Orders to participate in C–SAM Auctions, and therefore provide Agency Orders with additional opportunities for price improvement, which is consistent with the principles behind the C–SAM Auction. The Exchange believes this will be beneficial to participants because allowing multiple contra-parties should foster competition for filling the contra-side order and thereby result in potentially better prices, as opposed to only allowing one contra-party, which would require that contra-party to guarantee the entire Agency Order, which could result in a worse price for the trade. The Solicited Order for simple SAM Auctions may be comprised of multiple contra-parties.[59]

[54] *See, e.g.,* Cboe Options Rule 5.40; and Nasdaq ISE LLC (''ISE'') Options 3, Section 11(e).

[55] *See* Rule 21.19.

[56] *See* proposed Rule 21.23(e)(4) and current Rule 21.20(f)(2).

[57] *See* Rule 21.19(e).

[58] The eligibility requirements are also substantially the same as those for C–AIM, except for the minimum size requirement for C–SAM. *See* Rule 21.22(a); *see also* Cboe Options Rule 5.40(a).

[59] *See* Rule 21.19; *see also* Rule 21.22 (which permits the contra-side order in C–AIM Auctions to

Continued

The proposed C–SAM Auction requirements for the stop price are reasonable and promote a fair and orderly market and national market system, because they are consistent with the corresponding requirements for a simple SAM Auction, except the proposed requirements are based on the SBBO and complex order prices in the COB rather than the NBBO. As noted above, there is no NBBO for complex orders. The proposed stop price requirements promote just and equitable principles of trade, because they protect Priority Customer orders in the Simple Book and Priority Customer complex orders in the COB, and prevent trading through the SBBO and the best-priced orders on the COB.[60]

As discussed above, the Exchange has proposed to allow C–SAM Auctions to occur concurrently with other C–SAM Auctions for the same complex strategies. Although C–SAM Auctions for Agency Orders will be allowed to overlap, the Exchange does not believe this raises any issues that are not addressed through the proposed rule change described above. For example, although overlapping, each C–SAM Auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two C–SAM Auctions in the same complex strategy that commence and conclude, at nearly the same time, each C–SAM Auction will have a distinct conclusion at which time the C–SAM Auction will be allocated. In turn, when the first C–SAM Auction concludes, unrelated orders that then exist will be considered for participation in the C–SAM Auction. If unrelated orders are fully executed in such C–SAM Auction, then there will be no unrelated orders for consideration when the subsequent C–SAM Auction is processed (unless new unrelated order interest has arrived). If instead there is remaining unrelated order interest after the first C–SAM Auction has been allocated, then such unrelated order interest will be considered for allocation when the subsequent C–SAM Auction is processed. As another example, each C–SAM response is required to specifically identify the Auction for which it is targeted and if not fully executed will be cancelled back at the conclusion of the Auction. Thus, C–SAM responses will be specifically considered only in the specified C–SAM Auction.

The Exchange does not believe that allowing multiple auctions to overlap for Agency Orders presents any unique issues that differ from functionality already in place on the Exchange. Pursuant to Rules 21.19(c)(1), 21.21(c)(1), and 21.22(c)(1), multiple AIM (for Agency Orders for 50 or more contracts), SAM, and C–AIM (for Agency Orders with the smallest leg for 50 or more contracts) Auctions, respectively, may overlap.[61] Different complex strategies are essentially different products, as orders in those strategies cannot interact, just as orders in different series or classes cannot interact. Therefore, the Exchange believes concurrent C–SAM Auctions in different complex strategies is appropriate given that concurrent simple SAM Auctions in different series or different classes may occur. Similarly, while it is possible for a complex order to leg into the Simple Book, a complex order may only execute against simple orders if there is interest in each component in the ratio of the complex strategy. A simple order in one component of a complex strategy cannot on its own interact with a complex order in that complex strategy. Therefore, the Exchange believes it is appropriate to permit concurrent SAM and C–SAM Auctions in the same component. As proposed, C–SAM Auctions will ensure that Agency Orders execute at prices that protect Priority Customer orders in the Simple Book and that are not inferior to the SBBO, even when there are concurrent simple and complex auctions occurring. The proposed rule change sets forth how any auctions with overlapping components will conclude if terminated due to the same event. The Rules do not currently prevent a C–AIM in a complex strategy from occurring at the same time as an AIM in one of the components of the complex strategy. Therefore, the Exchange believes it is similarly reasonable to permit a C–SAM in a complex strategy to occur at the same time as a SAM in one of the components of the complex strategy.

The proposed auction process will promote a free and open market, because it ensures equal access to information regarding C–SAM Auctions and the exposed Agency Orders for all market participants, as all Options Members that subscribe to the Exchange's data feeds with the opportunity to interact with orders submitted into C–SAM Auctions.[62] The proposed auction notification message includes the same information as the auction notification message for simple SAM Auctions, and will be available in the same data feed. The Exchange has proposed a range between no less than 100 milliseconds and no more than one second for the duration of a C–SAM Auction, which is the same duration of a simple SAM Auction. This will provide investors with more timely execution of their complex orders, while ensuring there is an adequate exposure of complex orders. This proposed auction response time should provide investors with the opportunity to receive price improvement for complex orders through C–SAM while reducing market risk. The Exchange believes a briefer time period reduces the market risk for the Initiating Member, versus an auction with a longer period, as well as for any Options Member providing responses to a broadcast. As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors and the public interest. All Options Members will have an equal opportunity to respond with their best prices during the C–SAM Auction. Since the Exchange considers all complex interest present in the System, and not solely C–SAM responses, for execution against the Agency Order, those participants who are not explicit responders to a C–SAM Auction may receive executions via C–SAM as well.[63]

The proposed C–SAM Auction response requirements are reasonable and promote a fair and orderly market and national market system, because they are virtually identical to the corresponding requirements for a simple SAM Auction and benefit investors by providing clarity regarding how they may respond to a C–SAM Auction. The only differences are that C–SAM responses will be aggregated with other complex size rather than other simple interest, and C–SAM responses will be capped at the SBBO or prices of complex orders rather than the NBBO (because, as discussed above, there is no NBBO for complex orders and restricting prices based on the SBBO and complex orders will ensure protection of Priority Customer orders). This will further benefit investors by providing consistency across the

consist of multiple orders) and Cboe Options Rule 5.40 (which permits the Solicited Order in Cboe Options C–SAM Auctions to consist of multiple orders).

[60] *See also* Rule 21.22(b) (which applies similar stop price requirements in C–AIM Auctions) and Cboe Options Rule 5.40(b) (which applies the same stop price requirements in C–SAM Auctions.

[61] *See also* Cboe Options Rules 5.37(c)(1), 5.38(c)(1), 5.39(c)(1), and 5.40(c)(1) (which permit concurrent AIM (for larger-sized Agency Orders), C–AIM (for larger-sized Agency Orders), SAM, and C–SAM Auctions, respectively).

[62] Any Options Member can subscribe to the options data disseminated through the Exchange's data feeds.

[63] *See also* Rule 21.22(c) and Cboe Options Rule 5.40(c).

Exchange's price improvement mechanisms.[64]

The proposed rule change will also perfect the mechanism of a free and open market and a national market system, because it is consistent with linkage rules. Rule 27.2(b)(8) provides that a transaction that is effected as a portion of a complex trade is exception to the prohibition on effecting trade-throughs. As discussed above, any executions following a C–SAM Auction will not trade-through the SBBO or prices of complex orders resting on the COB (and will always improve the SBBO or COB prices if they consist of a Priority Customer order).

The proposed events that will conclude a C–SAM Auction are reasonable and promote a fair and orderly market and national market system, because they are consistent with the corresponding events that will conclude a simple SAM Auction, and benefit investors by providing clarity regarding what will cause a C–SAM Auction to conclude. These events would create circumstances under which a C–SAM would not have been permitted to start, and thus the Exchange believes it is appropriate to conclude a C–SAM Auction if those circumstances occur. As is the case with a simple SAM Auction (which will not conclude early due to the receipt of an opposite side simple order), the Exchange will not conclude a C–SAM Auction early due to the receipt of an opposite side complex order. The Exchange believes this promotes just and equitable principles of trade, because these orders may have the opportunity to trade against the Agency Order following the conclusion of the C–SAM Auction, which execution must still be at or better than the SBBO and prices of complex orders in the COB. The Exchange believes this will protect investors, because it will provide more time for price improvement, and the unrelated order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side complex interest.[65]

With respect to trading halts, as described above, in the case of a trading halt on the Exchange in the affected complex strategy or any component series, the C–SAM Auction will be cancelled without execution. This is consistent with simple SAM, which will be cancelled without execution if there is a trading halt on the Exchange in the affected series. Cancelling C–SAM Auctions without execution in this circumstance is consistent with Exchange handling of trading halts in the context of continuous trading on EDGX Options and promotes just and equitable principles of trade and, in general, protects investors and the public interest.[66]

Pursuant Rule 21.20, if an order is able to leg into the Simple Book, the System would first execute an order against Priority Customer orders in the Simple Book, then against any complex order interest in the COB (or auction responses), and last against any other simple interest in the Simple Book (with executions against the Simple Book occurring in the applicable ratio). This would occur at each price at which the complex order may execute. Requiring the System to make these determinations by going ''back and forth'' between the Simple Book and the COB at multiple price levels would be more complicated after a C–SAM Auction. The System must determine the aggregate amount of interest available at each execution price level before executing any portion of the Agency Order to determine the final auction price and how to allocate the Agency Order against contra-side interest at the conclusion of a C–SAM Auction. This is necessary because the System must determine at each price level the aggregate non-Priority Customer interest to determine whether there is sufficient size of contra-side interest at improved prices and thus whether the Agency Order will execute against the Solicited Order or contra-side interest.

As noted above, there would be significant technical complexities associated with reprogramming priority within the System to permit Agency Orders to leg into the Simple Book following a C–SAM Auction[67] and allocate the Agency Order in a manner consistent with standard priority principles and crossing auctions, while making the most crossing functionality available to Options Members. Pursuant to the complex order priority principles in Rule 21.20(f)(2), if an order is able to leg into the Simple Book, the System first executes an order against Priority Customer orders in the Simple Book, then against any complex order interest in the COB (or auction responses), and last against any other simple interest in the Simple Book (with executions against the Simple Book occurring in the applicable ratio). This occurs at each price at which the complex order may execute. Requiring the System to make these determinations by going ''back and forth'' between the Simple Book and the COB at multiple price levels is more complicated after a C–SAM Auction. The System must determine the aggregate amount of interest available at each execution price level before determining whether the Agency Order will execute against the Solicited Order or contra-side complex interest.

As discussed above, the Exchange believes the proposed rule change protects Priority Customer orders on the Simple Book, because executions following a C–SAM Auction will be subject to the general complex order priority[68] that will apply to all executions of all complex orders on the Exchange. It ensures an Agency Order will only execute at prices better than the SBBO existing at the conclusion of the C–SAM Auction if there is a Priority Customer order at the BBO on any leg, and at prices equal to or better than the SBBO existing at the conclusion of the C–SAM Auction if there is no Priority Customer order at the BBO on any leg. The proposed allocation will also ensure the Agency Order does not trade at the same price as a Priority Customer complex order resting on the COB or through the best-priced complex orders on the COB, and will protect investors by providing Priority Customer complex orders with priority at each price level.

Given the infrequency with which complex orders currently leg into the Simple Book, the Exchange believes it is in the best interest of investors to not implement additional technical complexities given the expected minimal impact, if any, that not permitting Agency Orders to leg into the Simple Book following a C–SAM Auction would have on execution opportunities for orders in the Simple Book.[69]

As is the case with SAM, an Options Member may not use C–SAM to circumvent the Exchange's rules limiting principal transactions. The proposed regulatory provisions are the same as those applicable to simple

[64] *See also* Rule 21.22(c)(5) and Cboe Options Rule 5.40(c)(5).

[65] *See also* Rule 21.22(d) (pursuant to which the same events will conclude a C–AIM Auction) and Cboe Options Rule 5.40(d) (pursuant to which the same events will conclude a C–SAM Auction on Cboe Options).

[66] The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market and other circumstances. *See* Rule 20.3.

[67] The Exchange notes AON complex orders will not be able to leg into the Simple Book due to the same technical complexities. *See* Rule 21.20(g).

[68] *See* proposed Rule 21.23(e)(4).

[69] *See also* Rule 21.22(e) (pursuant to which Agency Orders will not leg into the Simple Book following a C–AIM Auction) and Cboe Options Rule 5.40(e) (pursuant to which Agency Orders will execute in the same manner as the proposed rule change following a C–SAM Auction).

SAM,[70] and the Exchange believes they will protect customers and the public interest, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

The proposed rule change is also consistent with Section 11(a)(1) of the Act[71] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises investment discretion (collectively, referred to as ''covered accounts''), unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),[72] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[73] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[74]

The ''Effect vs. Execute'' exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [75] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Options Members entering orders into a C–SAM would satisfy the requirements of Rule 11a2–2(T).

The Exchange does not operate a physical trading floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[76] The Exchange represents that the System and the proposed C–SAM Auction will receive all orders electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that orders (as well as responses) for covered accounts from Options Members will be transmitted from a remote location directly to the proposed C–SAM mechanism by electronic means, and thus will satisfy the off-floor transmission requirement.

The second condition of Rule 11a2–2(T) requires that neither a member nor an associated person of such member participate in the execution of its order. The Exchange represents that, upon submission to the C–SAM Auction, an order or C–SAM response will be executed automatically pursuant to the rules set forth for C–SAM Auctions. In particular, execution of an order (including the Agency and Solicited Order) or a C–SAM response sent to the mechanism depends not on the Options Member entering the order or response, but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of an order or response is an Options Member or associated person of such Options Member able to acquire control or influence over the result or timing of order or response execution.[77] Once the Agency Order and Solicited Order, or the response, as applicable, have been transmitted, the Initiating Member that transmitted the orders, or the User that submitted the response, respectively, will not participate in the execution of the Agency Order or Solicited Order, or the response, respectively. No Options Member, including the Initiating Member, will see a C–SAM response submitted into C–SAM, and therefore and will not be able to influence or guide the execution of their Agency Orders, Solicited Orders, or C–SAM responses, as applicable.

Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the C–SAM Auction are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[78] The Exchange represents that the C–SAM Auction is designed so that no Options Member has any special or unique trading advantage in the handling of its orders or responses after transmitting its orders to the mechanism.

Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[79] The Exchange

[70] *See* Rule 21.21, Interpretations and Policies .01 and .02; *see also* Cboe Options Rule 5.40, Interpretations and Policies .01 and .02.

[71] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[72] 15 U.S.C. 78k(a)(1)(A).

[73] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[74] 17 CFR 240.11a2–2(T).

[75] The member may, however, participate in clearing and settling the transaction.

[76] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[77] An Initiating Member may not cancel or modify an Agency Order or Solicited Order after it has been submitted into C–SAM, but Users may modify or cancel their responses after being submitted into a C–SAM. *See* proposed Rule 5.40(c)(4) and (c)(5)(G). The Exchange notes that the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'').

[78] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[79] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such

recognizes that Options Members relying on Rule 11a2–2(T) for transactions effected through the C–SAM Auction must comply with this condition of the Rule and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

The Exchange believes that the instant proposal is consistent with Rule 11a2–2(T), and that therefore the exception should apply in this case. Therefore, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Act and the Rules thereunder.

The proposed rule change will also perfect the mechanism of a free and open market and a national market system, because it is consistent with linkage rules. Rule 27.2(b)(8) provides that a transaction that is effected as a portion of a complex trade is exception to the prohibition on effecting trade-throughs. As discussed above, any executions following a C–SAM Auction will not trade-through the SBBO or prices of complex orders resting on the COB (and will always improve the SBBO or COB prices if they consist of a Priority Customer order). The proposed rule change will also remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is substantially similar to solicitation auction mechanisms of other options exchanges.[80]

The proposed rule change enhances one of its price improvement auction mechanisms to apply to complex orders, which enhanced auction mechanism is substantially the same as one offered by Cboe Options and has a framework that is aligned with the other auction mechanisms offered by the Exchange and Cboe Options. Therefore, this proposed rule change will ultimately provide a consistent technology offering across the exchanges affiliated with the Exchange (the ''Cboe Affiliated Exchanges,'' which include Cboe Options, Cboe C2 Exchange, Inc., and Cboe BZX Exchange, Inc.), which, in turn, will simplify the technology implementation, changes, and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. This will provide Users with greater harmonization of price improvement auction mechanisms available among the Cboe Affiliated Exchanges, and therefore perfect the mechanism of a free and open market and a national market system and protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all orders submitted to a C–SAM Auction. The proposed C–SAM Auction is voluntary for Options Members to use and will be available to all Options Members. As discussed above, the Exchange believes the proposed rule change should encourage Options Members to compete amongst each other by responding with their best price and size for a particular auction. By offering all Options Members the ability to participate in the proposed allocation during the C–SAM Auction, an Options Member will be encouraged to submit complex orders outside of the C–SAM Auction at the best and most aggressive prices. Within the C–SAM Auction, the Exchange believes the proposed rule change will encourage Options Member to compete vigorously to provide the opportunity for price improvement in a competitive auction process. The proposed execution and allocation rules are consistent with those applicable to simple SAM, as well as complex order priority, and therefore will ensure protection of Priority Customer orders in both the Simple Book and the COB.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, because other options exchanges offer similar complex order price improvement auctions for larger-sized orders.[81] The general framework and primary features of the proposed C–SAM Auction process (such as the eligibility requirements, auction response period, response requirements, and auction notification process), are substantively the same as the framework for simple SAM.[82] The auction process is also similar, and is modified to address the underlying differences between simple and complex orders. For example, C–SAM will base pricing and execution requirements on the SBBO and complex orders in the COB, rather than the NBBO (which does not apply to complex orders), to ensure consistency with Priority Customer priority and complex order priority principles.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price improvement auction rules on the various options exchanges. The Exchange anticipates that this proposal will create new opportunities for the Exchange to attract new business and compete on equal footing with those options exchanges with complex order price improvement auctions and for this reason the proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release, at 11548 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[80] *See, e.g.,* Cboe Options Rule 5.40; and ISE Options 3, Section 11(e).

[81] *See, e.g.,* Cboe Options Rule 5.40; and ISE Rule Options 3, Section 11(e).

[82] *See* Rule 21.21. It is also substantially similar to the general framework of the Exchange's other price improvement auctions, AIM and C–AIM. *See* Rules 21.19 and 21.22 (respectively).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–064, and should be submitted on or before November 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[83]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24185 Filed 11–5–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87433; File No. SR–EMERALD–2019–35]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 31, 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 22, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt the Exchange's system connectivity fees.

The Exchange previously filed the proposal on August 23, 2019 (SR–EMERALD–2019–31). That filing has been withdrawn and replaced with the current filing (SR–EMERALD–2019–35).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule in order to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange is also refiling its proposal in order to address certain points raised in the only comment letter received by the Commission on the Exchange's prior proposal to increase connectivity fees.[3] In order to determine the Exchange's baseline costs associated with providing network connectivity services, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services. (For the avoidance of doubt, no expense amount was allocated twice.) The Exchange is presenting the results of its cost review in a way that corresponds directly with the Exchange's 2018 Audited Unconsolidated Financial Statement, the relevant section of which is attached [sic] hereto as Exhibit 3, which is publicly available as part of the Exchange's Form 1 Amendment.[4] The

[83] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Secretary, Commission, dated October 9, 2019 (''Third IEX Letter,'' as further described below).

[4] *See* the complete Audited Unconsolidated Financial Statement of MIAX Emerald, LLC, as of December 31, 2018, which is listed under Exhibit D of MIAX Form 1 Amendment 2019–7 Annual

purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fees are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the network connectivity services and will not result in excessive pricing or supra-competitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to adopt the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [5] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections (with the exception of the 10Gb ULL) are shared connections (collectively, the ''Shared Connections''), and thus can be utilized to access the Exchange and both of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''). The 10Gb ULL connection is a dedicated connection (''Dedicated Connection''), which provides network connectivity solely to the trading platforms, market data systems, and test system facilities of MIAX Emerald. These proposed fees are collectively referred to herein as the ''Proposed Fees.'' The amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL.[6] While the Exchange is new and only launched trading on March 1, 2019, since: (i) All of the Proposed Fees (except for the fee relating to the 10Gb ULL connection) relate to Shared Connections, and thus are the same amounts as are currently in place at MIAX and MIAX PEARL; (ii) all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections (without paying any new incremental connectivity fees), the Exchange is providing similar information to that which was provided in the MIAX and PEARL Fee Filings, including providing detail about the market participants impacted by the Proposed Fees, as well as the costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

The Exchange initially filed the Proposed Fees on March 1, 2019, designating the Proposed Fees immediately effective.[7] The First Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[8] The First Proposed Rule Change provided information about the market participants impacted by the Proposed Fees, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[9] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the First Proposed Rule Change.[10]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the Proposed Fees. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the First Proposed Rule Change. Despite the objection to the Proposed Fees, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [11] The IEX Letter specifically argued that the Proposed Fees were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX Emerald and its affiliates considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the First Proposed Rule

Filing at *https://www.sec.gov/Archives/edgar/vprr/1900/19003680.pdf.*

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* SR–MIAX–2019–46 and SR–PEARL–2019–33 (the ''MIAX and PEARL Fee Filings'').

[7] *See* Securities Exchange Act Release No. 85316 (March 14, 2019), 84 FR 10350 (March 20, 2019) (SR–EMERALD–2019–11) (the ''First Proposed Rule Change'').

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[10] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[11] *See* IEX Letter, pg. 1.

Change and the information provided by the Exchange in support of the Proposed Fees. Specifically, the Second Healthy Markets Letter stated that the First Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[12]

On April 29, 2019, the Exchange withdrew the First Proposed Rule Change.[13]

The Exchange refiled the Proposed Fees on April 30, 2019, designating the Proposed Fees immediately effective.[14] The Second Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[15] The Second Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fees are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fees are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[16]

The Commission received two comment letters on the Second Proposed Rule Change, after the Guidance was released.[17] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Second Proposed Rule Change to justify the Proposed Fees based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Second Proposed Rule Change. Also, Healthy Markets did not comment on the Second Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Second Proposed Rule Change.[18]

The Exchange refiled the Proposed Fees on June 26, 2019, designating the Proposed Fees immediately effective.[19] The Third Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[20] The Third Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fees are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit, in light of the Guidance issued by Commission staff subsequent to the Second Proposed Rule Change.

The Commission received three comment letters on the Third Proposed Rule Change.[21]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supra-competitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Third Proposed Rule Change.[22]

The Exchange refiled the Proposed Fee Increases on August 23, 2019, designating the Proposed Fee Increases immediately effective.[23] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[24] The Fourth Proposed Rule Change provided greater detail and clarity concerning the Exchange's cost methodology as it pertains to the Exchange's expenses for network connectivity services, using a line-by-line analysis of the Exchange's general expense ledger to determine what, if any, portion of those expenses supports the provision of network connectivity services.

The Commission received only one comment letter on the Fourth Proposed Rule Change, twelve days after the comment period deadline ended.[25] Of note, no member of the Exchange commented on the Fourth Proposed Rule Change. Also, no issuer or other person using the facilities of the Exchange commented on the Fourth Proposed Rule Change. Also, no industry group that represents members, issuers, or other persons using the facilities of the Exchange commented on the Fourth Proposed Rule Change. Also, no operator of an options market commented on the Fourth Proposed Rule Change. Also, no operator of a high performance, ultra-low latency network, which network can support access to three distinct exchanges and provides premium network monitoring and reporting services to customers, commented on the Fourth Proposed Rule Change. Rather, the only comment letter came from an operator of a single equities market (equities market structure and resulting network demands are fundamentally different from those in the options markets),[26] which operator also has a fundamentally different business model (and agenda) than does the Exchange. That letter—the Third IEX Letter—called for, among other things, the Exchange to explain its basis for concluding that it incurred substantially higher costs to provide lower-latency connections and further describe the nature and closeness of the relationship

[12] *See* Second Healthy Markets Letter, pg. 2.

[13] *See* SR–EMERALD–2019–11.

[14] *See* Securities Exchange Act Release No. 85839 (May 10, 2019), 84 FR 22192 (May 16, 2019) (SR–EMERALD–2019–20) (the ''Second Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees).

[15] *Id.*

[16] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[17] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the

[18] *See* SR–EMERALD–2019–20.

[19] *See* Securities Exchange Act Release No. 86344 (July 10, 2019), 84 FR 34030 (July 16, 2019) (SR–EMERALD–2019–24) (the ''Third Proposed Rule Change'').

[20] *Id.*

[21] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Fourth SIFMA Letter'').

[22] *See* SR–EMERALD–2019–24.

[23] *See* Securities Exchange Act Release No. 86839 (August 30, 2019), 84 FR 47009 (September 6, 2019) (SR–EMERALD–2019–31) (the ''Fourth Proposed Rule Change'').

[24] *Id.*

[25] *See supra* note 3.

[26] *See infra* pages 16 to 18 (describing the differences in equity market structure and options market structure).

between the identified costs and connectivity products and services as stated in the Exchange's cost allocation analysis.

On October 22, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[27]

The Exchange is now refiling the Proposed Fees to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange is also refiling its proposal in order to address certain points raised in the Third IEX Letter. The Exchange believes that the Proposed Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supra-competitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange also offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its disaster recovery facility, consisting of a 1Gb fiber connection and a 10Gb connection.

For the Shared Connections, the Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, via a single, shared connection. Any Member or non-Member can purchase a Shared Connection.

For the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. Accordingly, the Exchange is able to offer to its Members 10Gb ULL connectivity at a lower price point than is offered on MIAX and MIAX PEARL, the price difference being reflective of the lower cost to the Exchange.

For the Shared Connections, Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange, MIAX, and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. Thus, since all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections, most Members of MIAX Emerald have instant connectivity to the Exchange without paying any new incremental connectivity fees, as more fully-detailed below.

The Exchange proposes to establish the monthly network connectivity fees for such connections for both Members and non-Members. As discussed above, the amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL. The amount of the Proposed Fee for the Dedicated Connection is offered at a substantial discount to the amount currently in place at MIAX and MIAX PEARL. The reasons for the substantial discount are that the Dedicated Connection offers access to only a single market (the Exchange), whereas the 10Gb ULL connection offered by MIAX and MIAX PEARL offers access to two markets (MIAX and MIAX PEARL), as well as cost savings the Exchange was able to achieve (and thus pass through to its Members) as a result of a dedicated architecture. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be as follows: (a) 1,400 for the 1Gb connection; and (b) $6,000 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be as follows: (a) $550 for the 1Gb connection; and (b) $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(4) of the Act[29] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[30] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [31]

The Exchange believes that its proposal is consistent with Section

[27] *See* SR–EMERALD–2019–31.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

6(b)(4) of the Act, in that the Proposed Fees are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX Emerald as compared to the much greater number of members at other options exchanges (as further detailed below). MIAX Emerald is a brand new exchange, having only commenced operations in March 2019. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. Further, of the number of Members that connect directly to MIAX Emerald, many such Members do not purchase market data from MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchanges but not Members of MIAX Emerald. For example, the following are not Members of MIAX Emerald: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX Emerald, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

The argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX Emerald or its affiliates, MIAX and MIAX PEARL, they do not purchase connectivity to MIAX Emerald, and they do not purchase market data from MIAX Emerald. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX Emerald, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[32] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase a 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX Emerald notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

There is competition for connectivity to MIAX Emerald and its affiliates. MIAX Emerald competes with eight (8) non-Members, who resell MIAX Emerald connectivity. These are resellers of MIAX Emerald connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX Emerald (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX Emerald does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX Emerald to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. In fact, there are currently seven (7) non-Members that purchase 1Gb direct connectivity that are able to access MIAX Emerald, MIAX and MIAX PEARL. Those non-Members resell that connectivity to eight (8) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eight (8) customers also purchase connectivity directly from MIAX Emerald and/or its affiliates, MIAX and MIAX PEARL. Accordingly, indirect connectivity is a viable alternative used by non-Members of MIAX Emerald, constraining the price that MIAX Emerald is able to charge for connectivity to its Exchange.

[32] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

The Exchange,[33] MIAX,[34] and MIAX PEARL [35] are comprised of 41 distinct members amongst all three exchanges, excluding any additional affiliates of such members that are also members of the Exchange, MIAX, MIAX PEARL, or any combination thereof. Of those 41 distinct members, 28 of those distinct members are Members of MIAX Emerald. (Currently, there are no Members of MIAX Emerald that are not also members of MIAX or MIAX PEARL, or both.) Of those 28 distinct Members of MIAX Emerald, there are 6 Members that have no connectivity to the Exchange. Members are not forced to purchase connectivity to the Exchange, and these Members have elected not to purchase such connectivity. Of note, these same 6 Members also do not have connectivity to either MIAX or MIAX PEARL. These Members either trade indirectly through other Members or non-Members that have connectivity to the Exchange, or do not trade and conduct another type of business on the Exchange. Of the remaining 22 distinct Members of MIAX Emerald, *all 22* of those distinct Members already had connectivity to the Exchange via existing Shared Connections, thus providing all such 22 MIAX Emerald Members with instant connectivity to the Exchange without paying any new incremental connectivity fees.

Further, of those 22 Members, 14 of such Members elected to purchase additional connectivity to the Exchange, including additional Shared Connections and additional Dedicated Connections. The Exchange made available in advance to all of its prospective Members its proposed connectivity pricing (subject to regulatory clearance), in order for those prospective Members to make an informed decision about whether to become a Member of the Exchange and whether to purchase connectivity to the Exchange. Accordingly, each such Member made the decision to become a Member of the Exchange and to purchase connectivity to the Exchange, knowing in advance the connectivity pricing. And the vast majority of the additional connectivity purchased by those Members were for Dedicated Connections, the most expensive connectivity option.

As a result, of those 22 Members, through existing Shared Connections, newly purchased Shared Connections, and newly purchased Dedicated Connections: 14 Members have 1Gb (primary/secondary) connections; 13 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 10 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. All such Members with those Shared Connections and Dedicated Connections trade on MIAX Emerald.

The 6 Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 6 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

In addition, there are 5 non-Member service bureaus that already have connectivity to the Exchange via existing Shared Connections, thus providing all 5 of those non-Member service bureaus with instant connectivity to the Exchange without paying any new incremental connectivity fees. These non-Members freely purchased their connectivity from one of the Exchange's affiliates, either MIAX or MIAX PEARL, in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options.

The Exchange believes that the Proposed Fees are fair, equitable and not unreasonably discriminatory because the connectivity pricing is directly related to the relative costs to the Exchange to provide those respective services, and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers two direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX Emerald recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb ULL direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Approximately just less than half of MIAX Emerald, MIAX and MIAX PEARL Members that connect (15 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and also generally do not require the high touch network support services provided by the Exchange. Accordingly, these connections consume the least resources of the Exchange and are the least costly to the Exchange to provide. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth and also generally do require the high touch network support services provided by the Exchange. Accordingly, these connections consume the most resources of the Exchange and are the most costly to the Exchange to provide. Accordingly, the Exchange believes the allocation of the Proposed Fees ($6,000 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the resources consumed by the respective type of connection—lowest resource consuming members pay the least, and highest resource consuming members pay the most, particularly since higher resource consumption translates directly to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange.

The Exchange launched trading on March 1, 2019. Thus, at the time that the 14 Members who elected to purchase connectivity to the Exchange, the Exchange was untested and unproven, and had 0% market share of the U.S. options industry. For September of 2019, the Exchange had only a 0.81% market share of the U.S. options industry in Equity/Exchange Traded Fund (''ETF'') classes according to the OCC.[36] For September of 2019, the

[33] The Exchange has 28 distinct Members, excluding affiliated entities. *See* MIAX Emerald Exchange Member Directory, available at *https://www.miaxoptions.com*.

[34] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com*.

[35] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com*.

[36] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, Continued

Exchange's affiliate, MIAX, had only 3.87% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[37] For September of 2019, the Exchange's affiliate, MIAX PEARL, had only 5.30% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[38] The Exchange is not aware of any evidence that a combined market share less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition. Certainly, an untested and unproven exchange, with less than 1% market share in any month, and no rule or requirement that a market participant must join or connect to it, does not have anti-competitive pricing power, with respect to setting the pricing for the Dedicated Connections or the Shared Connections. If the Exchange were to attempt to establish unreasonable connectivity pricing, then no market participant would join or connect. Therefore, since 28 distinct Members joined MIAX Emerald and 14 of those distinct Members purchased additional connectivity to the Exchange, all knowing, in advance, the connectivity fees, the Exchange believes the Proposed Fees are reasonable, equitable, and not unfairly discriminatory.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX Emerald must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, see the R2G Services LLC (''R2G'') letter based on BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[39] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants are proposing to access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 34 total Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[40] Nasdaq ISE, LLC has approximately 100 members,[41] and NYSE American LLC has over 80 members.[42] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 34 Members.

Further, since there are 41 distinct members amongst all three exchanges, and only 28 of those distinct members decided to become Members of MIAX Emerald, there were 13 distinct members that decided *not* to become Members of MIAX Emerald. This further reinforces the fact that all market participants are not required to be Members of the Exchange and are not required to connect to the Exchange. It is a choice whether to join and it is a choice to connect. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

With respect to the now MIAX Emerald Members that had Shared Connections in place as of August 1, 2018 (via a previously purchased Shared Connection from MIAX or MIAX PEARL), the Exchange finds it compelling that all of those Members continued to purchase those Shared Connections after August 1, 2018, when MIAX and MIAX PEARL increased the connectivity fees for the Shared Connections to the current amounts proposed by the Exchange herein. In particular, the Exchange believes that the Proposed Fees for the Shared Connections are reasonable because MIAX and MIAX PEARL, which charge the same amount for the Shared Connections, did not lose any Members (or the number of Shared Connections each Member purchased) or non-Member Shared Connections when MIAX and MIAX PEARL proposed to increase the connectivity fees for the Shared Connections on August 1, 2018. For example, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, 12 Members purchased 1Gb connections. The vast majority of those Members purchased multiple such connections, the number of connections depending on their throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same 12 Members purchased 1Gb connections. Furthermore, the total number of connections did not decrease from July to August.

Further, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when MIAX and MIAX PEARL increased its fees. Furthermore, the Exchange understands that MIAX and MIAX PEARL did not receive any official comment letters or complaints from any now Members of MIAX Emerald who had Shared Connections in place as of July 2018 regarding the increased fees regarding how the change was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is

available at *https://www.theocc.com/webapps/exchange-volume.*

[37] *Id.*

[38] *Id.*

[39] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[40] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999997180078 32/9999999997-18-007832-index.htm*).

[41] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[42] *See https://www.nyse.com/markets/american-options/membership#directory.*

set too high (the R2G example),[43] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fees are equitably allocated among Members and non-Members, as evidenced by the fact that the fees are allocated across all connectivity alternatives according to the Exchange's costs to provide such alternatives, and there is not a disproportionate number of Members purchasing any alternative—14 Members have 1Gb (primary/secondary) connections; 14 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 11 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections.

Further, the Exchange believes that the fees are equitably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange. Also, these firms account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 76% of the volume on the Exchange. For example, for all of September 2019, 2.2 million contracts of the 2.9 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. The Exchange further believes that the fees are equitably allocated, as the amount of the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb ULL network connection. Pursuant to its extensive cost review described above, the Exchange believes that the average cost to provide a 10Gb ULL network connection is approximately 4 to 6 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb ULL connection are not 4 to 6 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb ULL connection which cause it to be 4 to 6 times more costly to provide than the 1Gb connection. As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of research and development (''R&D'') effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fees will permit recovery of the Exchange's costs and will not result in excessive or supra-competitive profit. The Proposed Fees will allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure as well as network monitoring and support services in order to provide the network connectivity services. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

The costs associated with making the network accessible to Exchange Members and non-Members, through the expansion associated with new Shared Connections and Dedicated Connections, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year in the past two years, and are projected to increase year-over-year in the future. This is due to several factors, including costs associated with maintaining and expanding a team of highly-skilled network engineers, fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts.

In order to provide more detail and to quantify the Exchange's costs, the Exchange notes that costs are associated with the infrastructure and headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. Additionally, the Exchange incurred costs in the expansion/buildout of the network leading up to the launch of operations, and the network maintenance costs continue to increase year-over-year. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX Emerald and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million.

A more detailed breakdown of the expense increases since the initial phases of the buildout of the Exchange over two years ago include the following: With respect to the network, there has been an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an

[43] *See supra* note 39.

approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee cost, this is the cost associated with MIAX Emerald consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX Emerald to effectively pay its competitors for this connectivity.

There was also significant capital expenditures over this same period to upgrade and enhance the underlying technology components. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with the buildout, maintenance, and enhancement of its network infrastructure.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset costs such costs.

Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. As an example, in the last year, R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset a portion of those costs through establishing network connectivity fees, which are designed to recover those costs, as proposed herein. Overall, the Proposed Fees are projected to offset only a portion of the Exchange's network connectivity costs. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. As detailed in the Exchange's 2018 Audited Unconsolidated Financial Statements, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX Emerald associated with providing network connectivity services versus the total projected annual revenue of the Exchange associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services for MIAX Emerald was approximately $4.7 million. The $4.7 million in total annual expense is comprised of the following, all of which are directly related to the provision of network connectivity services by MIAX Emerald to its respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to MIAX Emerald's 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements''). The $4.7 million in total annual expense is directly related to the provision of network connectivity services and not any other product or service offered by the Exchange. It does not, as the Third IEX Letter baselessly claims, include general costs of operating matching systems and other trading technology. (And as stated previously, no expense amount was allocated twice.) As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network

experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. Thus, the Exchange is acutely aware of and can isolate the actual costs associated with providing such a service to its customers, a significant portion of which relates to the premium, value-add customer network monitoring and support services that accompany the service, as fully-described above. IEX, on the other hand, does not offer such a network, and thus has no legal basis to offer a qualified opinion on the Exchange's costs associated with operating such a network. In fact, IEX differentiates itself as a provider of low cost connectivity solutions to an intentionally delayed trading platform—quite the opposite from the Exchange. Thus, there is no relevant comparison between IEX network connectivity costs and the Exchange's network connectivity costs, and IEX's attempt to do so in the Third IEX Letter is ill-informed and self-serving.[44]

For 2018, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $728,246. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[45] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion that actually supports the provision of network connectivity services), and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the provision of network connectivity services.

For 2018, total internal expense, relating to the internal costs of MIAX Emerald to provide the network connectivity services, was $4,031,491. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support connectivity for trading; and (3) occupancy costs for leased office space for staff that support network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion that supports the provision of network connectivity services), and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those line items to the provision of network connectivity services.

MIAX Emerald's employee compensation and benefits expense relating to providing network connectivity services was $3,262,226, which is only a portion of the $10,193,837 total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. MIAX Emerald's depreciation and amortization expense relating to providing network connectivity services was $416,807, which is only a portion of the $616,785 total expense for depreciation and amortization that is stated in the 2018 Financial Statements. MIAX Emerald's occupancy expense relating to providing network connectivity services was $352,458, which is only a portion of the $732,720 total expense for occupancy that is stated in the 2018 Financial Statements.

The total projected MIAX Emerald revenue for providing network connectivity services, on a full year run rate, is $3.0 million. However, since MIAX Emerald was launched on March 1, 2019, it did not start collecting revenue for network connectivity services until March 1, 2019. Thus, for 2018, MIAX Emerald's expense for providing network connectivity services was approximately $4.7 million, while its revenue for providing network connectivity services was $0. For 2019, MIAX Emerald projects 10 full months of revenue for network connectivity services (March 1–December 31), of $2.5 million, however it also projects increased expense for providing network connectivity services for 2019, as compared to 2018. Nevertheless, utilizing 2018 expense figures, for 2019, MIAX Emerald's expense for providing network connectivity services would be approximately $4.7 million, while its revenue for providing network connectivity services would be $2.5 million. On a fully annualized basis, utilizing 2018 expense figures and 2019 projected revenue extrapolated out to a full year run rate, MIAX Emerald's expense for providing network connectivity services would be approximately $4.7 million, while its revenue for providing network connectivity services would be $3

[44] *See* Third IEX Letter, pg. 5.

[45] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

million. Accordingly, for both 2018 and 2019, the total MIAX Emerald projected revenue for providing network connectivity services during 2018 ($0) and during 2019 ($2.5 million) is less than total actual and projected MIAX Emerald expense for providing network connectivity services for 2018 ($4.7 million) and 2019 (greater than $4.7 million).

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements.

The Exchange also believes its proposal to offer 10Gb ULL connections as dedicated connections furthers the objectives of Section 6(b)(5) of the Act [46] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. In particular, for the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. A dedicated 10Gb ULL connection does not offer any unfair advantage over a shared 10GB ULL connection, as is being offered solely as a cost-saving measure to the Exchange and its Members.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[47] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities,[48] however the Exchange also notes that the Exchange's 10Gb ULL connection is dedicated solely to one market (the Exchange) whereas the Exchange believes that other exchanges offer a shared 10Gb ULL connection to multiple markets. While MIAX Emerald's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX Emerald believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX Emerald believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[49]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fees are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fees do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of the Exchange as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar

[46] 15 U.S.C. 78f(b)(5).

[47] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[48] *Id.*

[49] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

low-latency connectivity, but with much higher rates to connect.[50] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[51] and Rule 19b–4(f)(2)[52] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2019–35. 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–EMERALD–2019–35 and should be submitted on or before November 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Jill M. Peterson,

Assistant Secretary.

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[50] *See supra* note 47.

[51] 15 U.S.C. 78s(b)(3)(A)(ii).

[52] 17 CFR 240.19b–4(f)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87432; File No. SR–PEARL–2019–33]

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 31, 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 22, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on August 23, 2019 (SR–PEARL–2019–25). That filing has been withdrawn and replaced with the current filing (SR–PEARL–2019–33).

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule in order to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange is also refiling its proposal in order to address certain points raised in the only comment letter received by the Commission on the Exchange's prior proposal to increase connectivity fees.[3]

In order to determine the Exchange's baseline costs associated with providing network connectivity services, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services. (For the avoidance of doubt, no expense amount was allocated twice.) The Exchange is presenting the results of its cost review in a way that corresponds directly with the Exchange's 2018 Audited Unconsolidated Financial Statements, the relevant sections of which are attached [sic] hereto as Exhibit 3, which are publicly available as part of the Exchange's Form 1 Amendment.[4] The purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fee increases are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the network connectivity services and will not result in excessive pricing or supra-competitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members[5] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[6] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[7] The Commission received one comment letter on the proposal.[8] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[9] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[10]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[11] The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[12] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[13] The Commission received one comment letter on the proposal.[14] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[15] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[16]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details

[3] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Secretary, Commission, dated October 9, 2019 (''Third IEX Letter,'' as further described below).

[4] *See* the complete Audited Unconsolidated Financial Statements of MIAX PEARL, LLC, LLC as of December 31, 2018, and the Audited Unconsolidated Financial Statements of Miami International Securities Exchange, LLC as of December 31, 2018, which are listed under Exhibit D of MIAX Form 1 Amendment 2019–7 Annual Filing at *https://www.sec.gov/Archives/edgar/vprr/1900/19003680.pdf.*

[5] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018) (SR–PEARL–2018–16) (the ''First Proposed Rule Change'').

[7] *Id.*

[8] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[9] *See* Securities Exchange Act Release No. 34–84177 (September 17, 2018).

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 84397 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR–PEARL–2018–16).

[12] *See* Securities Exchange Act Release No. 84358 (October 3, 2018), 83 FR 51022 (October 10, 2018) (SR–PEARL–2018–19) (the ''Second Proposed Rule Change'').

[13] *Id.*

[14] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter'').

[15] *See supra* note 12.

[16] *Id.*

to support its basis for asserting that the Proposed Fee Increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[17]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[18] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[19] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[20] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[21]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [22] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[23]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[24]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[25] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[26] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[27]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[28] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[29]

The Exchange refiled the Proposed Fee Increases on June 26, 2019, designating the Proposed Fee Increases

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[17] *See* Securities Exchange Act Release No. 84651 (November 26, 2018), 83 FR 61687 (November 30, 2018) (SR–PEARL–2018–19).

[18] *See* Securities Exchange Act Release No. 85317 (March 14, 2019), 84 FR 10380 (March 20, 2019) (SR–PEARL–2019–08) (the ''Third Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule).

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[21] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[22] *See* IEX Letter, pg. 1.

[23] *See* Second Healthy Markets Letter, pg. 2.

[24] *See* SR–PEARL–2019–08.

[25] *See* Securities Exchange Act Release No. 85837 (May 10, 2019), 84 FR 22214 (May 16, 2019) (SR–PEARL–2019–17) (the ''Fourth Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule).

[26] *Id.*

[27] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[28] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

[29] *See* SR–PEARL–2019–17.

immediately effective.[30] The Fifth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[31] The Fifth Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change, and primarily through the inclusion of anticipated revenue figures associated with the provision of network connectivity services.

The Commission received three comment letters on the Fifth Proposed Rule Change.[32]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX [PEARL] is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supra-competitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[33]

The Exchange refiled the Proposed Fee Increases on August 23, 2019, designating the Proposed Fee Increases immediately effective.[34] The Sixth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[35] The Sixth Proposed Rule Change provided greater detail and clarity concerning the Exchange's cost methodology as it pertains to the Exchange's expenses for network connectivity services, using a line-by-line analysis of the Exchange's general expense ledger to determine what, if any, portion of those expenses supports the provision of network connectivity services.

The Commission received only one comment letter on the Sixth Proposed Rule Change, twelve days after the comment period deadline ended.[36] Of note, no member of the Exchange commented on the Sixth Proposed Rule Change. Also, no issuer or other person using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no industry group that represents members, issuers, or other persons using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no operator of an options market commented on the Sixth Proposed Rule Change. Also, no operator of a high performance, ultra-low latency network, which network can support access to three distinct exchanges and provides premium network monitoring and reporting services to customers, commented on the Sixth Proposed Rule Change. Rather, the only comment letter came from an operator of a single equities market (equities market structure and resulting network demands are fundamentally different from those in the options markets),[37] which operator also has a fundamentally different business model (and agenda) than does the Exchange. That letter—the Third IEX Letter—called for, among other things, the Exchange to explain its basis for concluding that it incurred substantially higher costs to provide lower-latency connections and further describe the nature and closeness of the relationship between the identified costs and connectivity products and services as stated in the Exchange's cost allocation analysis.

On October 22, 2019, the Exchange withdrew the Sixth Proposed Rule Change.[38]

The Exchange is now refiling the Proposed Fee Increases to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange is also refiling its proposal in order to address certain points raised in the Third IEX Letter. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supra-competitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and

[30] *See* Securities Exchange Act Release No. 86343 (July 10, 2019), 84 FR 34003 (July 16, 2019) (SR–PEARL–2019–21) (the ''Fifth Proposed Rule Change'').

[31] *Id.*

[32] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Fourth SIFMA Letter'').

[33] *See* SR–PEARL–2019–21.

[34] *See* Securities Exchange Act Release No. 86837 (August 30, 2019), 84 FR 46988 (September 6, 2019) (SR–PEARL–2019–25) (the ''Sixth Proposed Rule Change'').

[35] *Id.*

[36] *See supra* note 3.

[37] *See infra* pages 17 to 19 (describing the differences in equity market structure and options market structure).

[38] *See* SR–PEARL–2019–25.

disaster recovery facilities of both the Exchange and its affiliate, MIAX, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) from $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [39] in general, and furthers the objectives of Section 6(b)(4) of the Act [40] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [41] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [42]

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. Further, of the number of Members that connect directly to MIAX PEARL, many such Members do not purchase market data from MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. For example, the following are not Members of MIAX PEARL: The D.E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX PEARL, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than Market Makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

The argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX PEARL or its affiliates, MIAX and MIAX Emerald, they do not purchase connectivity to MIAX PEARL, and they do not purchase market data from MIAX PEARL. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX PEARL, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(4).

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

each available connection.[43] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX PEARL notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

There is competition for connectivity to MIAX PEARL and its affiliates. MIAX PEARL competes with nine (9) non-Members who resell MIAX PEARL connectivity. These are resellers of MIAX PEARL connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX PEARL (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX PEARL does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX PEARL to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX PEARL and/or MIAX. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX PEARL and/or MIAX. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX PEARL, constraining the price that MIAX PEARL is able to charge for connectivity to its Exchange.

The Exchange[44] and MIAX[45] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX PEARL, MIAX, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX, or both. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory because the connectivity pricing is directly related to the relative costs to the Exchange to provide those respective services, and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX PEARL recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Approximately just less than half of MIAX PEARL and MIAX Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and also generally do not require the high touch network support services provided by the Exchange. Accordingly, these connections consume the least resources of the Exchange and are the least costly to the Exchange to provide. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth and also generally do require the high touch network support services provided by the Exchange. Accordingly, these connections consume the most resources of the Exchange and are the most costly to the Exchange to provide. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the resources consumed by the respective type of connection—lowest resource consuming members pay the least, and highest resource consuming members pays the most, particularly since higher resource consumption translates directly to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative. 10Gb connections are less costly to provide than 10Gb ULL connections, which require greater network support services.

With respect to options trading, the Exchange had only 5.30% market share of the U.S. options industry in Equity/Exchange Traded Fund (''ETF'') classes according to the OCC in September 2019.[46] For September 2019, the Exchange's affiliate, MIAX, had only 3.87% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[47] For September 2019, the Exchange's affiliate, MIAX

[43] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

[44] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[45] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

[46] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[47] *Id.*

Emerald, had only 0.81% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[48] The Exchange is not aware of any evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX PEARL must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, see the R2G Services LLC (''R2G'') letter based on BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[49] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 41 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[50] Nasdaq ISE, LLC has approximately 100 members,[51] and NYSE American LLC has over 80 members.[52] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 41 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018, particularly in light of the R2G disconnection example cited above.[53] In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX PEARL and MIAX; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[54] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX PEARL did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[55] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably

[48] *Id.*

[49] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[50] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[51] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[52] *See https://www.nyse.com/markets/american-options/membership#directory.*

[53] See *supra note* 49.

[54] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

[55] See *supra note* 49.

allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives according to the Exchange's costs to provide such alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the actual costs to the Exchange to provide network connectivity and the respective connection options, including the costs associated with providing the different levels of service associated with the respective connections.

Further, the Exchange believes that the fees are equitably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange. Also, these firms account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 81% of the volume on the Exchange. For example, for all of September 2019, approximately 15.5 million contracts of the approximately 19.1 million contracts executed were done by the top market making firms of the Exchange's total volume. The Exchange further believes that the fees are equitably allocated, as the amount of the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb or 10Gb ULL network connection. Pursuant to its extensive cost review described above, the Exchange believes that the average cost to provide a 10Gb/10Gb ULL network connection is approximately 4 to 6 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb/10Gb ULL connection are not 4 to 6 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb/10Gb ULL connection which cause it to be 4 to 6 times more costly to provide than the 1Gb connection. As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 10.7 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of research and development (''R&D'') effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb and 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure as well as network monitoring and support services in order to provide the network connectivity services, since Exchange launched operations in February 2017. Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to expanding its Information Security services, network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since became operational in February 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX PEARL and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX PEARL and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX PEARL and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX PEARL and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the Exchange became operational in February 2017. As these network connectivity-related expenses increase, MIAX PEARL and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since February 2017 include an approximate 70% increase in

technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with MIAX PEARL consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX PEARL to effectively pay its competitors for this connectivity. While the Exchange and MIAX have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX PEARL and MIAX. Accordingly, the total projected MIAX PEARL and MIAX connectivity revenue as a result of the proposed increase, on an annualized basis, is less than the total annual actual MIAX PEARL and MIAX connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the increase in actual costs to the Exchange (since February 2017) versus the projected increase in annual revenue. The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own and operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives calls from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including calls from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since February 2017 and are loss leaders for the Exchange to provide these added benefits for Members and non-Members.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, which are designed to recover those costs, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 Audited Unconsolidated Financial Statements, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitutes the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX PEARL and MIAX collected for providing network connectivity services versus the total projected annual revenue of both exchanges associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services (that is, the shared network connectivity of MIAX PEARL and MIAX, but excluding MIAX Emerald) was approximately $19.3 million. The $19.3 million in total annual expense is comprised of the following, all of which is directly related to the provision of network connectivity services by MIAX PEARL and MIAX to their respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX PEARL and MIAX to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX PEARL and MIAX to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to the MIAX PEARL and MIAX 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements''). The $19.3 million in total annual expense is directly related to the provision of network connectivity services and not any other product or service offered by the Exchange. It does not, as the Third IEX Letter baselessly

claims, include general costs of operating matching systems and other trading technology. (And as stated previously, no expense amount was allocated twice.) As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. Thus, the Exchange is acutely aware of and can isolate the actual costs associated with providing such a service to its customers, a significant portion of which relates to the premium, value-add customer network monitoring and support services that accompany the service, as fully-described above. IEX, on the other hand, does not offer such a network, and thus has no legal basis to offer a qualified opinion on the Exchange's costs associated with operating such a network. In fact, IEX differentiates itself as a provider of low cost connectivity solutions to an intentionally delayed trading platform—quite the opposite from the Exchange. Thus, there is no relevant comparison between IEX network connectivity costs and the Exchange's network connectivity costs, and IEX's attempt to do so in the Third IEX Letter is ill-informed and self-serving.[56]

For 2018, total third-party expense, relating to fees paid by MIAX PEARL and MIAX to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $5,052,346. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX PEARL and MIAX trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX PEARL and MIAX office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[57] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion that actually supports the provision of network connectivity services and no expense amount is allocated twice). Accordingly, MIAX PEARL and MIAX do not allocate their entire information technology and communication costs to the provision of network connectivity services.

For 2018, total internal expense, relating to the internal costs of MIAX PEARL and MIAX to provide the network connectivity services, was $14,271,870. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the provision of network connectivity for trading; and (3) occupancy costs for leased office space for staff that support the provision of network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion that supports the provision of network connectivity services), and no expense amount is allocated twice). Accordingly, MIAX PEARL and MIAX do not allocate their entire costs contained in those line items to the provision of network connectivity services.

MIAX's and MIAX PEARL's combined employee compensation and benefits expense relating to providing network connectivity services was $5,264,151, which is only a portion of the $11,997,098 (for MIAX) and $8,545,540 (for MIAX PEARL) total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's combined depreciation and amortization expense relating to providing network connectivity services was $8,269,048, which is only a portion of the $6,179,506 (for MIAX) and $4,783,245 (for MIAX PEARL) total expense for depreciation and amortization that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's combined occupancy expense relating to providing network connectivity services was $738,669, which is only a portion of the $945,431 (for MIAX) and $581,783 (for MIAX PEARL) total expense for occupancy

[56] *See* Third IEX Letter, pg. 5.

[57] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

that is stated in the 2018 Financial Statements.

Accordingly, the total projected MIAX and MIAX PEARL combined revenue for providing network connectivity services, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX PEARL and MIAX combined expense for providing network connectivity services during 2018 of approximately $19.3 million. MIAX PEARL and MIAX project comparable combined expenses for providing network connectivity services for 2019, as compared to 2018.

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX PEARL and MIAX. Stated differently, no expense amount of the Exchange is allocated twice.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[58] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[59] While MIAX PEARL's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX PEARL believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX PEARL believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[60]

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage. The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[61] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect. While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[58] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[59] *Id.*

[60] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[61] *See supra* note 58.

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,[62] and Rule 19b–4(f)(2)[63] 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–2019–33 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–2019–33. 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–2019–33 and should be submitted on or before November 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Jill M. Peterson,

Assistant Secretary.

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[62] 15 U.S.C. 78s(b)(3)(A)(ii).

[63] 17 CFR 240.19b–4(f)(2).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87437; File No. SR–NYSEArca–2019–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator MSCI EAFE Power Buffer ETFs and Innovator MSCI Emerging Markets Power Buffer ETFs, Series of the Innovator ETFs Trust, Under NYSE Arca Rule 8.600–E

October 31, 2019.

I. Introduction

On August 29, 2019, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the listing and trading of shares (''Shares'') of the Innovator MSCI EAFE Power Buffer ETFs and Innovator MSCI Emerging Markets Power Buffer ETFs (each a ''Fund'' and collectively the ''Funds''), series of the Innovator ETFs Trust (''Trust''), under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on September 18, 2019.[3] On October 16, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to: (1) Permit the continued listing and trading of Shares of the Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series); (2) list and trade Shares of up to an additional eleven Innovator MSCI EAFE Power Buffer ETF Series of the Trust (''EAFE Power Buffer Funds''); and (3) list and trade Shares of up to an additional eleven Innovator MSCI Emerging Markets Power Buffer ETF Series of the Trust (''Emerging Markets Power Buffer Funds'').[5] Innovator Capital Management, LLC (''Adviser'') is the investment adviser to the Funds and Milliman Financial Risk Management LLC (''Sub-Adviser'') is the sub-adviser.

The investment objective of the EAFE Power Buffer Funds is to provide investors with returns that match those of the MSCI EAFE Investable Market Index—Price Return (''MSCI EAFE Index'') over a period of approximately one year, while providing a level of protection from MSCI EAFE Index losses. The investment objective of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86948 (September 12, 2019), 84 FR 49131.

[4] In Amendment No. 1, the Exchange: (1) Clarified that it is submitting this proposal in order to allow each Fund to hold listed derivatives (*i.e.,* FLEX and standardized options on the Indexes and on ETFs that track the Indexes) in a manner that does not comply with Commentary .01(d)(2) to NYSE Arca Rule 8.600–E; (2) clarified the Funds' use of standardized options; (3) specified that while the Funds will invest primarily in FLEX and standardized options, they may also invest in cash and cash equivalents; and (4) made other technical, clarifying, and conforming changes. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-62/srnysearca201962-6310013-193523.pdf.*

[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 for each of the Innovator MSCI EAFE Power Buffer ETF (July Series and October Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series and October Series).

Emerging Markets Power Buffer Funds is to provide investors with returns that match those of the MSCI Emerging Markets Investable Market Index—Price Return (''MSCI Emerging Markets Index'' and, together with the MSCI EAFE Index, the ''Indexes'') over a period of approximately one year, while providing a level of protection from MSCI Emerging Markets Index losses.

In particular, the Funds are actively managed funds that employ a defined outcome strategy [6] that: (1) For the EAFE Power Buffer Funds, seeks to provide investment returns during the outcome period that match the gains of the MSCI EAFE Index, up to a maximized annual return (''EAFE Cap Level''),[7] while guarding against a decline in the MSCI EAFE Index of the first 15% (''EAFE Power Buffer Strategy''); and (2) for the Emerging Markets Power Buffer Funds, seeks to provide investment returns during the outcome period that match the gains of the MSCI Emerging Markets Index, up to a maximized annual return (''Emerging Markets Cap Level''),[8] while guarding against a decline in the MSCI Emerging Markets Index of the first 15% (''Emerging Markets Power Buffer Strategy'').

More specifically, pursuant to the EAFE Power Buffer Strategy, each EAFE Power Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- If the MSCI EAFE Index appreciates over the outcome period, the EAFE Power Buffer Fund will seek to provide shareholders with a total return that matches that of the MSCI EAFE Index, up to and including the EAFE Cap Level;
- If the MSCI EAFE Index depreciates over the outcome period by 15% or less, the EAFE Power Buffer Fund will seek to provide a total return of zero; and
- If the MSCI EAFE Index decreases over the outcome period by more than 15%, the EAFE Power Buffer Fund will seek to provide a total return loss that is 15% less than the percentage loss on the MSCI EAFE Index with a maximum loss of approximately 85%.

In addition, pursuant to the Emerging Markets Power Buffer Strategy, each Emerging Markets Power Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- If the MSCI Emerging Markets Index appreciates over the outcome period, the Emerging Markets Power Buffer Fund will seek to provide shareholders with a total return that matches that of the MSCI Emerging Markets Index, up to and including the Emerging Markets Cap Level;
- If the MSCI Emerging Markets Index depreciates over the outcome period by 15% or less, the Emerging Markets Power Buffer Fund will seek to provide a total return of zero;
- If the MSCI Emerging Markets Index decreases over the outcome period by more than 15%, the Emerging Markets Power Buffer Fund will seek to provide a total return loss that is 15% less than the percentage loss on the MSCI Emerging Markets Index with a maximum loss of approximately 85%.

Under normal market conditions: [9] (1) Each EAFE Power Buffer Fund will invest primarily in FLEX options or standardized options contracts listed on a U.S. exchange that reference either the MSCI EAFE Index or ETFs [10] that track the MSCI EAFE Index; and (2) each Emerging Markets Power Buffer Fund will invest primarily in FLEX options or standardized options contracts listed on a U.S. exchange that reference either the MSCI Emerging Markets Index or ETFs [11] that track the MSCI Emerging Markets Index.[12] Each of the Funds may invest its net assets (in the aggregate) in other investments (*i.e.,* cash or cash equivalents [13]) which the Adviser or Sub-Adviser believes will help each Fund to meet its investment objective and that will be disclosed at the end of each trading day.

According to the Exchange, it is submitting this proposal in order to allow each Fund to hold listed derivatives (*i.e.,* FLEX and standardized options on the Indexes and on ETFs that track the Indexes) in a manner that does not comply with Commentary .01(d)(2) to NYSE Arca Rule 8.600–E. Commentary .01(d)(2) to NYSE Arca Rule 8.600–E provides that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information

[6] Defined outcome strategies are designed to participate in market gains and losses within pre-determined ranges over a specified period (*i.e.,* point to point). These outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods.

[7] The EAFE Cap Level will be determined with respect to each EAFE Power Buffer Fund on the inception date of the EAFE Power Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX options acquired by the EAFE Power Buffer Fund at that time. The EAFE Cap Level will be determined only once at the beginning of each outcome period and not within an outcome period.

[8] The Emerging Markets Cap Level will be determined with respect to each Emerging Markets Power Buffer Fund on the inception date of the Emerging Markets Power Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX options acquired by the Emerging Markets Power Buffer Fund at that time. The Emerging Markets Cap Level will be determined only once at the beginning of each outcome period and not within an outcome period.

[9] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

[10] For purposes of this proposal, the term ''ETFs'' means Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E), and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange.

[11] *See supra* note 10.

[12] Options on the Indexes are traded on Cboe Exchange, Inc. (''Cboe Options''). Options on ETFs based on the Indexes are listed and traded in the U.S. on national securities exchanges. The Exchange, Cboe Options, and all other national securities exchanges are members of the Intermarket Surveillance Group (''ISG''). Moreover, Cboe Options and the Exchange are members of the Options Regulatory Surveillance Authority.

[13] Cash equivalents are the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[14] 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).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

with respect to quotations for and transactions in securities.

According to the Exchange, intra-day and closing price information regarding Index options and ETF options is available from the Options Price Reporting Authority, Cboe Options' website, and from major market data vendors. FINRA's Trade Reporting and Compliance Engine (''TRACE'') will be a source of price information for certain fixed income securities to the extent transactions in such securities are reported to TRACE. Price information regarding U.S. government securities and other cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under NYSE Arca Rule 8.600–E(d)(2)(D), if the Exchange becomes aware that the net asset value (''NAV'') or the Disclosed Portfolio (as defined in NYSE Arca Rule 8.600–E(c)(2)) is not disseminated to all market participants at the same time, the Exchange is required to halt trading in such series of Managed Fund Shares. In addition, the Exchange represents that if a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m). The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the issuer currently provides and maintains for the July Series, and will provide and maintain for any future series of a Fund, a publicly available web tool on its website that provides existing and prospective shareholders with certain information to help inform investment decisions. The information provided includes the start and end dates of the current outcome period, the time remaining in the outcome period, the Funds' current NAV, each Fund's cap for the outcome period and the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current NAV. The web tool also provides information regarding each Fund's buffer. This information includes the remaining buffer available for a shareholder purchasing Shares at the current NAV or the amount of losses that a shareholder purchasing Shares at the current NAV would incur before benefitting from the protection of the buffer.

The Shares do not qualify for generic listing because the Funds will not satisfy the requirements of Commentary .01(d)(2) to NYSE Arca Rule 8.600–E that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). As noted above, under normal market conditions: (1) Each EAFE Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the MSCI EAFE Index or ETFs that track the MSCI EAFE Index; and (2) each Emerging Markets Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the MSCI Emerging Markets Index or ETFs that track the MSCI Emerging Markets Index. The Commission notes that, although the Funds' holdings in these listed derivatives will not meet the requirements of Commentary .01(d)(2) to NYSE Arca Rule 8.600–E, the Indexes are broad-based; the ETFs will be listed and traded in the U.S. on national securities exchanges; and all Index and ETF options contacts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement, all of which help to mitigate concerns about the prices of the Shares being susceptible to manipulation.

Additionally, in support of this proposal, the Exchange represents that:

(1) With the exception of the requirements of Commentary .01(d)(2), each Fund will comply with the initial and continued listing standards under NYSE Arca Rule 8.600–E.

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

(3) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[17] as provided by NYSE Arca Rule 5.3–E.

(4) With respect to each of the proposed additional eleven series of each Fund, a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 1.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether 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–NYSEArca–2019–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[17] 17 CFR 240.10A–3.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–62, and should be submitted on or before November 27, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange: (1) Clarified that it is submitting this proposal in order to allow each Fund to hold listed derivatives (*i.e.,* FLEX and standardized options on the Indexes and on ETFs that track the Indexes) in a manner that does not comply with Commentary .01(d)(2) to NYSE Arca Rule 8.600–E; (2) clarified the Funds' use of standardized options; (3) specified that while the Funds will invest primarily in FLEX and standardized options, they may also invest in cash and cash equivalents; and (4) made other technical, clarifying, and conforming changes. The Commission believes that Amendment No. 1 does not raise any novel regulatory issues and provides additional clarity to the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[18] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2019–62), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24189 Filed 11–5–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(2).

[19] *Id.*

[20] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on December 5, 2019, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the **SUPPLEMENTARY INFORMATION** section of this notice. Also the Commission published a document in the **Federal Register** on October 2, 2019, concerning its public hearing on October 31, 2019, in Harrisburg, Pennsylvania.

DATES: The meeting will be held on Thursday, December 5, 2019, at 9 a.m.

ADDRESSES: The meeting will be held at the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the lower Susquehanna River region; (2) proposed FY2020 fee schedule changes; (3) ratification/approval of contracts/grants; (4) a report on delegated settlements; (5) Regulatory Program projects; and (6) waiver requests that have been submitted to the Commission.

This agenda is complete at the time of issuance, but other items may be added, and some stricken without further notice. The listing of an item on the agenda does not necessarily mean that the Commission will take final action on it at this meeting. When the Commission does take final action, notice of these actions will be published in the **Federal Register** after the meeting. Any actions specific to projects will also be provided in writing directly to project sponsors.

Regulatory Program projects listed for Commission action were those that were the subject of public hearings conducted by the Commission on October 31, 2019, and identified in the notices for such hearings, which was published in 84 FR 52552, October 2, 2019.

The public is invited to attend the Commission's business meeting. Comments on the Regulatory Program projects are subject to a deadline of November 12, 2019. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before November 26, 2019. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 31, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–24176 Filed 11–5–19; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0101]

Agency Information Collection Activities; Information Collection Renewal: 391.41 CMV Driver Medication Form, OMB Control Number: 2126–0064

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the renewal Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This Information Collection (IC) is voluntary and may be utilized by certified Medical Examiners (ME) responsible for issuing Medical Examiner's Certificates (MEC) to commercial motor vehicle (CMV) drivers. Certified MEs who choose to use this IC do so in an effort to communicate with treating healthcare professionals, who are responsible for

prescribing certain medications, so that the certified MEs fully understand the reasons the medications have been prescribed. The information obtained by this IC assists the certified MEs in determining if drivers are physically qualified and if there are medical conditions or being treated with certain prescribed medications that would adversely affect the drivers' ability to safely operate CMVs. FMCSA requests approval to renew an ICR titled, ''391.41 CMV Driver Medication Form.'' In response to the **Federal Register** notice published on July 3, 2019, requesting public comment, FMCSA received two comments.

DATES: Please send your comments to OMB by December 6, 2019. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0101. Interested persons are invited to submit written comments on the proposed IC to the Office of Information and Regulatory Affairs at OMB. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. An alternative, though slower, method is by U.S mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Horan III, Director, Office of Carrier, Driver, and Vehicle, Safety Standards, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–2362; email: *charles.horan@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: 391.41 CMV Driver Medication Form.

OMB Control Number: 2126–0064.

Type of Request: Renewal of a currently approved collection.

Respondents: Prescribing healthcare professionals.

Estimated Number of Respondents: Up to 1,223,470 (total number of prescribing healthcare professionals in the U.S.).

Estimated Number of Responses: Up to 1,967,006 (total number of CMV drivers who may be asked by a certified ME to have the 391.41 CMV Driver Medication Form, MCSA–5895, completed by a prescribing healthcare professional).

Estimated Time per Response: 8 minutes.

Expiration Date: January 31, 2020.

Frequency of Response: Voluntary.

Estimated Total Annual Burden: 262,267 hours.

Background: The primary mission of FMCSA is to reduce crashes, injuries, and fatalities involving large trucks and buses. The Secretary of Transportation has delegated to FMCSA responsibility under 49 U.S.C. 31136 and 31502 to prescribe regulations that ensure CMVs are operated safely. As part of this mission, the Agency's Medical Programs Division works to ensure that CMV drivers engaged in interstate commerce are physically qualified and able to perform their work safely.

Information used to determine and certify that a driver meets the physical qualification standards must be collected in order for our highways to be safe. FMCSA is the Federal government agency authorized to require the collection of this information. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). The regulations discussing this IC are outlined in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR parts 390–399. The FMCSRs at 49 CFR 391.41 set forth the physical qualification standards that interstate CMV drivers who are subject to part 391 must meet, with the exception of commercial driver's license/commercial learner's permit holders transporting migrant workers (who must meet the physical qualification standards set forth in 49 CFR 398.3). The FMCSRs covering driver physical qualification records are found at 49 CFR 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination must be recorded in accordance with the requirements set forth in that section.

The physical qualification standard regarding the use of drugs and substances in 49 CFR 391.41(b)(12) states that a person is physically qualified to drive a CMV if that person does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug; or does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in 49 CFR 382.107,[1] who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a CMV.

In 2006, FMCSA's Medical Review Board (MRB) deliberated on the topic of the use of Schedule II medications. The MRB considered information provided in a 2006 FMCSA-sponsored Evidence Report and by a subsequent Medical Expert Panel (MEP) to examine the relationship between the licit use of a Schedule II drug and the risk of a motor vehicle crash. In 2013, FMCSA tasked the MRB with updating the opinions and recommendations of the 2006 Evidence Report and MEP.

On September 10, 2013, the MRB and Motor Carrier Safety Advisory Committee (MCSAC) met jointly to hear presentations on the licit use of Schedule II medications and their regulation, and on U.S. Department of Transportation drug and alcohol testing protocols. Subsequently, the committees engaged in a discussion on the issue as it applies to CMV drivers. On September 11, 2013, the MRB discussed the issue in greater detail in light of its task to present a letter report to the Agency relating to CMV drivers and Schedule II medication use and to develop a form for certified MEs on the National Registry of Certified Medical Examiners (National Registry) to send to treating healthcare professionals of CMV drivers to expound on the use of these medications by driver applicants. On October 22, 2013, the MRB submitted its recommendations to FMCSA.

Thereafter, an MEP convened to provide an updated opinion on its prior report titled, ''Schedule II Opioids and Stimulants & CMV Crash Risk and Driver Performance.'' FMCSA revised the task of the MRB and instructed it to review the updated evidence report and MEP opinions in the report titled ''Schedule II Opioids and Stimulants & CMV Crash Risk and Driver Performance: Evidence Report and Systematic Review'' that was furnished subsequent to the MRB's deliberations. FMCSA directed the MRB to consider this report's findings and confer with the MCSAC on this topic during a joint meeting in October 2014. The MRB met in public meetings on July 29–30, 2014, and developed Schedule II medication recommendations. The MRB presented these recommendations to the MCSAC

[1] A licensed medical practitioner means a person who is licensed, certified, or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs (49 CFR 382.107).

in a joint public meeting on October 27, 2014, where they were deliberated by both committees. As a result, FMCSA's MRB and MCSAC provided joint recommendations related to the use of Schedule II medications by CMV drivers.

Because there is moderate evidence to support the contention that the licit use of opioids increases the risk of motor vehicle crashes and negatively impacts indirect measures of driver performance,[2] included was the recommendation that FMCSA develop a standardized medication questionnaire to assist the certified ME when reviewing prescription medications that have been disclosed during the history and physical examination for CMV driver certification. The two advisory committees recommended to FMCSA that the standardized CMV driver medication questionnaire be voluntary and include the following information and questions:

1. Questionnaire should be titled, ''391.41 CMV Driver Medication Questionnaire.''

2. Questionnaire should request the following information:

a. Identifying name and date of birth of the CMV driver.

b. Introductory paragraph stating purpose of the CMV Driver Medication Report.

c. Statements of 391.41(b)(12) (Physical Qualifications of Drivers relating to driver use of scheduled substances) and The Driver's Role, as found in the Medical Examination Report form at the end of 49 CFR 391.43 (Medical Examination; Certificate of Physical Examination).[3]

d. Name, state of licensure, signature, address, and contact information of the prescribing healthcare provider, as well as the date the form was completed.

e. Name, signature, date, address, and contact information of the certified ME.

3. Report should include the following questions:

a. Question 1—List all medications and dosages that you have prescribed to the above named individual.

b. Question 2—List any other medications and dosages that you are aware have been prescribed to the above named individual by another treating healthcare provider.

c. Question 3—What medical conditions are being treated with these medications?

d. Question 4—It is my medical opinion that, considering the mental and physical requirements of operating a CMV and with awareness of a CMV driver's role (consistent with The Driver's Role statement on page 2 of the form), I believe my patient: (a) Has no medication side effects from medication(s) that I prescribe that would adversely affect the ability to operate a CMV safely; and (2) has no medical condition(s) that I am treating with the above medication(s) that would adversely affect the ability to operate a CMV safely.

The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA's physical qualification standards provide this assurance by requiring drivers to be examined and medically certified as physically qualified to drive. Accordingly, FMCSA developed the 391.41 CMV Driver Medication Form, MCSA–5895.

The purpose of this voluntary collection of information is to assist the certified ME in determining if the driver is physically qualified under 49 CFR 391.41 and if there are disqualifying medical conditions or certain prescribed medications that would adversely affect the driver's ability to drive safely. Section 391.41(b)(12) states that a person is physically qualified to drive a CMV if that person does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug; or does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in 49 CFR 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a CMV.

The use of the 391.41 CMV Driver Medication Form, MCSA–5895, is at the discretion of the certified ME and facilitates communication with treating healthcare professionals, who are responsible for prescribing certain medications, so that the certified ME fully understands the reasons the medications have been prescribed. Because the use of the form is voluntary, there is no required collection frequency.

The 391.41 CMV Driver Medication Form, MCSA–5895, may be downloaded from the FMCSA website. Prescribing healthcare professionals can fax or scan and email the report to the certified ME. Consistent with OMB's commitment to minimizing respondents' recordkeeping and paperwork burdens and the increased use of secure electronic modes of communication, the Agency believes that approximately 50 percent of the 391.41 CMV Driver Medication Forms, MCSA–5895, are transmitted electronically.

The information collected from the 391.41 CMV Driver Medication Form, MCSA–5895, is used by the certified ME who requested the completion of the form and is attached to the Medical Examination Report Form, MCSA–5875, which becomes part of the CMV driver's record maintained by the certified ME. Therefore, the information is not available to the public. The FMCSRs covering driver physical qualification records are found at 49 CFR 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination must be recorded in accordance with the requirements set forth in that section. MEs are required to maintain records of the CMV driver medical examinations they conduct.

Discussion of Comments Received

In response to the **Federal Register** notice published on July 3, 2019 (84 FR 31980), requesting public comment concerning: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burden could be minimized without reducing the quality of the collection information, FMCSA received two comments. One was from the Owner-Operator Independent Drivers Association (OOIDA), and the other one was from an individual. These comments are outlined below, along with FMCSA's responses.

Is the collection necessary for the performance of FMCSA's functions?

OOIDA Comment

OOIDA stated that if this ICR is renewed the number of inconsistencies will continue to grow as certified MEs with no personal relationship with the driver attempt to evaluate years of long-term medication usage. It also stated that the ICR invites second guessing of a primary physician by certified MEs who are empowered by an unreliable medical form and that studies do not show a significant number of CMV

[2] Schedule II Opioids and Stimulants & CMV Crash Risk and Driver Performance: Evidence Report and Systematic Review, October 18, 2014, available at *https://rosap.ntl.bts.gov/view/dot/199.*

[3] After the recommendations, FMCSA began using a new version of the examination form titled Medical Examination Report Form, MCSA–5875. This version does not include The Driver's Role statement. Therefore, The Driver's Role statement no longer appears in 49 CFR 391.43, but still appears on the 391.41 CMV Driver Medication Form, MCSA–5895.

operators are crashing due to prescription medication use. OOIDA continued that this ICR will only increase problems its members have already experienced with certified MEs, which have resulted in higher costs and lengthy delays for drivers.

FMCSA Response

Section 391.41(b)(12)(ii) provides that a certified ME may only certify a driver who uses controlled drugs or substances listed on Schedules II through V in 21 CFR part 1308 if the prescribing healthcare professional provides certain information to the certified ME. Interstate CMV drivers are required to use a certified ME listed on the National Registry for their physical qualification examination and certification. Therefore, in many cases the driver is going to a certified ME from whom he or she does not routinely receive healthcare and who is not a healthcare professional prescribing medications for the driver. The 391.41 CMV Driver Medication Form, MCSA–5895, is an optional tool a certified ME can use to communicate with the prescribing healthcare professional who has a relationship with the driver and understands the driver's medical history. The form provides a standardized and efficient way for the certified ME to obtain the information needed to make a more informed medical certification determination. The decision to certify a driver is discretionary and continues to rest with the certifying ME.

FMCSA believes that use of the form should streamline the certification process and minimize the amount of time needed to obtain the necessary information from the prescribing healthcare professional. In addition, 49 CFR 391.43(g)(4) provides a ''determination pending category'' that allows up to 45 days to complete the certification examination if the certified ME determines additional information is needed. The driver may continue to operate a CMV during this period, as long as the driver has an unexpired MEC.

Individual Comment

This individual stated that the 391.41 CMV Driver Medication Form, MCSA–5895, would not be necessary for every examination because not every driver is taking a medication that would require the certified ME to collect this information. The individual noted that when a driver is using a Schedule II drug or any other drug that may have negative side effects, the information collected aids the certified ME in determining whether or not the driver's prescribing physician has taken the driver's role into consideration and standardizes the process.

FMCSA Response

The individual is correct that the form would not be necessary for every examination. The comment supports that the form is useful in the certification process.

Ways for FMCSA To Enhance the Quality, Usefulness, and Clarity of the Collected Information

Individual Comment

This individual provided the following suggestions for enhancing the quality, usefulness, and clarity of the collected information.

- Add the commercial driver's license number as an identifier near the driver's date of birth on the form since this is becoming the primary identifier for CMV drivers across Commercial Driver Medical Exams (CDMEs) and drug screening for FMCSA.
- Consider making this form mandatory during the CDME process for drivers currently taking a Schedule II drug.
- Facilitate use by the prescribing provider by putting the CDME information, date it was initiated, and contact information on page 1, just under the introduction (before the 49 CFR 391.41 excerpt).
- Change wording for precision in question 2 to ''. . . prescribed to the above named individual by any other treating health care provider.'', instead of ''. . . by another treating. . . .''
- Add a comments section for the prescribing provider to use if having difficulty answering ''yes'' or ''no'' to question 4, or if has qualification or clarification, etc.
- Consider adding wording to ''The Driver's Role'' that indicates:
  - Duties may also include overhead activity such as reaching, or forcefully pushing or pulling (adjusting rear-view mirror, tightening/loosening load straps), and squatting (inspection, on the road maintenance).
  - FMCSA does not allow drivers to be cleared medically for specific jobs or duties; a medically qualified driver must be able to do all aspects of ''The Driver's Role.''

FMCSA Response

Because there is moderate evidence to support the contention that the licit use of opioids increases the risk of motor vehicle crashes and negatively impacts indirect measures of driver performance, FMCSA's MRB and MCSAC recommended FMCSA develop a standardized medication questionnaire to assist the certified ME when reviewing prescription medications that have been disclosed during the history and physical examination for CMV driver certification. As part of their recommendations, they suggested what should be included on the form to assist the certified ME in making a physical qualification determination. FMCSA considered their recommendations and included the necessary information on the form.

FMCSA has considered the suggestions, but does not believe they would enhance the usefulness of the form or serve the purpose for which the form was intended to be used. Adding the driver's license number to the form would provide unnecessary personally identifiable information to the prescribing healthcare professional. The certified ME's contact information is already clearly set forth on page 2 of the form. The use of ''by any other,'' rather than ''another,'' is not likely to create confusion. FMCSA declines to add a comments section to question 4 because unqualified medical opinions are sought. The Driver's Role statement adequately covers the activities suggested. Question 4 states that the medical opinions are to be consistent with The Driver's Role statement, which is sufficient to indicate the entire statement is to be considered.

The Agency also declines to make the use of the form mandatory for Schedule II drugs, which would require a regulatory change to implement. The form was not intended to address only opioids. Moreover, 49 CFR 391.41(b)(12) provides that a certified ME may only certify a driver who uses controlled drugs or substances listed on Schedules II through V in 21 CFR part 1308 if the prescribing healthcare professional provides certain information to the certified ME. FMCSA has provided the 391.41 CMV Driver Medication Form, MCSA–5895, to be used by certified MEs at their discretion and as a resource in making medical certification determinations of interstate CMV drivers. The use of the form is voluntary. The form is just one way that certified MEs may communicate with prescribing healthcare professionals so that the certified MEs fully understand the reasons the medications have been prescribed. FMCSA encourages certified MEs to use the form as often as they find necessary.

Public Comments Invited: You are asked to comment on any aspect of this IC, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of

the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: October 31, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

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BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the Restoration and Enhancement Grants Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO or notice).

SUMMARY: This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Restoration and Enhancement (R&E) Grants Program. This notice makes available R&E Grants Program funding provided by the Consolidated Appropriations Act, 2018 (2018 Appropriation) and the Consolidated Appropriations Act, 2019 (2019 Appropriation), as well as available funding remaining from the Consolidated Appropriations Act, 2017 (2017 Appropriation). The opportunities described in this notice are made available under Catalog of Federal Domestic Assistance (CFDA) number 20.324, ''Restoration and Enhancement.''

DATES: Applications for funding under this solicitation are due no later than 5:00 p.m. EDT January 6, 2020. Applications for funding, or supplemental material in support of an application, received after 5:00 p.m. EDT on January 6, 2020 will not be considered for funding. Incomplete applications will not be considered for funding. See Section D of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov,* an applicant may submit an original and two (2) copies to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline.

FOR FURTHER INFORMATION CONTACT: For further information regarding the R&E Grant Program, please contact Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–403, Washington, DC 20590; email: *ruthie.americus@dot.gov;* phone: 202–493–0431. Grant application submission and processing questions should be addressed to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: 202–493–0303.

SUPPLEMENTARY INFORMATION: *Notice to applicants:* FRA recommends that applicants read this notice in its entirety prior to preparing application materials. The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded through a cooperative agreement. Definitions of key terms used throughout the NOFO are provided in Section A(2) below. These key terms are capitalized throughout the NOFO. There are several administrative prerequisites and eligibility requirements described herein with which applicants must comply. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

Table of Contents

A. Program Description

1. Overview

The purpose of this notice is to solicit applications for Operating Assistance grants for Initiating, Restoring, or Enhancing Intercity Rail Passenger Transportation authorized in Sections 11104 and 11303 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (2015); now codified at 49 U.S.C. 22908 [1] and funded in the 2018 and 2019 Appropriations Acts. FRA will consider applications consistent with the priorities in 49 U.S.C. 22908(d).

2. Definitions of Key Terms

a. ''Enhancing'' or ''Enhance'' means upgrading or modifying the service currently offered on a route or train. Examples may include Operating Costs associated with, but not limited to, adding a station stop, increasing frequency of a train (*e.g.,* tri-weekly to daily train service or increasing daily train service frequencies), or modifying on-board services offered on the train (*e.g.,* food or sleeping accommodations).

b. ''Initiating'' or ''Initiate'' means commencing service on a route that did not previously operate Intercity Rail Passenger Transportation.

c. ''Intercity Rail Passenger Transportation'' means rail passenger transportation, except commuter rail passenger transportation. See 49 U.S.C. 22901(3). In this notice, ''Intercity Passenger Rail Service'' and ''Intercity Passenger Rail Transportation'' are equivalent terms to ''Intercity Rail Passenger Transportation.''

d. ''Net Operating Costs'' are defined as operating expenses incurred minus operating revenue for an Intercity Rail Passenger Transportation route.

e. ''Operating Assistance'' refers to financial assistance covering allowable Operating Costs.

f. ''Operating Costs'' means expenses associated with the operation of Intercity Rail Passenger Transportation. Examples of such expenses may include: Staffing costs for train engineers, conductors, and on-board service crew; diesel fuel or electricity costs associated with train propulsion power; station costs such as ticket sales, customer information, and train dispatching services; station building utility and maintenance costs; lease payments on rolling stock; routine planned maintenance costs of equipment and train cleaning; host railroad access costs; train yard

[1] The Department of Transportation Reports Harmonization Act, Public Law 115–420, sec. 7 (2019) transferred this section from its location at 49 U.S.C. 24408 to 49 U.S.C. 22908.

operation costs; general and administrative costs; and management, marketing, sales and reservations costs.

g. ''Rail Carrier'' means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. See 49 U.S.C. 10102(5).

h. ''Restoring'' or ''Restore'' means reinstating service to a route that formerly operated Intercity Rail Passenger Transportation.

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is $24,419,000. Should additional R&E funds become available after the release of this NOFO, FRA may elect to award such funds to applications received under this NOFO.

Of the $25,000,000 made available for R&E in the 2018 and 2019 Appropriations, $23,982,500 is available for grants; $767,500 is set aside for Special Transportation Circumstances [2] as required under 49 U.S.C. 22907(l); and FRA will set aside $250,000 for award and program oversight. Of the $5,000,000 made available for R&E in the 2017 Appropriation, awards and set-asides were previously determined and $436,500 remains available under this NOFO.

2. Award Limits

The R&E grants may not provide funding for more than three years for any individual Intercity Rail Passenger Transportation route and may not be renewed. Applicants can apply to use R&E funding for: (a) Multiple (up to the first three) years of service or (b) only one year of service, provided the service has not already received three years of R&E funding. Grantees receiving less than three years of funding for any individual Intercity Rail Passenger Transportation route under this NOFO and/or previous R&E NOFOs may apply for R&E Operating Assistance under future NOFOs if available. In addition, no more than six R&E grants may be active simultaneously, but an applicant may be awarded more than one grant.

3. Award Size

There are no predetermined minimum or maximum dollar thresholds for awards. FRA will only make a maximum of six simultaneous awards with all available R&E program funding. Given the limited amount of funding currently available, applicants are encouraged to identify scalable project elements. FRA may select a project for funding that is less than the total amount requested in the application.

FRA strongly encourages applicants to identify and include other state, local, public, and private funding to support the proposed project in order to maximize competitiveness. A recipient of an R&E grant may use the grant funding in combination with other Federal grants that would benefit the applicable rail service.

4. Award Type

FRA will make awards for projects selected under this notice through grant agreements or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial involvement in carrying out the funded activity, including technical assistance, and increased program oversight under 2 CFR 200.24.

The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. FRA may award grants in installments, and may terminate any grant or cooperative agreement upon the cessation of service or the violation of any other term of the grant. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/Details/L19057.*

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, and project eligibility. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in Section D of this NOFO.

1. Eligible Applicants

The following entities are eligible applicants for all projects permitted under this notice:

(1) A State (including the District of Columbia);

(2) A group of States;

(3) An Interstate Compact;

(4) A public agency or publicly chartered authority established by one or more States; [3]

(5) A political subdivision of a State;

(6) Amtrak or another Rail Carrier that provides Intercity Rail Passenger Transportation;

(7) Any Rail Carrier in partnership with at least one of the entities described in paragraphs (1) through (5); [4] and

(8) Any combination of the entities described in paragraph (1) through (7).

Applications must identify an eligible applicant as the lead applicant. The lead applicant serves as the primary point of contact for the application, and if selected, as the recipient of the R&E Program grant award. Eligible applicants may reference entities that are not eligible applicants in an application as a project partner.

2. Cost Sharing or Matching

Grants for a project funded under the R&E program shall not exceed 80 percent of the projected Net Operating Costs for the first year of service; 60 percent of the Net Operating Costs for the second year of service; and 40 percent of the projected Net Operating Costs for the third year of service. The matching funds for the projected Net Operating Costs not covered by the R&E grant may be comprised of eligible public sector funding (*e.g.,* state, local, or other federal funding) or private sector funding. FRA encourages applicants to broaden their funding table in applications.

FRA will give preference to non-federal shares consisting of funding from multiple sources (*e.g.,* a state, county, railroad) that demonstrate broad participation and cost sharing from affected stakeholders. FRA will give priority to applications proposing a lower R&E grant share of projected Net Operating Costs than stated above, as further discussed in Section E(1). Applicants must identify the source(s) of their matching funds for the R&E grant associated with the service, and must clearly and distinctly reflect these funds in the application budget.

FRA will not consider funds already expended (or otherwise encumbered) that do not comply with 2 CFR 200.458 toward the matching funds requirement. Additionally, only cash contributions will be counted toward the matching funds requirements. Before submitting an application, applicants should

[2] The Special Transportation Circumstances funds will be announced under a separate NOFO(s).

[3] See Section D(2)(a)(iv) for supporting documentation required to demonstrate eligibility under this eligibility category.

[4] See Section D(2)(a)(iv) for supporting information required to demonstrate eligibility under this eligibility category.

carefully review the principles for cost sharing or matching in 2 CFR 200.306.

A recipient of an operating assistance grant under this NOFO may use that grant in combination with other Federal grants awarded that would benefit the applicable service.

3. Project Eligibility

Projects eligible for funding under this NOFO must be projects within the United States and be for Operating Assistance to Initiate, Restore, or Enhance Intercity Rail Passenger Transportation. FRA will give priority to proposed projects in applications that:

a. Show completed or nearly completed planning, design, environmental reviews, negotiation of agreements, acquisition of equipment, construction, and other actions necessary for Initiation, Restoration, or Enhancement of Intercity Rail Passenger Transportation;

b. Restore service over routes formerly operated by Amtrak, including routes in the Gulf Coast region between New Orleans, Louisiana, and Orlando, Florida as described in Section 11304 of the Passenger Rail Reform and Investment Act of 2015;

c. Provide daily or daytime service over routes where such service did not previously exist;

d. Include funding or other significant participation by State, local, and regional governmental and private entities;

e. Include a funding plan that demonstrates the Intercity Rail Passenger Service will be financially sustainable beyond the three-year grant period;

f. Provide service to regions and communities that are underserved or not served by other intercity public transportation;

g. Foster economic development, particularly in rural communities and for disadvantaged populations;

h. Provide other non-transportation benefits, such as livability benefits; and

i. Enhance connectivity and geographic coverage of the existing national network of Intercity Rail Passenger Service.

For a project that uses rights-of-way owned by a railroad, 49 U.S.C. 22905(c)(1) requires that a written agreement exist between the applicant and the owning railroad regarding use and ownership. This requirement is a condition to making a grant under the R&E Program.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See Section D(2) for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as host railroad agreements, Amtrak/operator agreements, and funding commitment documentation. The additional relevant supporting documentation will not count against the Project Narrative page limit.

1. Address To Request Application Package

Applicants must submit all application materials in their entirety through *http://www.Grants.gov* no later than 5:00 p.m. EDT, on January 6, 2020. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.*

For any supporting application materials that an applicant cannot submit via *Grants.gov,* an applicant may submit an original and two (2) copies to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, providing instructions to FRA on how to access files on a referenced website may also be sufficient.

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding.

Required documents for an application package are outlined in the checklist below.

- Project Narrative (see D.2.a)
- Statement of Work (see D.2.b.i)
- Capital and mobilization plan (see D.2.b.ii)
- Operating plan (see D.2.b.iii)
- Funding plan (see D.2.b.iv)
- Status of negotiations and agreements (see D.2.b.v)
- SF424—Application for Federal Assistance
- SF 424A—Budget Information for Non-Construction
- SF 424B—Assurances for Non-Construction
- FRA's Additional Assurances and Certifications
- SF LLL—Disclosure of Lobbying Activities

a. Project Narrative

This section describes the minimum content required in the Project Narrative of the grant application. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.i.
II. Project Summary	See D.2.a.ii.
III. Project Funding Summary	See D.2.a.iii.
IV. Applicant Eligibility Criteria	See D.2.a.iv.
V. Project Eligibility Criteria	See D.2.a.v.
VI. Detailed Project Description	See D.2.a.vi.
VII. Project Location	See D.2.a.vii.
VIII. Evaluation and Selection Criteria.	See D.2.a.viii.
IX. Project Implementation and Management.	See D.2.a.ix.
X. Project Readiness	See D.2.a.x.

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider Project Narratives beyond the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the page number of the relevant portion of the supporting documentation in the Project Narrative. The Project Narrative must adhere to the following outline.

i. *Cover Page:* Include a cover page that lists the following elements in a table:

Project title	
Lead Applicant.	
City(ies), State(s), Congressional District(s) where the project is located.	
Projected Total Operating Costs for the funded service (by year).	
Projected Operating Revenue for the funded service (by year).	
Projected Net Operating Costs for the funded service (by year).	
R&E Funding Requested (by year).	
Match for Remaining Net Operating Costs Not Provided by R&E Funding (by year).	

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project and what the project will entail. Include challenges the proposed project aims to address, and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Project Funding Summary:* Indicate the annual amount of R&E

funding requested, the year or years of service operations for which the funding is requested, the match for the remaining Net Operating Costs not provided by R&E funding, and the annual projected Net Operating Costs for each of the first three years of operation. Identify the source(s) of matching funds, and clearly and distinctly reflect these funds as part of the total projected Net Operating Cost in the application budget. Additionally, identify any other sources of Federal funds committed to the project and any pending Federal requests. Also, note if the requested Federal funding under R&E or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. Additionally, specify whether Federal funding for the project has previously been sought, and identify the Federal program and fiscal year of the funding request(s). Rail Carriers other than Amtrak should state whether they will require access to Amtrak's reservation system, stations, or facilities because they are directly related to the Rail Carrier's operations, and whether they expect the FRA to award a portion of the requested R&E grant to Amtrak for such access (and in what amount).[5] Provide information about any requests submitted to other programs for capital funding related to this project that supports the project's Initiation, Restoration, or Enhancement of the Intercity Rail Passenger Service.

iv. *Example Project Funding Table:*

Year of operations	Year 1	Year 2	Year 3
FY17 R&E Federal Funds Previously Secured.			
FY17 Non-Federal Funding/Match.			
FY18–FY19 R&E Federal Funding Request.			
FY18–FY19 Non-Federal Funding/Match.			

v. *Applicant Eligibility Criteria:* Explain how the applicant meets the applicant eligibility criteria outlined in Section C of this notice. For public agencies and publicly chartered authorities established by one or more states, the explanation must include citations to the applicable enabling legislation. If the applicant is eligible under 49 U.S.C. 22908(a)(7) as a Rail Carrier in partnership with at least one of the other eligible entities, the applicant should explain the partnership and each entity's contribution to the partnership.

vi. *Project Eligibility Criteria:* Explain how the project meets the project eligibility criteria in Section C(3) of this notice.

vii. *Detailed Project Description:* Include a detailed project description that expands upon the brief summary required above and cites with page number references to information included in documents responsive to Subsections D(2)(b)(ii–v). This detailed description should provide, at a minimum: The specific components and elements of the project, including service frequency; name and description of the planned routes and schedules; station facilities; equipment that will be used and how it will be acquired or refurbished (if necessary); where equipment will be maintained and by what entity; additional background on the challenges the project aims to address; the expected users and beneficiaries of the project; projected ridership, revenues and costs; all railroads owning tracks to be used; service providers or entities expected to provide services or facilities that will be used, including access to Amtrak systems, stations, and facilities; train operators and their qualifications; plan for ensuring safe operations; and any other information the applicant deems necessary to justify the proposed project. An applicant must specify whether it is seeking funding for a project that has already received Federal financial assistance, and if applicable, explain how the new scope proposed to be funded under this NOFO relates to the previous scope.

viii. *Project Location:* Include geospatial data for the project, as well as a map of the project's location. Include the Congressional districts in which the project will take place.

ix. *Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed project meets all of the evaluation and selection criteria, as outlined in Section E of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application. For the life-cycle cost selection criteria, applicants should demonstrate a credible plan to maintain related capital project assets without having to rely on Federal funding.

x. *Project Implementation and Management:* Describe proposed project implementation and project management arrangements. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting.

xi. *Project Readiness:* Provide a summary of the: Capital and mobilization plan including any capital investments; service planning actions; mobilization actions (such as qualification of train crews); and timeline for undertaking and completing each of the investments. Describe the appropriate planning, design, any environmental reviews, negotiation of agreements, acquisition of equipment, construction, and other actions necessary for Initiation, Restoration, and Enhancement of service that have been completed or remain necessary for completion. Provide the date when the first year of rail service will commence or when Enhancements to existing service will be placed into service.

b. Additional Application Elements

Applicants must submit:

i. A Statement of Work (SOW) addressing the scope, schedule, and budget for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must use FRA's standard SOW, schedule, and budget templates to be considered for award. The templates are located at *https://www.fra.dot.gov/Page/P0325.* When preparing the budget, the total Net Operating Cost of a project must be based on the best available information as indicated in cited references. The project schedule should be sufficiently detailed to include the date when the first year of service will commence (or when the proposed Enhancement will be placed into service), as well as reasonable due dates for expenses

[5] The Secretary, acting through the FRA, is permitted in 49 U.S.C. 22908(h) to award an appropriate portion of R&E grants under this NOFO to Amtrak as compensation for permitting certain access.

associated with the operation of the Intercity Rail Passenger Transportation.

ii. Capital and mobilization plan that includes:

(A) A description of any capital investments, service planning actions (such as environmental reviews), and mobilization actions (such as qualifications of train crews) required for Initiation of the Intercity Rail Passenger Transportation; and

(B) A timeline for undertaking and completing each of the investments and actions referred to in subparagraph (A).

iii. Operating plan describing:

(A) Planned service operation;

(B) Identity and qualifications of the train operator;

(C) Identity and qualifications of any other service providers (*e.g.,* on-board service, equipment maintenance, station staff);

(D) Service frequency;

(E) Planned routes and schedules;

(F) Station facilities that will be utilized;

(G) Projected ridership, revenues, and costs;

(H) Descriptions of how the projections under subparagraph (G) were developed;

(I) Equipment that will be utilized, how such equipment will be acquired or refurbished (if necessary), and where such equipment will be maintained; and

(J) A plan for ensuring safe operations and compliance with applicable safety regulations;

iv. Funding plan that:

(A) Describes the funding of initial capital costs and Operating Costs for the first three years of operation;

(B) Includes commitment by the applicant to provide the funds described in subparagraph (A) to the extent not covered by Federal grants and revenues; and

(C) Describes the funding of Operating Costs and capital costs, to the extent necessary, after the first three years of operation.

v. Status of negotiations and agreements with:

(A) Each of the railroads or regional transportation authorities whose tracks or facilities would be utilized by the service;

(B) The anticipated railroad carrier, if such entity is not part of the applicant group; and

(C) Any other service providers or entities expected to provide services or facilities that will be used by the service, including any required access to Amtrak systems, stations, and facilities if Amtrak is not part of the applicant group.

vi. SF424—Application for Federal Assistance

vii. SF 424A—Budget Information for Non-Construction

viii. SF 424B—Assurances for Non-Construction

ix. FRA's Additional Assurances and Certifications; and

x. SF LLL—Disclosure of Lobbying Activities.

Forms needed for the electronic application process are at *www.Grants.gov.*

c. Post-Selection Requirements

See Section F(2) for post-selection requirements.

1. Unique Entity Identifier, System for Award Management (SAM), and Submission Instructions

To apply for funding through *Grants.gov,* applicants must be properly registered in SAM before submitting its application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov.* Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable Data Universal Numbering System (DUNS) and SAM requirements, and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. (Please note that if a Dun & Bradstreet DUNS number must be obtained or renewed, this may take a significant amount of time to complete.) Late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov,* applicants must:

a. Obtain a DUNS Number

A DUNS number is required for *Grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for the government in identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

b. Register With the SAM at *www.SAM.gov*

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov.* The SAM database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award. Information about SAM registration procedures is available at *www.sam.gov.*

c. Create a *Grants.gov* Username and Password

Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The E-Biz POC at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp, in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

2. Submission Dates and Times

Applicants must submit complete applications to *www.Grants.gov* no later than 5:00 p.m. EDT, January 6, 2020. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on the dates/and times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. FRA strongly encourages applicants to apply early to ensure that all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

3. Intergovernmental Review

Executive Order 12372 requires applicants from state and local units of government or other organizations providing services within a state to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the state. Applicants must contact their State SPOC to determine if the program has been selected for state review.

4. Funding Restrictions

R&E grants awarded for any individual Intercity Rail Passenger Transportation route will not receive funding for more than three years and may not be renewed. No more than six Operating Assistance grant awards will be simultaneously active under the R&E Grants Program. FRA will approve pre-award costs consistent with 2 CFR 200.458, as applicable. Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement. Activities initiated prior to the execution of an agreement without FRA's written approval may not be eligible for reimbursement or included as a grantee's matching contribution. For Enhancement projects, FRA will only fund the portion of the Operating Costs associated with the Enhancement.

FRA is limited to funding a percentage of projected Net Operating Costs and may not fund any service producing net operating profits.

5. Other Submission Requirements

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.* See Section D.1 for submission of applications via postal mail, electronic mail or hand delivery.

E. Application Review Information

1. Criteria

a. Eligibility and Completeness Review

FRA will first screen each application for eligibility (eligibility requirements are outlined in Section C of this notice), completeness (application documentation and submission requirements are outlined in Section D of this notice) and the minimum match.

b. Evaluation Criteria

FRA subject-matter experts will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine technical merit and public benefits consistent with the priorities in 49 U.S.C. 22908(d).

i. Technical Merit: FRA will evaluate application information for the degree to which—

(A) The tasks and subtasks outlined in the SOW are appropriate to achieve the expected outcomes of the proposed project.

(B) The application is thorough and responsive to all the requirements outlined in this notice, including the strength and comprehensiveness of the capital and mobilization plan, operating plan, funding plan, and status of negotiations and agreements described in Section D(2)(b). In particular, the funding plan demonstrates the Intercity Rail Passenger Service will be financially sustainable beyond the 3-year grant period.

(C) The appropriate planning, design, any environmental reviews, negotiation of agreements, acquisition of equipment, construction, and other actions necessary for Initiation, Restoration, or Enhancement of service have been completed or nearly completed.

(D) Service is restored over routes formerly operated by Amtrak, including routes in the Gulf Coast region between New Orleans, Louisiana, and Orlando, Florida as described in Section 11304 of the Passenger Rail Reform and Investment Act of 2015.

(E) The appropriate funding or other significant participation by State, local, and regional governmental and private entities are in place.

ii. Benefits:

FRA will evaluate the proposed rail service on:

(A) Providing daily or daytime service over routes where such service did not previously exist;

(B) Providing service to regions and communities that are underserved or not served by other intercity public transportation;

(C) Fostering economic development, particularly in rural communities and for disadvantaged populations;

(D) Providing other non-transportation benefits; and

(E) Enhancing connectivity and geographic coverage of the existing national network of Intercity Rail Passenger Service.

c. Selection Criteria

In addition to the eligibility and completeness review and the evaluation

criteria outlined in this subsection, the FRA Administrator (or his designee) will select projects in consultation with a senior review team, which includes senior leadership from the Office of the Secretary and FRA, applying the following selection criteria:

i. The FRA will give preference to projects for which the:

(A) Proposed matching funds exceed the annual minimum required amounts specified in Section C(2); and

(B) Proposed matching funds are from more than one source, including private sources, demonstrating broad participation by affected stakeholders; and

ii. The FRA will also take into account the following key Departmental objectives:

(A) Supporting economic vitality at the national and regional level;

(B) Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment;

(C) Preparing for future operations and maintenance costs associated with their project's life-cycle, as demonstrated by a credible plan to maintain assets without having to rely on future Federal funding;

(D) Using innovative approaches to improve safety and expedite project delivery; and,

(E) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

iii. In determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, the applicant's receipt of other competitive awards, and projects located in or that support transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1.

2. Review and Selection Process

FRA will conduct a four-part application review process, as follows:

a. Screen applications for completeness and eligibility;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria);

c. Review and recommend initial selection of projects for the FRA Administrator's review by a non-career Senior Review Team, which includes senior leadership from the Office of the Secretary and FRA; and

d. Selection of awards by the FRA Administrator for the Secretary's review and approval.

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of $150,000 (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notice

FRA will announce applications selected for funding in a press release and on the FRA website after the application review period. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, before obligation.

2. Administrative and National Policy Requirements

For projects on a State-Supported route (as defined in 49 U.S.C. 24102(13)), grant recipients must be in compliance with the cost allocation methodology required under Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432) with respect to that route. Selected grantees must maintain compliance with the cost allocation methodology for the duration of the service.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards; compliance with Federal civil rights laws and regulations; requirements for disadvantaged business enterprises; debarment and suspension requirements; and drug-free workplace; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; environmental justice requirements; performance measures; grant conditions under 49 U.S.C. 22905, including the Buy America requirements, the provision deeming operators rail carriers for certain purposes and grantee agreements with railroad right-of-way owners for projects using railroad right-of-way.

See an example of standard terms and conditions for FRA grant awards at *https://www.fra.dot.gov/eLib/Details/L19057.*

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/Details/L19057.*

If the Federal share of any Federal award under this NOFO may include more than $500,000 over the period of performance, applicants are informed of the post award reporting requirements reflected in 2 CFR part 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

c. Performance Reporting

As a part of the grant agreement, the grant recipient must provide similar information regarding the route performance, financial, and ridership projections, and capital and business plans that Amtrak is required to provide to FRA, as well as other implementation information that includes the status of the investments and funded operations, the plans for continued operation and funding of routes, and any legislative recommendations.

Grant recipients must also collect information and report on the project's performance using measures established by the FRA to assess progress in achieving strategic goals and objectives. Examples of some rail measures are listed in the below table.

Rail measures	Unit measured	Temporal	Primary strategic goal	Secondary strategic goal	Description
Passenger Counts	Count	Annual	Economic Competitiveness.	State of Good Repair	Count of the annual passenger boardings and alightings at stations within the project area.
Travel Time	Time/Trip	Annual	Economic Competitiveness.	Quality of Life	Point-to-point travel times between pre-determined station stops within the project area. This measure demonstrates how track improvements and other upgrades improve operations on a rail line. It also helps make sure the railroad is maintaining the line after project completion.

G. Federal Awarding Agency Contacts

For further information regarding this notice, please contact Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov.* For information about the R&E Grants Program or project specific questions, please contact Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration,1200 New Jersey Avenue SE, Room W36–403, Washington, DC 20590; email: *ruthie.americus@dot.gov.*

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

FRA protects such information from disclosure consistent with applicable law. In the event FRA receives a Freedom of Information Act (FOIA) request for the information, FRA will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued in Washington, DC.

Quintin C. Kendall,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 2019–24225 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0088]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this provides the public notice that by a document dated October 10, 2019, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2019–0088.

Applicant: Amtrak, Mr. Nicholas J. Croce III, PE, Deputy Chief Engineer, C&S, 2995 Market Street, Philadelphia, PA 19104.

Specifically, Amtrak requests permission to retire signals 1267–4 and 1268–4, as well as associated track circuits and cab signals on Track 4 between Groton Interlocking, milepost (MP) 124.2, and Palmers Cove, MP 128.1, on the New England Division, Main Line New Haven to Boston, Northeast Corridor. The advanced civil speed enforcement system enforcing positive train stop at Groton signal 4W and Palmers Cove signal 4E will remain in place and in-service.

Amtrak is designating Track 4 as non-mainline track. Amtrak states the reason for the removal of signal equipment is to eliminate maintenance of equipment which provides no significant benefit to the safety of operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the

appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 23, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2019–24228 Filed 11–5–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning country-by-country reporting.

DATES: Written comments should be received on or before January 6, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Country-by-Country Reporting.

OMB Number: 1545–2072.

Form Number: 8975.

Abstract: Form 8975 is used to provide certain information required to report annual country-by-country reporting by certain United States persons that are the ultimate parent entity of a US MNE that has annual revenue for the preceding annual accounting period of $850 million or more.

Current Actions: There are no changes being made to the form or burden estimates at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profits.

Estimated Number of Respondents: 3,120.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 4,680 hours.

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 16, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–24211 Filed 11–5–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning U.S. estate tax return for qualified domestic trusts.

DATES: Written comments should be received on or before January 6, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate Tax Return for Qualified Domestic Trusts.

OMB Number: 1545–1212.

Form Numbers: 706 QDT.

Abstract: Form 706–QDT is used by the trustee or the designated filer to

compute and report the Federal estate tax imposed on qualified domestic trusts by Internal Revenue Code section 2056A. The IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Time per Respondent: 4 hours, 28 minutes.

Estimated Total Annual Burden Hours: 357 hours.

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: October 31, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–24212 Filed 11–5–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning changes in accounting periods.

DATES: Written comments should be received on or before January 6, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Accounting Periods.

OMB Number: 1545–1748.

Regulation Numbers: T.D. 8996.

Abstract: Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53-week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500 hours.

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: October 31, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–24213 Filed 11–5–19; 8:45 am]

BILLING CODE 4830–01–P

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