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

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## DEPARTMENT OF TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Parts 3, 6, 34, 46, 160, 161, 163, and 167

**[Docket ID OCC–2019–0004]**

**RIN 1557–AE50**

## Other Real Estate Owned and Technical Amendments; Amendment of Effective Date and Correction

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule; amendment of effective date and correction.

**SUMMARY:** On October 22, 2019, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** a final rule to revise provisions on other real estate owned and make related technical amendments. The final rule had an effective date of December 1, 2019. The OCC has determined that an amendment of the effective date to January 1, 2020, is appropriate.

**DATES:** The correction in this document is effective January 1, 2020. The effective date of the final rule published on October 22, 2019 (84 FR 56369), is changed from December 1, 2019 to January 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kevin Korzeniewski, Counsel, or J. William Binkley, Attorney, Chief Counsel's Office, (202) 649–5490; or for persons who are hearing impaired, TTY, (202) 649–5597.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Revised Effective Date

On October 22, 2019, the OCC published in the **Federal Register** a final rule to revise its rule on other real estate owned (OREO) at 12 CFR part 34, subpart E, and make related technical amendments (OREO final rule).[1]

The OREO final rule was published with an effective date of December 1, 2019. However, the OCC has determined that an amendment of the effective date of the OREO final rule to January 1, 2020, is necessary to satisfy the requirements of the Riegle Community Development and Regulatory Improvement Act (RCDRIA).[2] Under section 302(b) of RCDRIA, new regulations and amendments to regulations that impose new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter on or after the date the final regulations are published. Since the OREO final rule establishes new requirements for OREO held by Federal savings associations, RCDRIA requires that the OREO final rule be effective for these institutions no earlier than on January 1, 2020. In connection with this revision, the OCC is amending the RCDRIA statement in the final rule.

While the final rule primarily establishes new requirements for Federal savings associations, the OCC is delaying the effective date of the entire rule to avoid confusion about adopting different effective dates for national banks and Federal savings associations. Any national bank or Federal savings association subject to the final rule may choose to comply with it prior to January 1, 2020.

### II. Corrected RCDRIA Statement

In connection with the revised effective date, the OCC is amending the RCDRIA statement in the **SUPPLEMENTARY INFORMATION** section of the OREO final rule.

1. On page 56374, the second full paragraph in the first column, under the heading ''*D. Riegle Community Development and Regulatory Improvement Act of 1994*'' is revised to read as follows:

''The OCC received no comments addressing administrative burden of the regulation pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA). Under section 302(b) of RCDRIA, new regulations and amendments to regulations that impose new requirements on insured depository institutions generally shall take effect on the first day of a calendar quarter on or after the date the final regulations are published. Since the final rule establishes new requirements for OREO held by Federal savings associations, RCDRIA requires that the final rule be effective for these institutions no earlier than on January 1, 2020. While the revisions generally do not create new requirements for national banks, the OCC is delaying the effective date for the entire rule to avoid confusion between different types of OCC-regulated institutions.''

### III. Rule Text Revision

Through this final rule, the OCC is revising the effective date incorporated into the rule text at 12 CFR 34.82(b)(5) to January 1, 2020, to permit Federal savings associations to have a full 5-year initial holding period for OREO held prior to the revised effective date. As this revision is being made to implement the effective date required under RCDRIA, the OCC does not believe this change is subject to the notice and comment or delayed effective date requirements under the Administrative Procedure Act (5 U.S.C. 553).

In FR Doc. 2019–22823 appearing on page 56369 in the **Federal Register** of Tuesday, October 22, 2019, the following correction is made:

**§ 34.82 [Corrected]**

■ 2. On page 56375, in the first column, § 34.82 is corrected in paragraph (b)(5) by removing ''December 1, 2019'' and adding ''January 1, 2020'' in its place.

Dated: November 18, 2019.

**Morris R. Morgan,**

*First Deputy Comptroller, Comptroller of the Currency.*

[FR Doc. 2019–25279 Filed 11–20–19; 8:45 am]

BILLING CODE 4810–33–P

[1] 84 FR 56369 (Oct. 22, 2019).

[2] 12 U.S.C. 4802(b).

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 27**

**[Docket No. FAA–2019–0106; Notice No. 27–046–SC]**

# Special Conditions: Robinson Helicopter Company, Model Robinson R66, Visual Flight Rules Autopilot and Stability Augmentation System (AP/SAS System)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Robinson Helicopter Company (Robinson) Model R66 helicopter. This helicopter will have a novel or unusual design feature associated with installation of the autopilot and stability augmentation system (AP/SAS system). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** These special conditions are effective December 23, 2019.

**FOR FURTHER INFORMATION CONTACT:** Andy Shaw, Aerospace Engineer, FAA, Rotorcraft Standards Branch, Policy and Innovation Division, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5384; email *Andy.Shaw@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

On June 8, 2018, Robinson applied to amend type certificate (TC) Number R00015LA to install an AP/SAS system on the Robinson Model R66 helicopter. The Robinson Model R66 helicopter is a 14 CFR part 27 normal category, single turbine engine, conventional helicopter designed for civil operation. This helicopter model is capable of carrying up to four passengers with one pilot and has a maximum gross weight of up to 2,700 pounds, depending on the model configuration. The major design features include a 2-blade main rotor, an anti-torque tail rotor system, a skid landing gear, and a visual flight rule basic avionics configuration. Robinson proposes to modify this model helicopter by installing an AP/SAS system.

The AP/SAS system provides attitude stabilization in two or three axes (pitch and roll with optional yaw) as well as higher-level autopilot functions such as altitude hold, heading command and navigation tracking. However, the possible failure conditions for this system, and their effect on the continued safe flight and landing of the helicopter, are more severe than those envisioned by the present rules.

The effect on safety is not adequately covered under 14 CFR 27.1309 for the application of new technology and new application of standard technology. Specifically, the present provisions of § 27.1309(c) do not adequately address the safety requirements for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions, or for complex systems whose failures could result in major failure conditions. The current regulations are inadequate because when § 27.1309(c) was promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in ''catastrophic'' or ''hazardous/severe-major'' effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

## Type Certification Basis

Under 14 CFR 21.101, Robinson must show that the Model R66 helicopter, as modified by the installed AP/SAS, continues to meet the applicable regulations in effect on the date of application for the change to the type certificate. The baseline certification basis for the unmodified Robinson Model R66 helicopter is listed in TC Number R00015LA. Additionally, compliance must be shown to any applicable equivalent level of safety findings, exemptions, and special conditions prescribed by the Administrator as part of the certification basis.

The Administrator has determined the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this amended TC, do not contain adequate or appropriate safety standards for the Robinson Model R66 helicopter because of a novel or unusual design feature. Therefore, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Robinson must show compliance of the AP/SAS amended TC altered model R66 helicopter with the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38 and they become part of the type certification basis under § 21.101(d).

## Novel or Unusual Design Features

The Robinson Model R66 helicopter will incorporate the following novel or unusual design features: AP/SAS. An autopilot (AP) is a system used to control the trajectory of an aircraft without constant input from the pilot. This allows the pilot to focus on other aspects of operations such as weather and systems. A stability augmentation system (SAS) is another type of automatic flight control system; however, instead of maintaining the aircraft on a predetermined attitude or flight path, the SAS will reduce pilot workload by dampening aircraft buffeting regardless of the attitude or flight path.

## Discussion

To comply with the provisions of the special conditions, the FAA requires that Robinson provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by a functional hazard assessment (FHA). This process will ensure that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process is part of the overall safety assessment process discussed in FAA Advisory Circular 27–1B, *Certification of Normal Category Rotorcraft,* and Society of Automotive Engineers document Aerospace Recommended Practice 4761, *Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment.*

These special conditions require that the AP/SAS installed on a Robinson Model R66 helicopter meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Failure conditions are classified according to the severity of their effects on the rotorcraft.

Radio Technical Commission for Aeronautics, Inc. (RTCA) Document DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* provides software design assurance levels most commonly used for the major, hazardous/severe-major, and catastrophic failure condition categories. The AP/SAS system equipment must be qualified for the expected installation environment. The test procedures prescribed in RTCA Document DO–160G, *Environmental Conditions and Test Procedures for*

*Airborne Equipment,* are recognized by the FAA as acceptable methodologies for finding compliance with the environmental requirements. Equivalent environment test standards may also be acceptable. Environmental qualification provides data to show that the AP/SAS system can perform its intended function under the expected operating condition. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may also be affected environmentally by the AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

**Discussion of Comments**

Notice of proposed special conditions No. 27–046–SC for the Robinson Model R66 helicopter was published in the **Federal Register** on June 26, 2019 (84 FR 30050). Comments were received from two commenters. The commenters stated that special conditions previously issued for an AP/SAS system on a different model helicopter were more aligned with rulemaking whereas this special condition text seemed more appropriate for guidance material. The commenters requested the FAA change the proposed special conditions to be consistent with those previously issued for the same type of equipment. The FAA agrees that an effort should be made to maintain consistency and has revised the proposed special conditions to align with previously issued special conditions.

The commenters also noted the Discussion section of the proposed special conditions contains references to specific revisions of RTCA Document DO–178 and RTCA Document DO–160G and requested these references to specific revisions be removed. The FAA disagrees, however an applicant may request to use a later approved revision to these documents if the applicant shows the later revision meets the safety level intended by the special condition.

Except for the changes previously discussed, these special conditions are adopted as proposed.

**Applicability**

These special conditions are applicable to the AP/SAS installed as an amended TC approval in Robinson Model R66 helicopter, TC Number R00015LA.

**Conclusion**

This action affects only certain novel or unusual design features for an AP/SAS amended TC installed on one model helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features.

**List of Subjects in 14 CFR Part 27**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the amended type certification basis for installation of the autopilot and stability augmentation system (AP/SAS) on Robinson Model R66 helicopters.

Instead of the requirements of 14 CFR 27.1309(b) and (c), the following must be met for certification of the AP/SAS system installed on Robinson Model R66 helicopters:

a. The equipment and systems must be designed and installed so that any equipment and systems do not adversely affect the safety of the rotorcraft or its occupants.

b. The rotorcraft systems and associated components considered separately and in relation to others systems, must be designed and installed so that:

(1) The occurrence of any catastrophic failure condition is extremely improbable;

(2) The occurrence of any hazardous failure condition is extremely remote; and

(3) The occurrence of any major failure condition is remote.

c. Information concerning an unsafe system operating condition must be provided in a timely manner to the crew to enable them to take appropriate corrective action. An appropriate alert must be provided if immediate pilot awareness and immediate or subsequent corrective action is required. Systems and controls, including indications and annunciations, must be designed to minimize crew errors which could create additional hazards.

Issued in Fort Worth, Texas, on November 13, 2019.

**Jorge Castillo,**

*Manager, Rotorcraft Standards Branch, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2019–25292 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2019–0894; Product Identifier 2019–NE–32–AD; Amendment 39–19798; AD 2019–21–51]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GE90–115B model turbofan engines. Emergency AD 2019–21–51 was sent previously to all known operators of the GE GE90–115B model turbofan engines with certain engine serial numbers. This AD requires the removal from service of the Interstage Seal, part number 2505M72P01, from the affected engines. This AD was prompted by a recent event involving an uncontained high-pressure turbine (HPT) failure, resulting in an aborted takeoff and debris penetrating the airplane's fuselage and the other engine. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 6, 2019 to all persons except those persons to whom it was made immediately effective by Emergency AD 2019–21–51, issued on October 23, 2019, which contained the requirements of this amendment.

The FAA must receive comments on this AD by January 6, 2020.

**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 final rule, contact General Electric Company, GE Aviation, 1 Neumann Way, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329;

email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0894.

**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–2019–0894; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Herman Mak, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; Email: *herman.mak@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On October 23, 2019, the FAA issued Emergency AD 2019–21–51, which requires the removal from service of the GE GE90–115B model turbofan engine Interstage Seal, part number 2505M72P01, from the affected engines. That emergency AD was sent previously to all known operators of GE GE90–115B model turbofan engines with certain engine serial numbers. This action was prompted by a recent event involving an uncontained HPT failure, that resulted in an aborted takeoff, debris penetrating the airplane's fuselage and the other engine. This condition, if not addressed, could result in uncontained HPT failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

**Related Service Information**

The FAA reviewed GE Alert Service Bulletin GE90–100 S/B 72–A0826, dated October 23, 2019. The service information describes procedures for the removal of the Interstage Seal from affected GE GE90–115B model turbofan engines.

**FAA's Determination**

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

**AD Requirements**

This AD requires the removal from service of the Interstage Seal, part number 2505M72P01, from the affected engines.

**FAA's Justification and Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of Emergency AD 2019–21–51, issued on October 23, 2019, to all known U.S. owners and operators of certain GE GE90–115B model turbofan engines. The FAA found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the Interstage Seal must be removed within 25 flight cycles from the effective date of this AD. Additionally, no domestic operators use the affected engines. The AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable and unnecessary. In addition, for the reason 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 was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0894 and Product Identifier 2019–NE–32–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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 final rule.

**Regulatory Flexibility Act**

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

**Costs of Compliance**

The FAA estimates that this AD affects zero engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Remove the Interstage Seal | 100 work-hours × $85 per hour = $8,500 | $509,600 | $518,100 | $0 |

**Authority for This Rulemaking**

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service,

as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

### Regulatory Findings

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, the FAA certifies that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2019–21–51 General Electric Company:** Amendment 39–19798; Docket No. FAA–2019–0894; Product Identifier 2019–NE–32–AD.

**(a) Effective Date**

This AD is effective December 6, 2019 to all persons except those persons to whom it was made immediately effective by Emergency AD 2019–21–51, issued on October 23, 2019, which contained the requirements of this amendment.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all General Electric Company (GE) GE90–115B model turbofan engines with engine serial numbers 907451, 907464, 907504, 907564, 907574, 907599, 907601, and 907618.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by a recent event involving an uncontained high-pressure turbine (HPT) failure, resulting in an aborted takeoff, debris penetrating the aircraft's fuselage and the other engine. The FAA is issuing this AD to prevent failure of the HPT. The unsafe condition, if not addressed, could result in uncontained HPT failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

**(f) Compliance**

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

**(g) Required Action**

Within 25 flight cycles after the effective date of this AD, remove from service the Interstage Seal, part number 2505M72P01 with serial numbers GWN0TCL3, NCE062LD, NCE254LC, NCE314KU, NCE374LB, NCE527KT, NCE777LD, or NCE994KW.

**Note 1 to paragraph (g):** GE Alert Service Bulletin GE90–100 S/B 72–A0826, dated October 23, 2019, contains guidance for replacing the Interstage Seal.

**(h) Alternative Methods of Compliance (AMOCs)**

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

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

**(i) Related Information**

For more information about this AD, contact Herman Mak, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; Email: *herman.mak@faa.gov.*

**(j) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on November 14, 2019.

**Robert J. Ganley,**

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

[FR Doc. 2019–25129 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

## Office of Workers' Compensation Programs

## 20 CFR Part 725

**RIN 1240–AA11**

## Black Lung Benefits Act: Medical Benefit Payments

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Final rule; delay of applicability date.

**SUMMARY:** The Office of Workers' Compensation Programs (OWCP) has encountered unforeseen delays in implementing a new computer system to process payments for professional medical and hospital outpatient services made by the Black Lung Disability Trust Fund (Trust Fund) under the Black Lung Benefits Act (BLBA). This action delays the applicability date of two rules relevant to these payments, which were published in the **Federal Register** on June 14, 2018.

**DATES:**

*Effective date:* This rule is effective November 21, 2019.

*Applicability date:* The applicability date for 20 CFR 725.708(a) and (b) and 725.710 is delayed from November 30, 2019 to April 26, 2020.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Suite N–3520, Washington, DC 20210. Telephone: 1–800–347–2502. This is a toll-free number. TTY/TDD callers may dial toll-free 1–800–877–8339 for further information.

**SUPPLEMENTARY INFORMATION:** The Trust Fund pays for covered medical services and treatments provided to certain miners who are entitled to BLBA disability benefits. *See generally* 33 U.S.C. 907, as incorporated by 30 U.S.C. 932(a); 83 FR 27690 (June 14, 2018). On June 14, 2018, OWCP published a final rule revising its regulations governing the payment of medical benefits by the Trust Fund. 83 FR 27690–27699. The revised rules adopt payment formulas that accurately reflect prevailing community rates for authorized treatments and services.

While the revised regulations became effective on August 31, 2018, 83 FR 27690, the Department set a separate applicability date for the rules governing payments for professional medical and outpatient services. *Id.; see*

*also* 20 CFR 725.708(c) and 725.710(d). In adopting this approach, the Department explained that payment of these bills ''would require extensive modifications to the existing computer processes for full implementation. The Department is currently transitioning to a new computer system and will realize cost-savings by building the new payment methodologies into that system rather than modifying the existing one.'' 83 FR 27691.

The Department has been diligently working toward developing and deploying a new computer system to implement the new payment formulas but has encountered unforeseen delays. While many of the issues causing these delays have been resolved, OWCP cannot complete development of the new computer system without shifting significant resources from other critical workloads in time to process professional and outpatient bills by the current November 30, 2019 applicability date. As an alternative, OWCP considered, but rejected, manually processing these bills in the interim. Based on black lung program data from FY 2015 through FY 2017, OWCP estimates it receives an average of approximately 69,000 requests annually for payment of professional medical services alone. OWCP does not have the staff necessary to manually process this volume of bills. Thus, without an adequate computer system, it would be impractical for OWCP to timely process and pay professional and outpatient bills due to the volume. As a result, the Department is delaying the applicability date of the rules governing payment of these bills until April 26, 2020, the day before the new computer system is now scheduled to become operational.

The Department's implementation of this action without opportunity for public comment, effective immediately upon publication, is based on the good cause exceptions in the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d)(3). Section 553(b)(B) provides that an agency may issue a rule without notice and comment when the agency for ''good cause'' finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Section 553(d) provides that final rules may not become effective less than thirty days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause,'' among other exceptions.

Under these standards, the Department has determined that there is good cause for making this rule final without notice and comment procedures, and effective immediately upon **Federal Register** publication. As already noted, OWCP does not have the capacity to manually process the volume of bills it receives for professional and outpatient medical services. Thus, delaying the rule's application is a necessity: Without the delay, OWCP would no longer be able to promptly pay medical professionals and hospitals who provide treatment services to totally disabled coal miners. That result is contrary to the interests of miners and medical providers alike. Delaying the rules' application also does not impose any additional procedural burdens on the treatment providers. They will continue to seek payment in the same manner they do now no matter when the rules become applicable. *See generally* 20 CFR 725.714 and 725.715.

Finally, neither medical professionals nor outpatient services providers will be harmed economically by the delay in any significant way. The Department summarized its economic impact analysis of the new payment formulas in its notice of proposed rulemaking. 82 FR 739, 745–765 (Jan. 4, 2017). The Department compared payments it actually made from the Trust Fund in FY 2014 with payments it would have made if the new payment formulas in the proposed (and eventually final) rules applied. For both medical professionals and outpatient services, total annual Trust Fund payments decreased, in the aggregate, under the new payment formulas: $8,493 for professionals and $1,719,543 for outpatient services. 82 FR 746–748. Thus, delaying application of the new payment formulas will not, in the aggregate, harm the providers of either professional or outpatient services.

**List of Subjects in 20 CFR Part 725**

Administrative practice and procedure, Black lung benefits, Claims, Coal miners' entitlement to benefits, Health care, Reporting and recordkeeping requirements, Survivors' entitlement to benefits, Total disability due to pneumoconiosis, Vocational rehabilitation, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 725 as follows:

## PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for part 725 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

**§ 725.708 [Amended]**

■ 2. In § 725.708, amend paragraph (c) by removing the date ''November 30, 2019'' and adding in its place ''April 26, 2020''.

**§ 725.710 [Amended]**

■ 3. In § 725.710, amend paragraph (d) by removing the date ''November 30, 2019'' and adding in its place ''April 26, 2020''.

**Julia K. Hearthway,**

*Director, Office of Workers' Compensation Programs.*

[FR Doc. 2019–25282 Filed 11–18–19; 4:15 pm]

BILLING CODE 4510–CR–P

## DEPARTMENT OF JUSTICE

## 28 CFR Part 16

**[CPCLO Order No. 11–2019]**

## Privacy Act of 1974; Implementation

**AGENCY:** Executive Office for Immigration Review, United States Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Executive Office for Immigration Review (EOIR), a component within the United States Department of Justice (DOJ or Department), is finalizing without changes its Privacy Act exemption regulations for the system of records titled, Office of the Chief Administrative Hearing Officer (OCAHO) Case Management System (CMS), JUSTICE/EOIR–002, which were published as a Notice of Proposed Rulemaking (NPRM) on August 16, 2019. Specifically, the Department's regulations will exempt the records maintained in JUSTICE/EOIR–002 from one or more provisions of the Privacy Act. The exemptions are necessary to ensure the integrity of investigatory and adjudicatory records in cases before OCAHO. The Department received two comments and neither comments were substantive.

**DATES:** This final rule is effective December 23, 2019.

**FOR FURTHER INFORMATION CONTACT:** Michelle Curry, Associate General Counsel and Senior Component Official for Privacy, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, by email at *michelle.curry@usdoj.gov,* or by facsimile at 703–305–0443.

**SUPPLEMENTARY INFORMATION:**

## Background

EOIR created a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system of records will be used by OCAHO to facilitate adjudication of its cases and may include paper and electronic files maintained by OCAHO. The records to be maintained in this new system historically have been included as part of EOIR–001, Records and Management Information System. They are being transferred into this new system to improve efficiency, improve records management practices, and provide better access for parties to proceedings.

OCAHO Administrative Law Judges (ALJs) hear cases and adjudicate issues arising under the provisions of the Immigration and Nationality Act (INA) relating to: (1) Knowingly hiring, recruiting or referring for a fee, or continuing to employ unauthorized aliens, failure to comply with employment eligibility verification requirements, and requiring indemnity bonds from employees in violation of section 274A of the INA (8 U.S.C. 1324a), (2) immigration-related unfair employment practices in violation of section 274B of the INA (8 U.S.C. 1324b), and (3) immigration-related document fraud in violation of section 274C of the INA (8 U.S.C. 1324c).

Complaints under sections 274A and 274C of the INA are filed by the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE). Complaints under section 274B of the INA may be filed by private individuals or entities, or by the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (DOJ/CRT). The respondents in OCAHO cases are typically businesses or employers. The parties to 274A and 274C cases may seek administrative review of ALJ decisions and orders by the Chief Administrative Hearing Officer (CAHO). Parties in all case types may appeal final agency orders to the appropriate United States Circuit Court of Appeals.

In order to process and adjudicate cases and appeals, OCAHO must collect certain information and documents from and about complainants and respondents. The DOJ/CRT and DHS ICE can file complaints with OCAHO. Often, these agencies will submit investigatory records as exhibits or attachments to other filings. The investigatory records include, but are not limited to, notices of inspection, summaries of inspection results, affidavits or memoranda from investigators, results from searches of internal agency databases, and similar records. These exhibits or attachments then become part of OCAHO's official case record.

To improve tracking and storage of case-related information and documents, OCAHO is implementing a new electronic case management system (CMS). The OCAHO CMS will manage the entire life cycle of OCAHO's case processes, including tracking and managing case information and documents, facilitating case research, and reporting on key business functions and metrics. The OCAHO CMS will also include an electronic filing capability, which will enable parties to submit case information and documents electronically through a secure web-based portal. The portal will also provide notifications and updates on case status, and will allow authorized parties to access copies of all case-related documents electronically. The system is segregated by ''need to know'' user controls and allows authorized users to track various stages of the proceedings. The system also contains templates to generate letters, notices, and decisions used in the OCAHO process. The system can generate reports by case status and disposition.

## Response to Public Comments

In its OCAHO CMS NPRM and Notice of a New System of Records, published on August 16, 2019, the Department invited public comment (84 FR 41940 and 84 FR 42016). The comment periods for both notices closed on September 16, 2019. The Department received two comments from individuals. The Department has closely reviewed and considered these comments. Both comments received were concerned with the general appropriateness of exempting records from certain provisions of the Privacy Act, including the provision for individual access to records under the Act. Congress recognized the need for exemptions to these provisions of the Privacy Act to ensure the integrity of investigatory and adjudicatory records. As noted in the NPRM, the exemptions taken here apply in ''limited circumstances,'' only to the extent information in this system comes within the scope of 5 U.S.C. 552a(k)(1) and (2).

*Executive Orders 12866, 13563, 13771—Regulatory Review*

In accordance with 5 U.S.C. 552a(j) and 552a(k), this action is subject to rulemaking procedures, which give interested persons an opportunity to participate in the rulemaking process ''through submission of written data, views, or arguments,'' pursuant to 5 U.S.C. 553. The exemptions claimed by the system, as detailed below, do not raise novel legal or policy issues, nor do they adversely affect the economy, the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof in a material way. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

*Regulatory Flexibility Act*

This regulation will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual's entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

*Congressional Review Act*

This rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. The Paperwork Reduction Act applies to some of the records collected as part of this system of records. The following approved information collection is associated with this system of records: Form EOIR–58, Unfair Immigration-Related Employment Practices Complaint Form, and OMB #1125–0016. This system of records will also collect information via a web-based electronic filing portal. The Department is in the process of seeking approval of this information collection under the Paperwork Reduction Act.

*Unfunded Mandates Reform Act of 1995*

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, as adjusted for inflation, or more in any one year; and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the

Unfunded Mandates Reform Act of 1995.

**List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of information, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, the Department of Justice amends 28 CFR part 16 as follows:

## PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

■ 2. Amend § 16.83 by adding paragraphs (e) and (f) to read as follows:

**§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.**

* * * * *

(e) The following system of records is exempt from 5 U.S.C. 552a(d): Office of the Chief Administrative Hearing Officer (OCAHO) Case Management System (CMS) (JUSTICE/EOIR–002). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (2).

(f) Exemption from 5 U.S.C. 552a(d) is justified for the system of records in paragraph (e) of this section for the following reasons:

(1) In limited circumstances, from subsection (d) when access to the records contained in the system of records in paragraph (e) of this section could inform the subject of an ongoing investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature and scope of the information and evidence obtained as to the subject's activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties.

(2) From subsections (d)(2), (3), and (4) because the administrative case files constitute an official record which includes transcripts of administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related papers. Administrative due process could not be achieved by the ex parte ''correction'' of such materials by the individual who is the subject thereof.

Dated: November 14, 2019.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

[FR Doc. 2019–25080 Filed 11–20–19; 8:45 am]

**BILLING CODE 4410–30–P**

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## DEPARTMENT OF DEFENSE

## Department of the Army, Corps of Engineers

## 33 CFR Part 334

**[COE–2017–0011]**

## James River, Skiffes Creek, and Warwick River Surrounding Joint Base Langley-Eustis (JBLE-Eustis), Virginia; Restricted Areas and Danger Zones

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Corps of Engineers is establishing restricted areas and danger zones in the waters of the James River, Skiffes Creek and Warwick River in Newport News, Virginia. JBLE-Eustis contains a military port, berthing numerous Army vessels, and conducts exercises to include small craft testing and live fire training activities. The amendment is necessary to protect the public from hazards associated with training and mission operations, and to protect government assets, missions, and the base population in general. The amendment increases the restricted areas and creates danger zones surrounding the existing installation and firing ranges.

**DATES:** Effective date: December 23, 2019.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW–CO (David Olson), 441 G Street NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, DC at 202–761–4922.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the May 23, 2018, edition of the **Federal Register** (83 FR 23864) and the regulations.gov docket number was COE–2017–0011. In response to the proposed rule, three comments were received. One commenter stated that additional clarification was needed regarding the proposed areas coordinates because as written it is unclear what the intended extent of the areas should be, therefore, the applicant provided corrected coordinates and modified the rule text to address the charting concerns.

Another commenter stated that they are not in opposition to the proposal, however, they believe that an Environmental Impact Statement (EIS) should be provided to the public prior to the comment period closing. The preliminary review prior to publishing the proposed rule for comment determined that an EIS was not warranted for the proposed rule and no additional information was identified during review warranting a change to this finding.

One commenter stated that they fully support the proposed restricted areas and danger zones, and no further evaluation was warranted.

In response to a request by the United States Air Force, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR 334.280 to establish permanent restricted areas and danger zones, in the waters of the James River, Skiffes Creek, and Warwick River in Newport News, Virginia. The permanent restricted areas and the danger zones are necessary to protect the public from hazards associated with training and mission operations, and to fulfill the current security needs of the Department of the Air Force to protect government assets, missions, and the base population in general at the facility.

**Procedural Requirements**

*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. For the reasons stated below, this final rule is not a

''significant regulatory action'' under Executive Order 12866. Accordingly, this final 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.

The Corps determined this final rule is not a significant regulatory action. This regulatory action determination is based on the rules governing the restricted areas, which allow any vessel that needs to transit the restricted areas and danger zones to do so if the operator of the vessel obtains permission from Commander, JBLE-Eustis, and/or other persons or agencies as he/she may designate.

*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 Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted areas may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted areas and danger zones are necessary to protect vessels and personnel assigned to JBLE-Eustis by implementing a waterside security program. They are also necessary to protect the public. Small entities can also utilize navigable waters outside of the restricted areas and danger zones. Small entities that need to transit the restricted areas and danger zones may do so as long as vessel operators obtain permission from the Commander, JLBE-Eustis, and/or other persons or agencies as he/she may designate. Entities that want to conduct other activities in or near the restricted area may need to obtain other approvals from the applicable Federal, state, or local government authority. The restricted areas are necessary for security of JBLE-Eustis. The danger zones are necessary for protect the public from hazards associated with training and mission operations. The Corps expects that the economic impact of the restricted areas and danger zones would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this restricted area and danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

*c. Review Under the National Environmental Policy Act*

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

*d. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

*e. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.280 to read as follows:

**§ 334.280 James River, Skiffes Creek and Warwick River surrounding Joint Base Langley-Eustis, Virginia; restricted areas and danger zones.**

(a) *The areas.* The datum for the coordinates for the restricted areas and danger zones described in this section is NAD–83.

(1) *Army Training and Small Craft Testing Area (restricted area).* Beginning on the shore at latitude 37°09′53″ N, longitude 76°36′23″ W; thence westerly to latitude 37°09′53″ N, longitude 76°36′59″ W; thence westerly to latitude 37°09′50″ N, longitude 76°37′45″ W; thence southerly to latitude 37°09′00″ N, longitude 76°38′05″ W; thence southerly to latitude 37°08′22″ N, longitude 76°37′55″ W; thence due east to the shore at latitude 37°08′22″ N, longitude 76°37′20″ W; thence northerly following the shoreline to the point of beginning.

(2) *3rd Port Facility (restricted area).* An area surrounding the 3rd Port facility, Fort Eustis, beginning at a point on the shoreline at latitude 37°09′53″ N, longitude 76°36′23″ W; thence northerly, following the shoreline to latitude 37°10′03″ N, longitude 76°36′25″ W; thence northerly, following the shoreline to latitude 37°10′19″ N, longitude 76°36′07″ W; thence northerly, across the mouth of Bailey's Creek to latitude 37°10′24″ N, longitude 76°36′02″ W; thence northerly, following the shoreline to latitude 37°10′29″ N, longitude 76°36′06″ W; thence westerly, across Skiffes Creek to latitude 37°10′33″ N, longitude 76°36′20″ W; thence southerly following the shoreline to latitude 37°10′13″ N, longitude 76°36′42″ W; thence southerly to latitude 37°09′53″ N, longitude 76°36′59″ W; thence to the point of beginning.

(3) *Warwick River and any tributaries, creeks, estuaries, tidal areas, to include Butlers Gut and Jail Creek (restricted area).* All navigable waters of the United States as defined in 33 CFR part 329 within the boundaries of Fort Eustis, westerly of a line connecting the following coordinates: Commencing from the shoreline at latitude 37°09′47″ N, longitude 76°33′52″ W; thence following the meanders of the installation boundary along the westerly mean low waterline of Warwick River, thence to a point on the installation

boundary at latitude 37°04′35″ N, longitude 76°33′19″ W.

(4) *James River and any tributaries, creeks, estuaries, tidal areas, to include Nells Creek, Locust Neck Creek, Dudleys Creek, Morrisons Creek, Morleys Gut, Blows Creek, and Milstead Creek (restricted area).* Navigable waters of the United States as defined at 33 CFR part 329 within the boundaries of Fort Eustis, north/north-easterly of a line connecting the following coordinates: Commencing from the shoreline at latitude 37°04′35″ N, longitude 76°33′19″ W; thence following the meanders of the installation boundary along the northeasterly mean low waterline of the James River, thence to a point on the installation boundary at latitude 37°10′03″ N, longitude 76°36′25″ W at a point at the mouth of Skiffes Creek.

(5) *Skiffes Creek and any tributaries, creeks, estuaries, tidal areas, to include Baileys Creek (restricted area).* All navigable waters of the United States as defined at 33 CFR part 329 within the boundaries of Fort Eustis, easterly of a line connecting the following coordinates: Commencing from a point on the installation boundary at latitude 37°10′03″ N, longitude 76°36′25″ W; thence northerly, following the shoreline to latitude 37°10′19″ N, longitude 76°36′07″ W; thence northerly, across the mouth of Bailey's Creek to latitude 37°10′24″ N, longitude 76°36′02″ W; thence northerly, following the shoreline to latitude 37°10′29″ N, longitude 76°36′06″ W; thence northerly, following the meanders of the installation boundary to a point at the centerline of an unnamed tributary at latitude 37°10′36″ N, longitude 76°36′01″ W; thence southeasterly, following the centerline of the unnamed tributary to a point on the installation boundary at latitude 37°10′24″ N, longitude 76°35′32″ W.

(6) *Danger Zone Warwick River.* Navigable waters of the United States as defined at 33 CFR part 329 that encroach upon the boundaries of the Danger Zone of Fort Eustis, westerly of a line connecting the following coordinates: Commencing from the installation boundary at latitude 37°06′44″ N, longitude 76°34′04″ W; thence to a point at latitude 37°06′44″ N, longitude 76°34′02″ W; thence to a point at latitude 37°06′35″ N, longitude 76°33′56″ W; thence to a point at latitude 37°06′28″ N, longitude 76°33′57″ W; thence to a point at latitude 37°06′15″ N, longitude 76°33′30″ W; thence to a point at latitude 37°05′43″ N, longitude 76°33′13″ W; thence to a point at latitude 37°05′33″ N, longitude 76°33′17″ W; thence to a point at latitude 37°05′13″ N, longitude 76°32′53″ W; thence to a point at latitude 37°05′03″ N, longitude 76°33′09″ W; thence following the meanders of the installation boundary along the southwesterly mean low waterline of Warwick River, thence to a point at latitude 37°04′52″ N, longitude 76°33′13″ W; thence to a point at latitude 37°04′49″ N, longitude 76°33′11″ W; thence to a point at latitude 37°04′43″ N, longitude 76°33′28″ W; thence following the meanders of the installation boundary along the southwesterly mean low waterline of Warwick River, thence to a point at latitude 37°04′35″ N, longitude 76°33′19″ W.

(7) *Danger Zone James River.* Navigable waters of the United States as defined at 33 CFR part 329 that encroach upon the boundaries of the Danger Zone of Fort Eustis, north/north-easterly of a line connecting the following coordinates: Commencing from the installation boundary at latitude 37°04′35″ N, longitude 76°33′19″ W; thence following the meanders of the installation boundary along the easterly mean low waterline of James River to a point at latitude 37°04′39″ N, longitude 76°33′39″ W; thence to a point at latitude 37°04′33″ N, longitude 76°34′15″ W; thence to a point at latitude 37°04′52″ N, longitude 76°34′19″ W; thence to a point at latitude 37°04′52″ N, longitude 76°34′18″ W; thence to a point at latitude 37°04′60″ N, longitude 76°34′20″ W; thence to a point at latitude 37°05′19″ N, longitude 76°34′51″ W; thence to a point at latitude 37°05′53″ N, longitude 76°35′00″ W; thence to a point at latitude 37°06′03″ N, longitude 76°35′08″ W; thence following the meanders of the installation boundary along the easterly mean low waterline of James River, thence to a point at latitude 37°06′40″ N, longitude 76°35′52″ W; thence to a point at latitude 37°06′35″ N, longitude 76°36′19″ W; thence to a point on the installation boundary at latitude 37°06′50″ N, longitude 76°36′21″ W.

(b) *The regulations.* (1) For the restricted areas defined in paragraphs (a)(1) and (2) of this section:

(i) All vessels will contact the 3rd Port Harbor Master on marine channel 12 or 68 prior to entering or transiting these restricted areas.

(ii) The passage of fishing vessels to or from authorized traps, or the transit of commercial vessels, will be coordinated with the 3rd Port Harbor Master on marine channel 12 or 68.

(iii) The harvesting and cultivation of oyster beds or the setting of fish traps within these restricted areas will be allowed provided the commercial fisherman coordinate access to these areas with the 3rd Port Harbor Master on marine channel 12 or 68.

(iv) The Commander, Joint Base Langley-Eustis will, to the extent possible, give public notice from time to time through local news media and the Coast Guard's Local Notice to Mariners of the schedule of intended Department of Defense use of the restricted areas.

(2) For the restricted areas defined in paragraphs (a)(3), (4), and (5) of this section:

(i) Entry into these areas is for official government purposes only, or as authorized by the Commander, Joint Base Langley-Eustis.

(ii) Entry will be coordinated and conducted in accordance with the policies and procedures established by the Commander, Joint Base Langley-Eustis.

(3) For the danger zones defined in paragraphs (a)(6) and (7) of this section:

(i) Persons, vessels or other craft shall not enter or remain in the danger zone when firing is or will soon be in progress unless authorized to do so by the enforcing agency.

(ii) Advance notice of the schedule of small arms firing will be provided via the Joint Base Langley-Eustis web page.

(iii) All projectiles will be fired to land within the impact area on the Fort Eustis peninsula. Neither the Department of the Army nor the Department of the Air Force will be responsible for damages by such projectiles to nets, traps, buoys, pots, fishpounds, stakes, or other equipment which may be located within these danger zones.

(c) *Enforcement.* The regulations of this section shall be enforced by the Commander, Joint Base Langley-Eustis, Virginia, and such agencies as the commander may designate.

Dated: November 15, 2019.

**Thomas P. Smith,**

*Chief, Operations and Regulatory Division, Directorate of Civil Works.*

[FR Doc. 2019–25273 Filed 11–20–19; 8:45 am]

**BILLING CODE 3720–58–P**

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**33 CFR Part 334**

## Restricted Area, Curtis Creek and Arundel Cove, United States Coast Guard Yard, Baltimore, Maryland

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is amending its regulations to establish a restricted area in the waters of Curtis Creek and Arundel Cove extending offshore from the United States Coast Guard Yard, Baltimore, located in Baltimore, Maryland. The restricted area is necessary to address the current security and safety needs at U.S. Coast Guard Yard (CG Yard), Baltimore, Maryland, including the protection of Coast Guard-wide military assets as the CG Yard is the Coast Guard's only shipyard and largest industrial facility; performing major ship, electronics and heavy weapons overhaul, repair and manufacture. The CG Yard is also the host command for various Coast Guard commands supporting local and nationwide Coast Guard missions.

**DATES:** Effective date: December 23, 2019.

**ADDRESSES:** Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Division, 441 G Street NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, DC at 202–761–4922 or by email at *david.b.olson@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations to establish a restricted area in the waters of Curtis Creek and Arundel Cove extending offshore from the United States Coast Guard Yard, Baltimore, located in Baltimore, Maryland. The restricted area is necessary to address the current security and safety needs at U.S. Coast Guard Yard (CG Yard), Baltimore, Maryland, including the protection of Coast Guard-wide military assets as the CG Yard is the Coast Guard's only shipyard and largest industrial facility; performing major ship, electronics and heavy weapons overhaul, repair and manufacture. The CG Yard is also the host command for various Coast Guard commands supporting local and nationwide Coast Guard missions.

The proposed rule was published in the November 16, 2017, edition of the **Federal Register** (82 FR 53438) and the docket number was COE–2017–0003. In November 2016, the Corps' Baltimore District issued a public notice on its web page soliciting comments on the proposal. The District received one comment from an adjacent property owner concerning the proposed location of the restricted area in relation to his parcel. The CG Yard was contacted by the District and it was determined that incorrect coordinates in the vicinity of the commenters parcel had been initially provided. Corrected coordinates were subsequently provided to the District by the CG Yard. In response, the District notified the commenter and the coordinates were amended in the rule text. In addition, the CG Yard initially proposed channel markers within Curtis Creek to demarcate the restricted area. During the establishment process, the CG Yard amended the request and proposed signage that would be placed along the shoreline.

In the November 16, 2017, proposal, the Corps made a preliminary determination that the proposed rule does not require the preparation of an Environmental Impact Statement, and that an environmental assessment would be prepared for the final rule. The regulations governing the National Environmental Policy Act (NEPA) do not require draft environmental assessments to be available for public comment. Federal agencies are only required to solicit public comments to inform decision-making. Given the administrative nature of the proposed rule and the substance of the comments received, we have determined that an environmental assessment is the appropriate mechanism for complying with NEPA requirements. Public input on the proposed action was solicited using **Federal Register** noticing and local public noticing. Public comments received in response to the notices were documented and fully considered during final agency decision making.

### Administrative Requirements

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.

The Corps has determined this rule is not a significant regulatory action. This regulatory action determination is based on the size, duration, and location of the restricted area. The restricted area occupies only a portion of the waterway and a vessel that needs to transit the restricted area may do so if the operator of the vessel obtains permission from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative. In accordance with 33 CFR 334.3(b), the authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. The final rule states that fishing, crabbing, trawling, net-fishing, and other aquatic activities may also be conducted with prior approval from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative. Entities that want to conduct other activities in or near the restricted area may need to obtain other approvals from the applicable federal, state, or local government authority.

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 Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted area may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted area is necessary to address the current security needs at CG Yard, Baltimore, Maryland, including the protection of Coast Guard-wide military assets. Small entities can utilize navigable waters outside of the restricted area. Small entities may also transit the restricted area as long as they obtain permission from the Commanding Officer, CG Yard

or his/her designated representative. The Corps determined that the restricted area would have practically no economic impact on the public, would not result in an anticipated navigational hazard, and would not cause interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared. We concluded that the establishment of a restricted area at United States Coast Guard Yard, Baltimore, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Baltimore District Office. Please contact Mr. Steve Elinsky at the phone number specified above for further information.

d. *Unfunded Mandates Reform Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

e. *Congressional Review Act.* The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 33 CFR Part 334**

Danger zones, Navigation (water), Transportation, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 to read as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.145 to read as follows:

**§ 334.145 Curtis Creek and Arundel Cove, U.S. Coast Guard Yard, Baltimore; restricted area.**

(a) *The area.* All of the navigable waters of Curtis Creek extending approximately 120 meters from the high-water mark of the United States Coast Guard facility, bounded by these coordinates (including the Arundel Cove): Commencing from the shoreline at latitude 39°12′05.8″ N, longitude 076°34′28.4″ W; thence to latitude 39°12′04.8″ N, longitude 076′34′32″ W; thence to latitude 39°11′59″ N, longitude 076°34′28″ W; thence to latitude 39°11′44.8″ N, longitude 076°34′25″ W; thence to latitude 39°11′44.5″ N, longitude 076°34′07″ W; and thence along the shoreline to the point of origin. The datum for these coordinates is NAD–83.

(b) *The regulations.* (1) The restricted area as described in paragraph (a) of this section is only open to government vessels. Government vessels include, but are not limited to, U.S. Coast Guard, U.S. Coast Guard Auxiliary, Department of Defense, National Oceanic and Atmospheric Administration, state and local law enforcement, emergency services and vessels under contract with the U.S. Government. Vessels transiting the restricted area shall proceed across the area by the most direct route and without unnecessary delay. Fishing, crabbing, trawling, net-fishing and other aquatic activities are prohibited without prior approval from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative. The Coast Guard will install warning signs along the shoreline notifying individuals of the restricted area and prohibiting all unauthorized entry into the area along the property boundary.

(2) All persons, vessels and other craft are prohibited from entering, transiting, drifting, dredging or anchoring within the restricted area as described in paragraph (a) of this section without prior approval from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative.

(3) The restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, seven days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, U.S. Coast Guard Yard or such persons or agencies he/she may designate.

Dated: November 14, 2019.

**Thomas P. Smith,**

*Chief, Operations and Regulatory Division, Directorate of Civil Works.*

[FR Doc. 2019–25272 Filed 11–20–19; 8:45 am]

BILLING CODE 3720–58–P

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 380

**[Docket No. 14–CRB–0001–WR (2016–2020) COLA 2020]**

## Cost of Living Adjustment to Royalty Rates for Webcaster Statutory License

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Final rule; cost of living adjustment.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of ephemeral reproductions of sound recordings.

**DATES:** *Effective date:* January 1, 2020.

*Applicability dates:* These rates are applicable to the period January 1, 2020, through December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Assistant, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On May 2, 2016, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2016–2020 for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. *See* 81 FR 26316.

Pursuant to those regulations, at least 25 days before January 1 of each year from 2017 to 2020, the Judges shall publish in the **Federal Register** notice of a COLA applicable to the royalty fees for performances of sound recordings via

eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10.

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the CPI–U from the CPI–U published in November 2015 (237.838), according to the formula $(1 + (C_y - 237.838)/237.838) \times R_{2016}$, where $C_y$ is the CPI–U published by the Secretary of Labor before December 1 of the preceding year and $R_{2016}$ is the royalty rate for 2016; *i.e.,* for commercial webcasters $0.0022 per subscription performance or $0.0017 per nonsubscription performance, or for noncommercial webcasters $0.0017 per performance for all digital audio transmissions in excess of 159,140 Aggregate Tuning Hours (ATH) in a month on a channel or station. The adjustment shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c). The CPI–U published by the Secretary of Labor from the most recent index published before December 1, 2019, is 257.346.[1] Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in an increase in the rates for 2020.

The 2020 rate for eligible transmissions of sound recordings by commercial webcasters is $0.0024 per subscription performance and $0.0018 per nonsubscription performance.

Application of the increase to rates for noncommercial webcasters results in a 2020 rate of $0.0018 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

As provided in 37 CFR 380.10(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

**List of Subjects in 37 CFR Part 380**

Copyright; sound recordings.

**Final Regulations**

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

[1] As announced on November 13, 2019, by the Bureau of Labor Statistics in its *News Release—Consumer Price Index October 2019,* available at *https://www.bls.gov/news.release/cpi.htm* at Table 1.

## PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

**Authority:** 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Section 380.10 is amended by revising paragraph (a) to read as follows:

**§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.**

(a) *Royalty fees.* For the year 2020, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

(1) *Commercial webcasters:* $0.0024 per performance for subscription services and $0.0018 per performance for nonsubscription services.

(2) *Noncommercial webcasters:* $500 per year for each channel or station and $0.0018 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

* * * * *

Dated: November 15, 2019.

**Jesse M. Feder,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2019–25196 Filed 11–20–19; 8:45 am]

BILLING CODE 1410–72–P

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 381

**[Docket No. 16–CRB–0002–PBR (2018–2022) COLA (2020)]**

## Cost of Living Adjustment to Public Broadcasters Compulsory License Royalty Rate

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule; cost of living adjustment.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) to the royalty rate that noncommercial radio stations at certain colleges, universities, and other educational institutions that are not affiliated with National Public Radio must pay for the use in 2020 of published nondramatic musical compositions in the SESAC repertory pursuant to the statutory license under the Copyright Act for noncommercial broadcasting.

**DATES:**

*Effective date:* December 23, 2019.

*Applicability dates:* These rates are applicable to the period beginning January 1, 2020, and ending December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Assistant, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 118 of the Copyright Act, title 17 of the United States Code, creates a statutory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

On January 19, 2018, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under section 118 of the Copyright Act for the license period 2018–2022. *See* 83 FR 2743. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish in the **Federal Register** notice of the change in the cost of living and a revised schedule of the rates codified at § 381.5(c)(3) relating to compositions in the repertory of SESAC. The adjustment, fixed to the nearest dollar, shall be the greater of (1) the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) (''CPI–U'') ''during the period from the most recent index published prior to the previous notice to the most recent index published prior to December 1, of that year'' or (2) 1.5%. 37 CFR 381.10.

The change in the cost of living as determined by the CPI–U during the period from the most recent index published prior to the previous notice, *i.e.,* before December 1, 2018, to the most recent index published before December 1, 2019, is 1.8%.[1] In accordance with 37 CFR 381.10(b), the Judges announce that the COLA for calendar year 2020 shall be 1.8%. Application of the 1.8% COLA to the 2019 rate for the performance of published nondramatic musical compositions in the repertory of SESAC—$159 per station—results in an adjusted rate of $162 per station, rounded to the nearest dollar.

**List of Subjects in 37 CFR Part 381**

Copyright, Music, Radio, Rates, Television.

[1] On November 13, 2019, the Bureau of Labor Statistics announced that the CPI–U increased 1.8% over the last 12 months.

**Final Regulations**

In consideration of the foregoing, the Judges amend part 381 of title 37 of the Code of Federal Regulations as follows:

## PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

■ 2. Section 381.5 is amended by revising paragraphs (c)(3)(iii) to read as follows:

**§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

* * * * *

(c) * * *

(3) * * *

(iii) 2020: $162 per station.

* * * * *

Dated: November 15, 2019.

**Jesse M. Feder,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2019–25197 Filed 11–20–19; 8:45 am]

BILLING CODE 1410–72–P

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 386

**[Docket No. 19–CRB–0013–SA–COLA (2020)]**

## Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Final rule; cost of living adjustment.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 1.8% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2018 to October 2019.

**DATES:**

*Effective date:* January 1, 2020.

*Applicability dates:* These rates are applicable to the period January 1, 2020, through December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Assistant, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the distant retransmission of television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and has reauthorized the license for additional five-year periods, most recently with the passage of the STELA Reauthorization Act of 2014, Public Law 113–200.[1]

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010–2014 term. *See* 75 FR 53198. The rates were proposed by Copyright Owners and Satellite Carriers[2] and were unopposed. *Id.* On December 4, 2014, Congress extended the term of those rates through 2019 by passing the STELA Reauthorization Act of 2014. 17 U.S.C. 119(c)(1)(E).

Section 119(c)(2) of the Copyright Act provides that, effective January 1 of each year, the Judges shall adjust the royalty fee payable under Section 119(b)(1)(B) ''to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI–U] published by the Secretary of Labor before December 1 of the preceding year.'' Section 119 also requires that ''[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.'' 17 U.S.C. 119(c)(2).

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2018, to the most recent index published before December 1, 2019, is 1.8%.[3] Application of the 1.8% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—29 cents per subscriber per month—results in a rate of 30 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(1). Application of the 1.8% COLA to the current rate for viewing in commercial establishments—59 cents per subscriber per month—results in a rate of 60 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(2).

[1] The license expires on December 31, 2019. 17 U.S.C. 119(h).

[2] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC, comprised the Satellite Carriers.

[3] On November 13, 2019, the Bureau of Labor Statistics announced that the CPI–U increased 1.8% over the last 12 months.

**List of Subjects in 37 CFR Part 386**

Copyright, Satellite, Television.

**Final Regulations**

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

## PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

**Authority:** 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by adding paragraphs (b)(1)(xi) and (b)(2)(xi) to read as follows:

**§ 386.2 Royalty fee for secondary transmission by satellite carriers.**

* * * * *

(b) * * *

(1) * * *

(xi) 2020: 30 cents per subscriber per month.

(2) * * *

(xi) 2020: 60 cents per subscriber per month.

Dated: November 15, 2019.

**Jesse M. Feder,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2019–25198 Filed 11–20–19; 8:45 am]

BILLING CODE 1410–72–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–R04–OAR–2019–0374; FRL–10002–48–Region 4]**

## Air Quality Designation; FL; Redesignation of the Duval County Ozone Unclassifiable Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On June 19, 2019, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jacksonville, Florida ozone unclassifiable area (hereinafter referred to as the ''Duval County Area'' or ''Area'') to attainment for the 2015 primary and secondary 8-hour ozone national ambient air quality standards (NAAQS). EPA now has sufficient data to determine that the Duval County Area is in attainment of the 2015 primary and secondary 8-hour ozone NAAQS. EPA is approving the State's request and

redesignating the Area to attainment/unclassifiable for the 2015 primary and secondary 8-hour ozone NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the Area is in compliance with the 2015 primary and secondary 8-hour ozone NAAQS.

**DATES:** This rule will be effective December 23, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0374. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 1, 2015, EPA revised the primary and secondary 8-hour NAAQS for ozone to a level of 70 parts per billion (ppb), based on a 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations. *See* 80 FR 65292 (October 26, 2015). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to ground-level ozone.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On June 4, 2018 (83 FR 25776), EPA published a final rule designating certain areas across the country, including the Duval Area, as nonattainment, unclassifiable, or attainment/unclassifiable for the 2015 primary and secondary 8-hour ozone NAAQS based primarily upon air quality monitoring data from monitors for calendar years 2014–2016.[1] [2] EPA designated Duval County as unclassifiable for the 2015 primary and secondary 8-hour ozone NAAQS because the monitors in the Duval County Area had incomplete data for the 2014–2016 timeframe.[3]

On June 19, 2019, Florida submitted a request for EPA to redesignate the Duval County Area to attainment/unclassifiable for the 2015 primary and secondary 8-hour ozone NAAQS based upon valid, quality-assured, and certified ambient air monitoring data from 2016–2018 showing that the Area is in compliance with the 2015 primary and secondary 8-hour ozone NAAQS.[4] In a notice of proposed rulemaking (NPRM) published on August 14, 2019 (84 FR 40351), EPA proposed to approve the State's redesignation request. The details of Florida's submittal and the rationale for EPA's actions are further explained in the NPRM. Comments on the NPRM were due on or before September 13, 2019.

## II. Response to Comments

EPA received one set of adverse comments on its proposal action. These comments, from an anonymous commenter, are provided in the docket for this final rulemaking. Below is a summary of the comments and EPA's responses.

*Comment 1:* The Commenter contends that EPA does not have the authority to redesignate any area, including the Duval County Area, to ''attainment/unclassifiable'' because the Agency must use one of the three options (*i.e.,* attainment, nonattainment, or unclassifiable) listed for designations in CAA section 107(d)(1)(A).

*Response 1:* EPA disagrees with the Commenter. The Agency's use of the label ''attainment/unclassifiable'' rather than ''attainment'' when designating an area or redesignating an unclassifiable area that now has data demonstrating attainment of the relevant NAAQS has no legal or practical significance. An area classified as attainment/unclassifiable meets Congress's definition of an attainment area under CAA section 107(d)(1)(A)(ii), and the legal status and applicable regulatory framework are the same regardless of whether the area is labeled solely as ''attainment.''

EPA has a longstanding practice of designating most areas that meet a NAAQS as ''unclassifiable/attainment,'' or more recently, ''attainment/unclassifiable'' for that standard. This category includes areas that have air quality monitoring data meeting the NAAQS and areas that do not have monitors and for which EPA has no evidence that the areas may be violating the NAAQS or contributing to a nearby violation. EPA recently reversed the order of the label to ''attainment/unclassifiable'' because it better conveys the definition of the designation category and is more easily distinguished from the separate ''unclassifiable'' category. *See, e.g.,* 83 FR 25776, 25778 (June 4, 2018). EPA uses the ''unclassifiable'' category for areas where EPA could not determine, based upon available information, whether the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the ''attainment'' category for instances when EPA redesignates a nonattainment area that has attained the relevant NAAQS.

*Comment 2:* The Commenter asserts that EPA cannot redesignate any area to attainment without demonstrating that the area meets the requirements of CAA section 107(d)(3)(E). By not addressing these requirements for the Duval Area, the Commenter claims that the Agency failed to address the required elements for a redesignation to attainment and effectively granted itself an extension of the initial designation process.

*Response 2:* EPA disagrees with the Commenter. As noted in the NPRM, Congress expressly limited the redesignation criteria in CAA section 107(d)(3)(E) to redesignations of nonattainment areas to attainment, and therefore, these criteria are not applicable to redesignations of

[1] This action, combined with final rules published on November 16, 2017 (82 FR 54232) and July 25, 2018 (83 FR 35136), completed the 2015 8-hour ozone NAAQS designations for all areas.

[2] Several states chose to submit early certified air quality data for their areas. For those areas, EPA based the final designation decisions on air quality data from 2015–2017. Florida did not submit early certified air quality data. In the NPRM, EPA inadvertently stated that the Agency designated the Area unclassifiable based on 2015–2017 data.

[3] EPA used the category ''unclassifiable'' for areas in which EPA could not determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations.

[4] Although Florida requested redesignation of the Area to ''attainment,'' EPA is redesignating the area to ''attainment/unclassifiable'' because, as noted in the proposal, EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

unclassifiable areas to attainment/unclassifiable.[5] Furthermore, a redesignation under section 107(d)(3) is not and cannot be an extension of the initial designations process because an area must first be designated under a separate legal process pursuant to section 107(d)(1) before it can be redesignated. Extensions of the designations process are governed by section 107(d)(1)(B) which allows for a one-year extension in the event that the EPA Administrator has insufficient information to promulgate the designations. EPA can designate an area as ''unclassifiable'' regardless of whether it extends the designations period. EPA designated the Duval Area as ''unclassifiable'' pursuant to section 107(d)(1) on June 4, 2018, due to incomplete air quality monitoring data from 2014–2016. Complete, quality-assured, and certified data now exist for the 2016–2018 time period, and these data show that the Area is attaining the standard. The State submitted a redesignation request under section 107(d)(3)(A) based on these data, and EPA is approving that request because it meets the CAA requirements for a redesignation from unclassifiable to attainment/unclassifiable.

## III. Final Action

EPA is approving Florida's redesignation request and redesignating the Duval County Area from unclassifiable to attainment/unclassifiable for the 2015 8-hour ozone NAAQS.

## IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable does not in and of itself create any new requirements. Accordingly, this action merely redesignates an area to attainment/unclassifiable and does not impose additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final redesignation action is not approved to apply to 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 13, 2019.

**Mary S. Walker,**

*Regional Administrator, Region 4.*

40 CFR part 81 is amended as follows:

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.310, the table entitled ''Florida—2015 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended by revising the entry for ''Jacksonville, FL'' to read as follows:

**§ 81.310 Florida.**

* * * * *

[5] The redesignation criteria listed in section 107(d)(3)(E) are preceded by the phrase ''[t]he Administrator may not promulgate a redesignation *of a nonattainment area* (or portion thereof) to attainment unless. . .'' (emphasis added).

FLORIDA—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

| Designated area [1] | Designation | | Classification | |
|---|---|---|---|---|
| | Date [2] | Type | Date | Type |
| Jacksonville, FL ..... Duval County. | December 23, 2019 ..... | Attainment/Unclassifiable .. | ..... | |
| * | * | * | * | * | * | * |

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2019–25284 Filed 11–20–19; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 46 CFR Part 28

**[Docket Number USCG–2010–0625]**

**RIN 1625–AB50**

### Waiver of Citizenship Requirements for Crewmembers on Commercial Fishing Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; information collection approval.

**SUMMARY:** The Coast Guard announces that it has received approval from the Office of Management and Budget for an information collection request associated with the Waiver of Citizenship Requirements for Crewmembers on Commercial Fishing Vessels in a final rule we published in the **Federal Register** on February 14, 2014. In that rule, we stated we would publish a document in the **Federal Register** announcing the effective date of the collection-of-information related sections. This rule establishes December 23, 2019, as the effective date for those sections.

**DATES:** The amendments to §§ 28.1105 and 28.1110, published February 14, 2014 (79 FR 8864), are effective December 23, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, including the final rule published on February 14, 2014 (79 FR 8864), go to *https://www.regulations.gov,* type USCG–2010–0625 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Joseph Myers, U.S. Coast Guard; telephone 202–372–1249, email *CGFishSafe@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 14, 2014, the Coast Guard published a final rule that added the waiver of citizenship requirements for crewmembers on commercial fishing vessels. 79 FR 8864. The final rule delayed the effective dates of 46 CFR 28.1105 and 28.1110 because these sections contain collection-of-information provisions that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. On March 21, 2016, the OMB approved the collection, ''Commercial Fishing Industry Vessel Safety Regulations,'' and assigned OMB Control Number 1625–0061. Accordingly, we announce that 46 CFR 28.1105 and 28.1110 are effective December 23, 2019.

This document is issued under the authority of 46 U.S.C. 8103(b)(3)(C).

Dated: November 15, 2019.

**R.V. Timme,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2019–25234 Filed 11–20–19; 8:45 am]

BILLING CODE 9110–04–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

**[WT Docket No. 18–120; DA 19–1160]**

### Transforming the 2.5 GHz Band; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission (Commission) is correcting a final rule that appeared in the **Federal Register** on October 25, 2019. In the document, the Commission took another step towards making more mid-band spectrum available for next generation wireless services benefitting all Americans. Specifically, the Commission transformed the regulatory framework governing the 2.5 GHz band (2496–2690 MHz), which is the single largest band of contiguous spectrum below 3 gigahertz.

**DATES:** The corrections to § 27.14 are effective November 25, 2019; the correction to § 27.1219 is effective April 27, 2020.

**FOR FURTHER INFORMATION CONTACT:** John Schauble of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418–0797 or *John.Schauble@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2019–22511 appearing on page 57343 in the **Federal Register** on October 25, 2019, the following corrections are made:

**§ 27.14 [Corrected]**

■ 1. On page 57364, in the third column, amend § 27.14(u)(4) by removing the two entries ''(o)(2) or (3)'' and adding, in their places, the entries ''(u)(2) or (3)''.

■ 2. On page 57365, in the first column, amend § 27.14(u)(5) by removing the two entries ''(o)(2) or (3)'' and adding, in their places, the entries ''(u)(2) or (3)''.

**§ 27.1219 [Corrected]**

■ 3. On page 57367, in the first column, amend § 27.1219(a)(1) by removing the word ''have'' and adding, in its place, the word ''has''.

Federal Communications Commission.

**John Schauble,**

*Deputy Chief, Broadband Division, Wireless Telecommunications Bureau.*

[FR Doc. 2019–25202 Filed 11–20–19; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R6–ES–2016–0086; 4500030113]**

**RIN 1018–BB52**

# Endangered and Threatened Wildlife and Plants; Threatened Species Status for Meltwater Lednian Stonefly and Western Glacier Stonefly With a Section 4(d) Rule

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the meltwater lednian stonefly (*Lednia tumana*) and the western glacier stonefly (*Zapada glacier*), both aquatic species from alpine streams and springs. Meltwater lednian stoneflies are found in Montana and Canada, and western glacier stoneflies are found in Montana and Wyoming. The effect of this regulation will be to add these species to the List of Endangered and Threatened Wildlife. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of these species. We have also determined that designation of critical habitat for these species is not prudent.

**DATES:** This rule becomes effective December 23, 2019.

**ADDRESSES:** This final rule is available at *http://www.regulations.gov* in Docket No. FWS–R6–ES–2016–0086 and at *https://www.fws.gov/mountain-prairie/es/meltwaterLednianStonefly.php* and at *https://www.fws.gov/mountain-prairie/es/westernGlacierStonefly.php* on the internet. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Montana Ecological Services Office, 585 Shepard Way, Suite 1, Helena, MT 59601; 406–449–5225.

**FOR FURTHER INFORMATION CONTACT:** Jodi Bush, Office Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Suite 1, Helena, MT 59601, by telephone 406–449–5225. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

*What this document does.* This rule will add the meltwater lednian stonefly (*Lednia tumana*) and western glacier stonefly (*Zapada glacier*) as threatened species to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) with a rule issued under section 4(d) of the Act (hereafter referred to as a ''4(d) rule'') at 50 CFR 17.47.

*The basis for our action.* Under the Endangered Species Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that habitat fragmentation and degradation in the form of declining streamflows and increasing water temperatures resulting from climate change are currently affecting habitat for the meltwater lednian stonefly and the western glacier stonefly (Factor A).

Based on empirical evidence, most glaciers supplying cold water to meltwater lednian and western glacier stonefly habitats in Glacier National Park (GNP) are projected to melt by 2030. As a result, habitat with a high probability of occupancy for the meltwater lednian stonefly is modeled to decrease 81 percent by 2030 (Muhlfeld *et al.* 2011, p. 342). A decrease in distribution of western glacier stonefly has already been documented. Drought is expected to further reduce the amount of habitat occupied by meltwater lednian stonefly and western glacier stonefly, due to reductions of meltwater from seasonal snowpack and anticipated future reduction of flow from other meltwater sources in the foreseeable future (Factor E). As a result of this anticipated loss of habitat, only a few refugia streams and springs are expected to persist in the long term. Recolonization of intermittent habitats where known occurrences of either species are extirpated is not anticipated, given the poor dispersal abilities of similar stonefly species. Threats to meltwater lednian stonefly and western glacier stonefly habitat are currently occurring rangewide, are based on empirical evidence of past and current glacial melting, and are expected to continue into the foreseeable future.

*Peer review and public comment.* We sought comments from seven objective and independent specialists (and received three responses) to ensure that our determination is based on scientifically sound data, assumptions, and analyses. As directed by the Service's Peer Review Policy dated July 1, 1994 (59 FR 34270) and a recent memo updating the peer review policy for listing and recovery actions (August 22, 2016), we invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during two public comment periods. All comments received during the peer review process and the public comment periods have either been incorporated throughout this rule or addressed in the Summary of Comments and Recommendations section.

### Previous Federal Action

Please refer to the proposed listing rule for the meltwater lednian stonefly and western glacier stonefly (81 FR 68379, October 4, 2016) for a detailed description of previous Federal actions concerning these species prior to October 4, 2016. In that proposed rule, we explained that we received new information on the western glacier stonefly in August 2016, indicating a larger range than previously known. However, due to a settlement agreement deadline, we were unable to fully incorporate and analyze the new information before publishing our October 4, 2016, 12-month finding and proposed listing rule. In March 2017, we received additional information (separate from the information received in August 2016) on the western glacier stonefly, also indicating a larger range

than previously known. On October 31, 2017, we reopened the comment period on our proposed listing rule to allow the public to comment on both sets of new information (82 FR 50360). Now that we have had the opportunity to fully consider this new information from August 2016 and March 2017, we have incorporated it into this final rule.

Our October 4, 2016, proposed rule included a determination that critical habitat for the meltwater lednian stonefly and western glacier stonefly was prudent but not determinable at that time (81 FR 68379). Since that time, the Service finalized regulations related to listing species and designating critical habitat (84 FR 45020, August 27, 2019), which revised the regulations that implement section 4 of the Act and clarify circumstances in which critical habitat may be found not prudent. Regulations at 50 CFR 424.12(a)(1) provide the circumstances when critical habitat may be not prudent, and we have determined that a designation of critical habitat for these species is not prudent, as discussed further below.

Our October 4, 2016, proposed rule also referenced a section of the regulation that provided threatened species with the same protections as endangered species also known as ''blanket rules'' (50 CFR 17.31). The Service has since published regulations on August 27, 2019 (84 FR 44753), amending 50 CFR 17.31 and 17.71 that state ''the blanket rules will no longer be in place, but the Secretary will still be required to make a decision about what regulations to put in place for the species.'' While the Service always had the ability to promulgate species-specific 4(d) rules for threatened species, moving forward we will promulgate a species-specific 4(d) rule for each species that we determine meets the definition of a threatened species. As explained below, in the preamble to our 2016 proposed rule, we determined that a rule that included the prohibitions set forth in 50 CFR 17.21 for endangered species would be necessary and advisable for the conservation of the meltwater lednian stonefly and the western glacier stonefly. Consequently, we are promulgating a species-specific 4(d) rule that outlines the protections that were described in the 2016 proposed rule; see Provisions of the 4(d) Rule, below.

## I. Final Listing Determination

### *Background*

Both the meltwater lednian stonefly (*e.g.,* Baumann 1975, p. 18; Baumann *et al.* 1977, pp. 7, 34; Newell *et al.* 2008, p. 181; Stark *et al.* 2009, entire) and western glacier stonefly (Baumann 1975, p. 30; Stark 1996, entire; Stark *et al.* 2009, p. 8) are recognized as valid species by the scientific community. Both stonefly species begin life as eggs, hatch into aquatic nymphs, and later mature into winged adults, surviving briefly on land before reproducing and dying. Meltwater habitat for meltwater lednian stonefly and western glacier stonefly is supplied by glaciers and rock glaciers, as well as by four other sources: (1) Seasonal snow, (2) perennial snow, (3) alpine springs, and (4) ice masses (Giersch *et al.* 2017, p. 2584). Please refer to the proposed listing rule for the meltwater lednian stonefly and western glacier stonefly (81 FR 68379, October 4, 2016) for a full discussion of taxonomy, species descriptions, and biology. We have received no new substantive information on those topics since that time.

### Distribution and Abundance

### Meltwater Lednian Stonefly

Meltwater lednian stoneflies are known to occur in northwestern Montana and southwest Alberta (Giersch et al. 2017; p. 2582). Specifically, meltwater lednian stoneflies are known to occur in 113 streams: 109 in Glacier National Park (GNP), 2 south of GNP on National Forest land, 1 south of GNP on tribal land (Figure 1; Giersch *et al.* 2017; p. 2582), and 1 north of GNP in Waterton Lakes National Park in Alberta, Canada (Donald and Anderson 1977, p. 114; Baumann and Kondratieff 2010, p. 315; Giersch 2017, pers. comm.). In the proposed rule (81 FR 68379, October 4, 2016), we indicated meltwater lednian stoneflies were known from historical collections in Waterton Lakes National Park in Canada, but were not known to be extant there. However, recent surveys conducted after the proposed rule was published have also documented the species in the same watershed in Waterton Lakes National Park where they were sampled historically (Giersch 2017, pers. comm.). Meltwater lednian stoneflies occupy relatively short reaches of streams [mean = 592 meters (m) (1,942 feet; ft); standard deviation = 455 m (1,493 ft)] below meltwater sources (for description, see *Habitat* section below; Giersch *et al.* 2017; p. 2582). Meltwater lednian stoneflies can attain moderate to high densities [(350–5,800 per square m) (32–537 per square ft)] (*e.g.,* Logan Creek: Baumann and Stewart 1980, p. 658; National Park Service (NPS) 2009, entire; Muhlfeld *et al.* 2011, p. 342; Giersch 2016, pers. comm.). Given this range of densities and a coarse assessment of available habitat, we estimated the abundance of meltwater lednian stonefly in the millions of individuals; however, no population trend information is available for the meltwater lednian stonefly.

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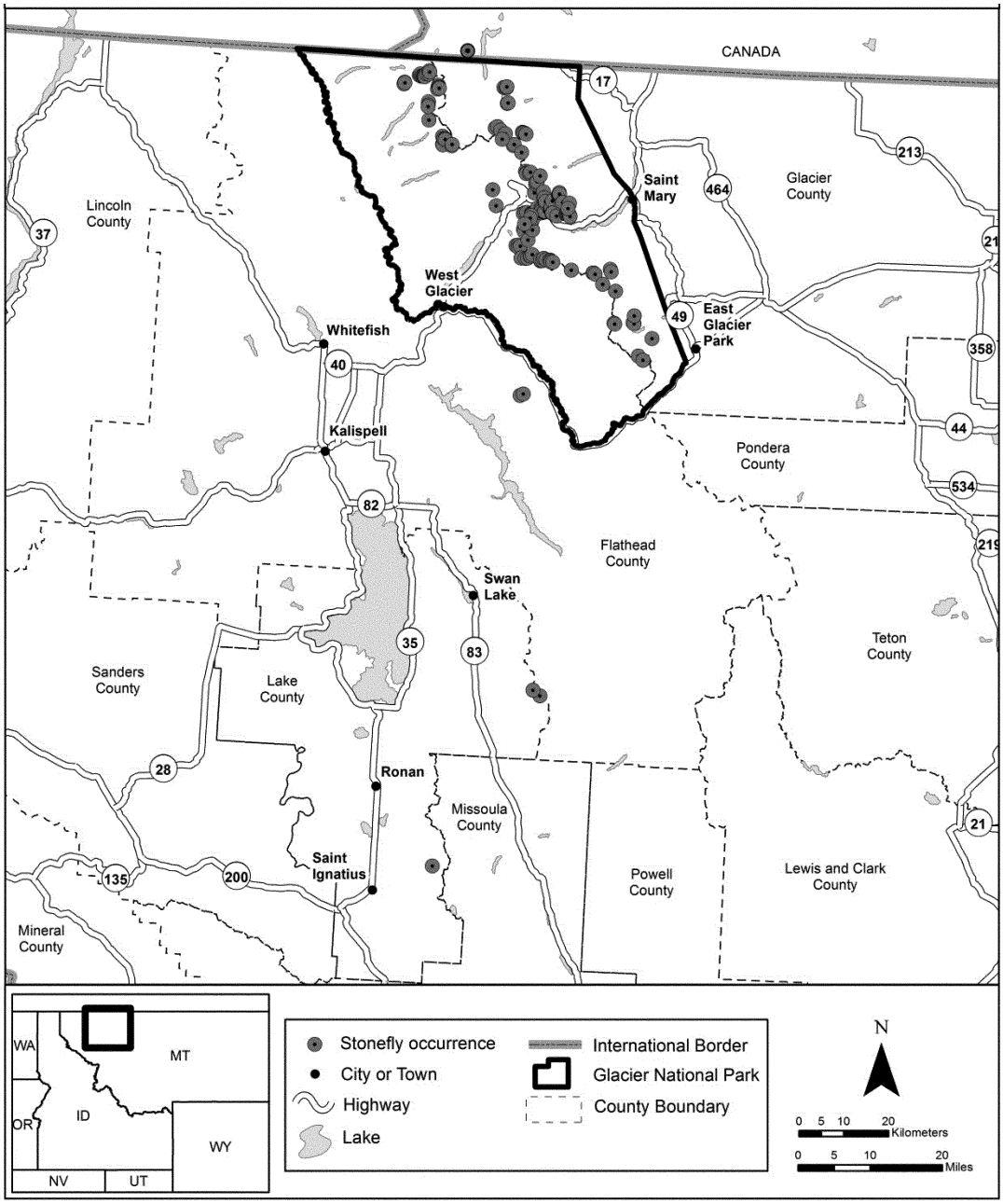


Figure 1. Documented occurrences of the meltwater lednian stonefly (*Lednia tumana*) from 1997 to 2016 in Glacier National Park, Waterton Lakes National Park (Canada), Great Bear Wilderness, Bob Marshall Wilderness, and the Mission Mountain Tribal Wilderness.

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Western Glacier Stonefly

Western glacier stoneflies are known to occur in 16 streams: 6 in GNP, 4 in Grand Teton National Park (GTNP), and 6 in the Absaroka/Beartooth Wilderness on the Custer/Gallatin National Forest (Figure 2; Giersch *et al.* 2017, p. 2584; Giersch 2017, pers. comm.). The number of streams known to be occupied by western glacier stonefly has increased from the number reported in the proposed rule, due to new information received after the proposed rule was published (Hotaling *et al.* 2017, entire; Giersch *et al.* 2017, p. 2584). Similar to the meltwater lednian stonefly, western glacier stoneflies are found on relatively short reaches of streams [mean = 569 m (1,869 ft); standard deviation = 459 m (1,506 ft)] in close proximity to meltwater sources (Giersch *et al.* 2017). Western glacier stoneflies can attain moderate densities [(400–2,300 per square m) (37–213 per square ft)] in GNP (Giersch 2016, pers. comm.). Lower densities of western glacier stoneflies have been reported in GTNP [(up to 11–56 per square m) (up to 1–5 per square ft)] (Tronstad 2017, pers. comm.). Given this range of densities and a coarse assessment of available habitat, we estimated the abundance of the western glacier stonefly to be in the tens of thousands of individuals, presumably

less numerous than the meltwater lednian stonefly.

The recent discovery and subsequent genetic confirmation of western glacier stoneflies in streams in GTNP and the Absaroka/Beartooth Wilderness has increased the known range of the species by about 500 kilometers (km) (~311 miles (mi)) southward (Hotaling *et al.* 2017, entire; Giersch *et al.* 2017, p. 2585). However, western glacier stoneflies have decreased in distribution among and within six streams in GNP where the species was known to occur in the 1960s and 1970s (Giersch *et al.* 2015, p. 58).

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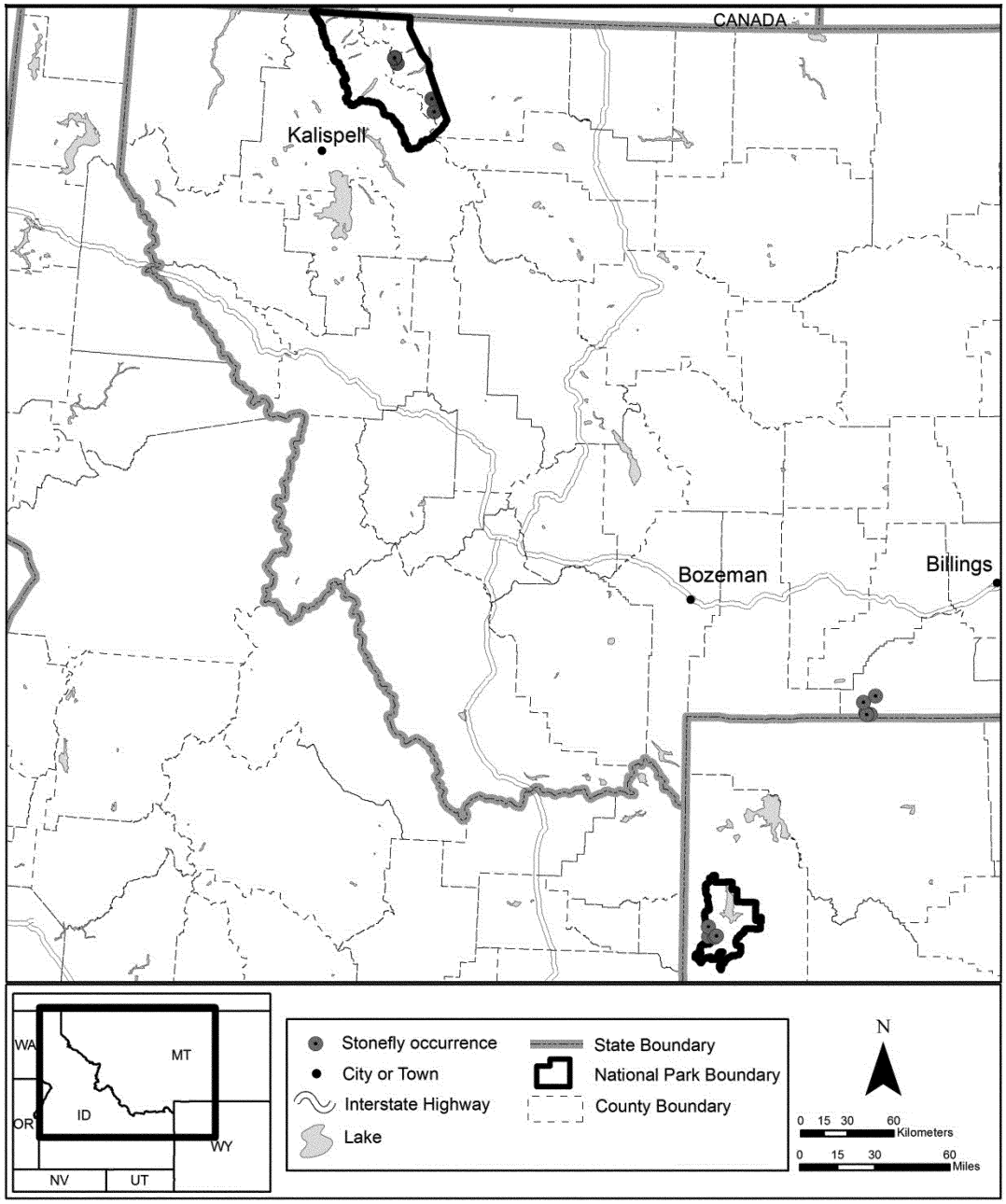


Figure 2. Documented occurrences of the western glacier stonefly (*Zapada glacier*) from 2010 to 2016 in Glacier National Park, Grand Teton National Park, and the Absaroka/Beartooth Wilderness.

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The northern distributional limits of the meltwater lednian stonefly and the western glacier stonefly are not known. Potential habitat for meltwater lednian and western glacier stoneflies, which appears to be similar to the habitat both species are currently occupying, exists in the area of Banff and Jasper National Parks, Alberta, Canada. Aquatic invertebrate surveys have been conducted in this area, and no specimens of either species were found, although it is likely that sampling did not occur close enough to glaciers or icefields to detect either meltwater

lednian or western glacier stonefly, if indeed they were present (Hirose 2016, pers. comm.). Sampling in this area for both meltwater lednian and western glacier stoneflies is planned for the future and would help fill in an important data gap with regard to northern distributional limits of both species.

Habitat

Meltwater Lednian Stonefly

The meltwater lednian stonefly is found in high-elevation, alpine streams (Baumann and Stewart 1980, p. 658; Montana Natural Heritage Program 2010a) originating from meltwater sources, including glaciers and small icefields, perennial and seasonal snowpack, alpine springs, and glacial lake outlets (Hauer *et al.* 2007, p. 107; Giersch *et al.* 2017, p. 2584). These streams are believed to be fishless, due to their high gradient. Meltwater lednian stoneflies are known from alpine streams where modeled maximum water temperatures do not exceed 10 degrees Celsius (°C) (50 degrees Fahrenheit (°F)) (Giersch *et al.* 2017, p. 2584), although the species can withstand higher water temperatures (~20 °C; 68 °F) for short periods of time (Treanor *et al.* 2013, p. 602). In general, the alpine streams inhabited by the meltwater lednian stonefly are presumed to have very low nutrient concentrations (low nitrogen and phosphorus), reflecting the nutrient content of the glacial or snowmelt source (Hauer *et al.* 2007, pp. 107–108). During the daytime, meltwater lednian stonefly nymphs prefer to occupy the underside of rocks or larger pieces of bark or wood (Baumann and Stewart 1980, p. 658; Giersch *et al.* 2017, p. 2579).

Western Glacier Stonefly

Western glacier stoneflies are found in high-elevation, alpine streams closely linked to the same meltwater sources as the meltwater lednian stonefly (Giersch *et al.* 2017; p. 2584). The specific thermal tolerances of the western glacier stonefly are not known. However, all recent collections of the western glacier stonefly in GNP have occurred in habitats with daily maximum water temperatures less than 13.3 °C (55.9 °F) (Giersch *et al.* 2017, p. 2584). Further, abundance patterns for other species in the *Zapada* genus in GNP indicate preferences for the coolest environmental temperatures, such as those found at high elevation in proximity to headwater sources (Hauer *et al.* 2007, p. 110). Daytime microhabitat preferences of the western glacier stonefly appear similar to those for the meltwater lednian stonefly as described above (Giersch *et al.* 2017, p. 2579).

*Summary of Biological Status and Threats*

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Our implementing regulations at 50 CFR 424.11(d) set forth a framework within which we evaluate the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. The foreseeable future extends only so far as the predictions about the future are reliable. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics.

Below is a summary of biological status and threats for listing factors A and E, including new information and citations provided to us during the peer review and public comment period. See the proposed listing rule for information on biological status and threats for listing factors B, C, and D (81 FR 68379, October 4, 2016; pp. 68390–68392). We did not make substantive changes to listing factors B, C, and D between the proposed and final listing rules because we have received no new substantive information relevant to our analysis of those factors. Also, see the proposed listing rule for discussion of synergistic effects and the *Factor E* discussion in this rule, which addresses comments from a peer reviewer with regard to synergistic effects (81 FR 68379, October 4, 2016, pp. 68392–68393).

For listing factors A and E, we made substantive changes between the proposed and final listing rules. As described further below in Summary of Changes from the Proposed Rule, in the proposed listing rule, we identified populations of meltwater lednian stonefly and western glacier stonefly based on watershed boundaries. However, multiple peer reviewers observed the need for empirical evidence to support that assessment. Therefore, we have updated our explanation to describe the number of streams occupied by both meltwater lednian stonefly and western glacier stonefly in our Factors A and E analyses. In addition, we received updated information on the distribution of meltwater lednian stonefly and western glacier stonefly after the proposed rule was published. Meltwater lednian stonefly are now known from southwest Alberta, Canada (Giersch et al. 2017; p. 2582). In addition, new information documented and genetically confirmed the presence of western glacier stonefly approximately 500 km (311 mi) farther south than previously known (Giersch *et al.* 2016, p. 28; Hotaling *et al.* 2017, entire). These southern populations of western glacier stonefly were in the Absaroka-Beartooth wilderness in southern Montana and in Grand Teton National Park in northwestern Wyoming. As a result of this new information, we have now identified a total of 16 streams occupied by western glacier stonefly. Here, we analyze how both species are affected by threats under Factors A and E in all of their currently known locations.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Meltwater lednian stoneflies occupy remote, high-elevation alpine habitats in GNP and several proximate watersheds. Western glacier stoneflies occupy similar habitats in GNP, GTNP, and the Absaroka/Beartooth Wilderness. The remoteness of these habitats largely precludes overlap with human uses and typical land management activities (*e.g.,* forestry, mining, irrigation) that have historically modified habitats of many species. However, these relatively pristine, remote habitats are not expected to be immune to the effects of climate change. Thus, our analysis

under Factor A focuses on the expected effects of climate change on meltwater lednian and western glacier stonefly habitats.

Climate Change

See the proposed listing rule for general background information on global climate change (81 FR 68379, October 4, 2016).

Uncertainty in Climate Projections

Any model (representation of something) carries with it some level of uncertainty. Consequently, there is uncertainty in climate projections and related impacts across and within different regions of the world (*e.g.,* Glick et al. 2011, pp. 68–73; Deser et al. 2012, entire; International Panel on Climate Change (IPCC) 2014, pp. 12, 14). This uncertainty can come from multiple sources, including type, amount, and quality of evidence, changing likelihoods of diverse outcomes, ambiguously defined concepts or terminology, or human behavior (IPCC 2014, pp. 37, 56, 58, 128). Methods developed to convey uncertainty in climate projections include quantifying uncertainty (IPCC 2014, p. 2) or analyzing for trends among climate projections (IPCC 2014, pp. 8, 10). Also, uncertainty in climate projections can be reduced by using more regionalized data to produce higher resolution, more accurate climate projections (Glick et al. 2011, pp. 58–61). This uncertainty was considered in this determination. We note that despite the inherent uncertainties associated with climate models/projections, empirical data are used to develop climate models. These models and their associated projections often constitute the best available science, in the absence of other relevant information.

Regional Climate

The western United States appears to be warming faster than the global average. In the Pacific Northwest, regionally averaged temperatures have risen 0.8 °C (1.5 °F) over the last century and as much as 2 °C (4 °F) in some areas and are projected to increase by another 1.5 to 5.5 °C (3 to 10 °F) over the next 100 years (Karl *et al.* 2009, p. 135). Since 1900, the mean annual air temperature for GNP and the surrounding region has increased 1.3 °C (2.3 °F), which is 1.8 times the global mean increase (U.S. Geological Survey (USGS) 2010, p. 1). Warming also appears to be pronounced in alpine regions globally (*e.g.,* Hall and Fagre 2003, p. 134 and references therein). For the purposes of this final rule, we consider the foreseeable future for anticipated effects of climate change on the alpine environment to be approximately 35 years (~year 2050) based on two factors. First, various global climate models and emissions scenarios provide consistent projections within that timeframe (IPCC 2014, p. 11). Second, the effect of climate change on glaciers in GNP has been modeled within that timeframe (*e.g.,* Hall and Fagre 2003, entire; Brown *et al.* 2010, entire).

Habitats for both the meltwater lednian stonefly and the western glacier stonefly originate from meltwater sources that will be impacted by any projected warming, including glaciers, rock glaciers and small icefields, perennial and seasonal snowpack, alpine springs, and glacial lake outlets (Hauer *et al.* 2007, p. 107; Giersch *et al.* 2017, p. 2584). The alteration or loss of these meltwater sources and perennial habitat has direct consequences on both meltwater lednian stonefly and western glacier stonefly populations. Below, we provide an overview of expected rate of loss of meltwater sources as a result of climate change, followed by the projected effects to stonefly habitat from altered stream flows and water temperatures.

Glacier Loss

Glacier loss in GNP is directly influenced by climate change (*e.g.,* Hall and Fagre 2003, entire; Fagre 2005, entire). When established in 1910, GNP contained approximately 150 glaciers larger than 0.1 square kilometer (25 acres) in size, but presently only 25 glaciers larger than this size remain (Fagre 2005, pp. 1–3; USGS 2005, 2010). Hall and Fagre (2003, entire) modeled the effects of climate change on glacier persistence in GNP's Blackfoot-Jackson basin using two climate scenarios based on empirical air temperature and glacier melt rate data: (1) Doubling of atmospheric carbon dioxide by 2030 ($CO_2$) and (2) linear temperature-extrapolation. Under the $CO_2$ scenario, regional air temperatures were projected to increase 3.3 °C by 2100, and glaciers were projected to completely melt in GNP by 2030, with projected increases in winter precipitation not expected to buffer glacial shrinking (Hall and Fagre 2003, pp. 137–138). Under the linear temperature-extrapolation scenario, regional air temperatures were projected to increase 0.45 °C by 2100, and glaciers were projected to completely melt in GNP by 2277 (Hall and Fagre 2003, pp. 137–138).

We determined that the $CO_2$ scenario was likely to better represent future air temperature conditions and glacier persistence in GNP for multiple reasons. First, the projected future air temperature increase of 0.45 °C (by 2100) under the linear temperature-extrapolation scenario is now projected to occur by 2035 (IPCC 2014, p. 10)—65 years sooner than projected under the linear temperature-extrapolation. This new projection is based on 11 additional years of climate data that were not available in 2003. Thus, the linear temperature-extrapolation model is overly conservative. Second, while both future air temperature projections (*i.e.,* 3.3 °C and 0.45 °C) from Hall and Fagre 2003 are bracketed by newer projections of air temperature rise from varying climate scenarios in IPCC 2014 (p. 10), the mean annual air temperature for GNP and the surrounding region is increasing at 1.8 times the global rate (USGS 2010, p. 1). This means that the $CO_2$ scenario with its higher future air temperature projection (*i.e.,* 3.3 °C) is more likely to represent the likely air temperature change in the GNP area. Indeed, the range of projected future air temperatures in three of the four global climate scenarios used in IPCC 2014 (*i.e.,* Representative Concentration Pathways (RCPs) 4.5, 6.0, and 8.5; IPCC 2014, p. 8) include 3.3 °C, after taking into account the regional increase of projected air temperatures of 1.8 times the global rate.

Conversely, even the most conservative (*i.e.,* lowest emissions) global climate scenario used in IPCC 2014 (RCP 2.6) does not encompass the air temperature projection (0.45 °C) from the linear temperature-extrapolation model, after taking into account the regional increase of projected air temperatures of 1.8 times the global rate. Third, recent observations of glacier melting rates indicate faster melt than projected by the $CO_2$ scenario (Muhlfeld et al. 2011, p. 339). Intuitively, this indicates the $CO_2$ scenario would be expected to better represent future air temperatures and glacier persistence, relative to the more conservative linear temperature-extrapolation model. For these reasons, we expect the $CO_2$ scenario to better represent future air temperature increase and glacier persistence in GNP than the linear temperature-extrapolation scenario.

A more recent analysis of Sperry Glacier in GNP estimates this particular glacier (1 of 25 glaciers remaining from the historical 150 glaciers larger than 25 acres) may persist through 2080, in part due to annual avalanche inputs from an adjacent cirque wall (Brown *et al.* 2010, p. 5). We are not aware of any other published studies using more recent climate scenarios that speak directly to anticipated conditions of the remaining glaciers in GNP. Thus, we largely rely

on Hall and Fagre's (2003) projections under the $CO_2$ scenario in our analysis, supplemented with more recent glacier-specific studies where appropriate (*e.g.,* Brown *et al.* 2010, entire).

The longevity of glaciers and snowfields in GTNP and the Absaroka/Beartooth Wilderness is unknown. While most of these glaciers occur at higher elevations than those in GNP, multiple factors other than elevation influence glacial retreat rates, including size, latitude, and aspect (Janke 2007, p. 80). Middle Teton glacier in GTNP is projected to persist through the year 2100 (Tootle *et al.* 2010, p. 29); however, this projection is based on the assumption that future glacial retreat rates will be the same as those observed during the period of study (*i.e.,* 1967–2006; Tootle *et al.* 2010, p. 29). This scenario appears unlikely because glacier size is an important variable in glacier retreat rates (Janke 2007, p. 80), whereby the rate of glacial melting increases as glaciers shrink. Thus, the longevity of glaciers and snowfields in GTNP and the Absaroka/Beartooth Wilderness is unclear at this time.

Petersen Glacier in GTNP is a rock glacier that provides meltwater to one stream occupied by the western glacier stonefly. A rock glacier is a glacier that is covered by rocks and other debris. The size of Petersen Glacier is unknown because it is mostly covered in rocks. However, rock glaciers melt more slowly than alpine glaciers because of the insulating properties of the debris covering the main glacial ice mass (Janke 2007, p. 80; Pelto 2000, pp. 39–40; Brenning 2005, p. 237). Thus, cold-water habitats originating from rock glaciers may be present longer into the future than from other meltwater sources.

Loss of Other Meltwater Sources

Meltwater in meltwater lednian stonefly and western glacier stonefly habitat is supplied by glaciers and rock glaciers, as well as by four other sources: (1) Seasonal snow, (2) perennial snow, (3) alpine springs, and (4) ice masses (Giersch *et al.* 2017, p. 2584). Seasonal snow is that which accumulates and melts seasonally, with the amount varying year to year depending on annual weather events. Perennial snow is some portion of a snowfield that does not generally melt on an annual basis, the volume of which can change over time. Alpine springs originate from some combination of meltwater from snow, ice masses or glaciers, and groundwater. Ice masses are smaller than glaciers and do not actively move as glaciers do.

The sources of meltwater that supply meltwater lednian and western glacier stonefly habitat are expected to be affected by the changing climate at different time intervals. In general, we expect all meltwater sources to decline under a changing climate, given the relationship between climate and glacial melting (Hall and Fagre 2003, entire; Fagre 2005, entire) and recent climate observations and modeling (IPCC 2014, entire). It is likely that seasonal snowpack levels will be most immediately affected by climate change, as the frequency of more extreme weather events increases (IPCC 2014, p. 8). These extremes may result in increased seasonal snowpack in some years and reduced snowpack in others.

We expect that effects to meltwater lednian stonefly habitats south of GNP may occur sooner in time than those discussed for GNP. The timing of snowfield and ice mass disappearance is expected to be before the majority of glacial melting (*i.e.,* 2030), because perennial snowpack and ice masses are less dense than glaciers and typically have smaller volumes of snow and ice. However, alpine springs, at least those supplemented with groundwater, may continue to be present after complete glacial melting. Our analysis primarily focuses on effects to the meltwater lednian stonefly and the western glacier stonefly and their habitat within GNP because more data are available for those areas.

Streamflows

*Meltwater streams*—Declines in meltwater sources are expected to affect flows in meltwater streams in GNP. Glaciers and other meltwater sources act as water banks, whose continual melt maintains streamflows during late summer or drought periods (Hauer *et al.* 2007, p. 107). Following glacier loss, declines in streamflow and periodic dewatering events are expected to occur in meltwater streams in the northern Rocky Mountains (Hauer *et al.* 1997, p. 909; Leppi *et al.* 2012, p. 1105; Clark *et al.* 2015, p. 14). In similarly glaciated regions, intermittent stream flows have been documented following glacial recession and loss (Robinson *et al.* 2015, p. 8). By 2030, the modeled distribution of habitat with the highest likelihood of supporting meltwater lednian stoneflies is projected to decline by 81 percent in GNP, compared to the present amount of habitat (Muhlfeld *et al.* 2011, p. 342). Desiccation (drying) of these habitats, even periodically, could eliminate entire populations of the meltwater lednian stonefly and the western glacier stonefly because the aquatic nymphs need perennial flowing water to breathe and to mature before reproducing (Stewart and Harper 1996, p. 217). Given that both stonefly species are believed to be poor dispersers (similar to other Plecopterans; Baumann and Gaufin 1971, p. 277), recolonization of previously occupied habitats is not expected following dewatering and extirpation events. Lack of recolonization by either stonefly species is expected to lead to further isolation between extant occupied streams.

Currently, 107 streams (of 113) occupied by meltwater lednian stonefly and 12 streams (of 16) occupied by western glacier stonefly are supplied by seasonal snowpack, perennial snowpack, ice masses, and some glaciers (Giersch *et al.* 2017, p. 2584; Giersch 2017, pers. comm.). Meltwater from these sources is expected to become inconsistent by 2030 (Hall and Fagre 2003, p. 137). Although the rate at which flows will be reduced or at which dewatering events will occur in these habitats is unclear, we expect, at a minimum, to see decreases in abundance and distribution of both species as a result. By 2030, we also anticipate the remaining occupied habitats to be further isolated relative to current conditions.

*Alpine springs*—Declines in meltwater sources are also expected to affect flows in alpine springs, although likely on a longer time scale than for meltwater streams. Flow from alpine springs in the northern Rocky Mountains originates from glacial or snow meltwater in part, sometimes supplemented with groundwater (Hauer *et al.* 2007, p. 107). For this reason, some alpine springs are expected to be more climate-resilient and persist longer than meltwater streams and may serve as refugia areas for meltwater lednian and western glacier stoneflies, at least in the near term (Ward 1994, p. 283). However, small aquifers feeding alpine springs are ultimately replenished by glacial and other meltwater sources in alpine environments (Hauer *et al.* 1997, p. 908).

Once glaciers in GNP melt, small aquifer volumes and the groundwater influence they provide to alpine springs are expected to decline. Thus by 2030, even flows from alpine springs supplemented with groundwater are expected to decline (Hauer *et al.* 1997, p. 910; Clark *et al.* 2015, p. 14). This expected pattern of decline is consistent with observed patterns of low flow from alpine springs in the Rocky Mountains region and other glaciated regions during years with little snowpack (Hauer *et al.* 1997, p. 910; Robinson *et al.* 2015, p. 9). Further, following complete melting of glaciers, drying of

alpine springs in GNP might be expected if annual precipitation fails to recharge groundwater supplies. Changes in future precipitation levels due to climate change in the GNP region are projected to range from relatively unchanged to a small (~10 percent) annual increase (IPCC 2014, pp. 20–21).

Only 6 streams (out of 113) occupied by meltwater lednian stonefly and 4 streams (out of 16) occupied by western glacier stonefly originate from alpine springs. Thus, despite the potential for some alpine springs to provide refugia for both stonefly species after glaciers melt, only a few populations may benefit from these potential refugia.

*Glacial lake outlets*—Similar to alpine springs, flow from glacial lake outlets is expected to diminish gradually following the projected melting of most glaciers around 2030. Glacial lakes are expected to receive annual inflow from melting snow from the preceding winter, although the amount by which it may be reduced after complete glacial melting is unknown. Reductions in flow from glacial lakes are expected to, at a minimum, decrease the amount of available habitat for both meltwater lednian and western glacier stoneflies.

One occurrence each of the meltwater lednian stonefly and the western glacier stonefly occupy a glacial lake outlet (Upper Grinnell Lake; Giersch *et al.* 2015, p. 58; Giersch *et al.* 2017, p. 2588). Thus, despite the fact that this habitat type may continue to provide refugia for both stonefly species even after the complete loss of glaciers, a small percentage of each species may benefit from these potential refugia. As such, we conclude that habitat degradation in the form of reduced streamflows due to the effects of climate change will impact 95 percent of streams occupied by meltwater lednian stonefly and 75 percent of streams occupied by western glacier stonefly populations within the foreseeable future.

Water Temperature

*Meltwater streams*—Glaciers act as water banks, whose continual melting maintains suitable water temperatures for meltwater lednian stonefly and western glacier stonefly during late summer or drought periods (Hauer *et al.* 2007, p. 107; USGS 2010). As glaciers melt and contribute less volume of meltwater to streams, water temperatures are expected to rise (Hauer *et al.* 1997, p. 909; Clark *et al.* 2015, p. 14). Aquatic invertebrates have specific temperature needs that influence their distribution (Fagre *et al.* 1997, p. 763; Lowe and Hauer 1999, pp. 1637, 1640, 1642; Hauer *et al.* 2007, p. 110); complete glacial melting may result in an increase in water temperatures above the physiological limits for survival or optimal growth for the meltwater lednian and western glacier stoneflies.

As a result of melting glaciers and a lower volume of meltwater input into streams, we expect upward elevational shifts of meltwater lednian stonefly and western glacier stonefly, as they track their optimal thermal preferences. However, both meltwater lednian stonefly and western glacier stonefly already occupy the most upstream portions of these habitats and can move upstream only to the extent of the receding glacier/snowfield. Once the glaciers and snowfields completely melt, meltwater lednian stoneflies and western glacier stoneflies will have no physical habitat left to which to migrate upstream. The likely result of this scenario would be the extirpation of stoneflies from these habitats. Other indirect effects of warming water temperatures on both stonefly species could include encroaching aquatic invertebrate species that may be superior competitors, or changed thermal conditions that may favor the encroaching species in competitive interactions between the species (condition-specific competition).

The majority of streams occupied by meltwater lednian stonefly and one stream occupied by western glacier stonefly are habitats that may warm significantly by 2030, due to the projected complete melting of glaciers and snow and ice fields. Increasing water temperatures may be related to recent distributional declines of western glacier stoneflies within GNP (Giersch *et al.* 2015, p. 61).

*Alpine springs*—Although meltwater contributions to alpine springs are expected to decline as glaciers and perennial snow melt, water temperature at the springhead may remain relatively consistent due to the influence of groundwater, at least in the short term. The springhead itself may provide refugia for both meltwater lednian and western glacier stoneflies, although stream reaches below the actual springhead are expected to exhibit similar increases in water temperature in response to loss of glacial meltwater as those described for meltwater streams. However, as described above, some alpine springs may eventually dry up after glacier and snowpack loss, if annual precipitation fails to recharge groundwater supplies (Hauer *et al.* 1997, p. 910; Robinson *et al.* 2015, p. 9).

Only six streams occupied by the meltwater lednian stonefly (5 percent of total known occupied streams) and four streams occupied by the western glacier stonefly (25 percent of total known occupied streams) originate from alpine springs. Thus, despite the fact that alpine springs may be more thermally stable than meltwater streams and provide thermal refugia to both the meltwater lednian stonefly and the western glacier stonefly, a small percentage of each species may benefit from these potential refugia.

*Glacial lake outlets*—Similar to alpine springs, glacial lake outlets are more thermally stable habitats than meltwater streams. This situation is likely due to the buffering effect of large volumes of glacial lake water supplying these habitats. It is anticipated that the buffering effects of glacial lakes will continue to limit increases in water temperature to outlet stream habitats, even after the loss of glaciers. However, water temperatures are still expected to increase over time following complete glacial loss in GNP. It is unknown whether water temperature increases in glacial lake outlets will exceed presumed temperature thresholds for meltwater lednian and western glacier stonefly in the future. However, given the low water temperatures recorded in habitats where both species have been collected, even small increases in water temperature of glacial lake outlets may be biologically significant and detrimental to the persistence of both species for the reasons described previously.

One stream occupied by meltwater lednian stonefly and the western glacier stonefly is a glacial lake outlet (Upper Grinnell Lake; Giersch *et al.* 2015, p. 58; Giersch *et al.* 2017). Thus, despite the fact that glacial lake outlets may be more thermally stable than meltwater streams and provide thermal refugia to both the meltwater lednian stonefly and the western glacier stonefly, a small percentage of each species may benefit from these potential refugia. Consequently, we conclude that changes in water temperature from climate change are a threat to most populations of both stonefly species now and into the future.

Maintenance and Improvement of National Park Infrastructure

Glacier National Park and Grand Teton National Park are managed to protect natural and cultural resources, and the landscapes within these parks are relatively pristine. However, both National Parks include a number of human-built facilities and structures that support visitor services, recreation, and access, such as the Going-to-the-Sun Road (which bisects GNP) and numerous visitor centers, trailheads, overlooks, and lodges (*e.g.,* NPS 2003a, pp. S3, 11). Maintenance and

improvement of these facilities and structures could conceivably lead to disturbance of the natural environment.

In the proposed listing rule, we mentioned we were aware of one water diversion on Logan Creek in GNP that was scheduled to be retrofitted by the NPS. Logan Creek is occupied by meltwater lednian stoneflies. Since publication of the proposed listing rule, the water diversion retrofit project has been redesigned to avoid any dewatering or instream work in the proposed section of Logan Creek (Aceituno 2017, pers. comm.). Thus, this project is no longer expected to impact meltwater lednian stoneflies, and we no longer incorporate this project into our analysis.

We do not have any information indicating that maintenance and improvement of other GNP or GTNP facilities and structures is affecting either meltwater lednian or western glacier stoneflies or their habitat. While roads and trails provide avenues for recreationists (primarily hikers) to access backcountry areas, most habitats for both the meltwater lednian stonefly and the western glacier stonefly are located in steep, rocky areas that are not easily accessible, even from backcountry trails. Most documented occurrences of both species are in remote locations upstream from human-built structures, thereby precluding any impacts to stonefly habitat from maintenance or improvement of these structures. Given the above information, we conclude that maintenance and improvement of National Park facilities and structures, and the resulting improved access into the backcountry for recreationists, are unlikely to affect meltwater lednian or western glacier stonefly or their habitat.

National Park Visitor Impacts

In 2015, GNP hosted 2.3 million visitors (NPS 2015, entire) and, in 2016, GTNP hosted 4.8 million visitors (NPS 2016, entire). A few of the recent collection sites for the meltwater lednian stonefly (*e.g.,* Logan and Reynolds Creeks in GNP) are more accessible to the public or adjacent to popular hiking trails in GNP and GTNP. Theoretically, human activity (wading) in streams by anglers or hikers could disturb meltwater lednian stonefly habitat. However, we consider it unlikely that many National Park visitors would actually wade in stream habitats where the species has been collected, because the sites are in small, high-elevation streams situated in rugged terrain, and most would not be suitable for angling due to the absence of fish. In addition, the sites in GNP are typically snow covered into late July or August (Giersch 2010a, pers. comm.), making them accessible for only a few months annually. We also note that the most accessible collection sites in Logan Creek near the Logan Pass Visitor Center and the Going-to-the-Sun Road in GNP are currently closed to public use and entry to protect resident vegetation (NPS 2010, pp. J5, J24). Collection sites of western glacier stoneflies in GTNP are also relatively inaccessible to most visitors. We conclude that impacts to the meltwater lednian and western glacier stonefly and their habitat from National Park visitors are not likely to occur.

Wilderness Area Visitor Impacts

Three streams occupied by meltwater lednian stonefly are located in wilderness areas adjacent to GNP, and six streams occupied by the western glacier stonefly are located in the Absaroka/Beartooth Wilderness. Visitor activities in wilderness areas are similar to those described for National Parks, namely hiking and angling. No recreational hiking trails are present near the two streams occupied by meltwater lednian stonefly in the Bob Marshall Wilderness and Great Bear Wilderness (USFS 2015, p. 1) or near the stream occurring in the Mission Mountain Tribal Wilderness. There are several hiking trails near streams occupied by the western glacier stonefly in the Absaroka/Beartooth Wilderness. Similar to the National Parks, stream reaches that harbor the meltwater lednian stonefly and the western glacier stonefly in these wilderness areas are likely fishless due to the high gradient, so wade anglers are not expected to disturb stonefly habitat. Given the remote nature of and limited access to meltwater stonefly and western glacier stonefly habitat in wilderness areas, we do not anticipate any current or future threats to meltwater lednian stoneflies or western glacier stoneflies or their respective habitats from visitor use.

Summary of Factor A

In summary, we expect climate change impacts to fragment or degrade all habitat types that are currently occupied by meltwater lednian and western glacier stoneflies, albeit at different rates. Flows in meltwater streams are expected to be affected first, by becoming periodically intermittent and warmer. Drying of meltwater streams and water temperature increases, even periodically, are expected to reduce available habitat in GNP for the meltwater lednian stonefly by 81 percent by 2030. After 2030, flow reductions and water temperature increases due to continued warming are expected to further reduce or degrade remaining refugia habitat (alpine springs and glacial lake outlets) for both meltwater lednian and western glacier stoneflies. In GTNP and the Absaroka/Beartooth Wilderness, we expect a similar pattern of meltwater stream warming and potential drying. Projected habitat changes are based on observed patterns of flow and water temperature in similar watersheds elsewhere where glaciers have already melted.

We have observed a declining trend in western glacier stonefly distribution over the last 50 years, as air temperatures have warmed in GNP. The addition of newly reported populations of western glacier stonefly provides increased redundancy for the species across its range, bringing the total number of known occupied streams to 13 (up from 4 occupied streams at the time of publishing of the proposed rule). However, the resiliency of all known populations remains low because western glacier stonefly inhabit the most upstream reaches of their meltwater habitats and cannot disperse further upstream if water temperatures warm beyond their thermal tolerances. We expect the meltwater lednian stonefly to follow a similar trajectory, given the similarities between the two stonefly species and their meltwater habitats. Consequently, we conclude that habitat fragmentation and degradation resulting from climate change are significantly affecting both the meltwater lednian and western glacier stoneflies now and into the future. Given the minimal overlap between stonefly habitat and most existing infrastructure or backcountry activities (*e.g.,* hiking), we conclude any impacts from these activities on either the meltwater lednian stonefly or the western glacier stonefly are low.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any threats involving the overutilization or collection of the meltwater lednian or western glacier stonefly for any commercial, recreational, or educational purposes at this time. We are aware that specimens of both species are occasionally collected for scientific purposes to determine their distribution and abundance (*e.g.,* Baumann and Stewart 1980, pp. 655, 658; NPS 2009; Muhlfeld et al. 2011, entire; Giersch et al. 2015, entire). However, both species are comparatively abundant in remaining habitats (*e.g.,* NPS 2009; Giersch 2016, pers. comm.), and we have no information to suggest that past, current, or any collections in the near future will result in population-level

effects to either species. Consequently, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the meltwater lednian or western glacier stonefly now or in the near future.

Factor C. Disease or Predation

We are not aware of any diseases that affect the meltwater lednian or western glacier stonefly. Therefore, we do not consider disease to be a threat to these species now or in the near future.

We presume that nymph and adult meltwater lednian and western glacier stoneflies may occasionally be subject to predation by bird species such as American dipper (*Cinclus mexicanus*) or predatory aquatic insects. Fish and amphibians are not potential predators because these species do not occur in the stream reaches containing the meltwater lednian stonefly and the western glacier stonefly. The American dipper prefers to feed on aquatic invertebrates in fast-moving, clear alpine streams, and the species is native to GNP. As such, predation by American dipper on these species would represent a natural ecological interaction in the GNP (see Synergistic Effects section below for analysis on potential predation/habitat fragmentation synergy). Similarly, predation by other aquatic insects would represent a natural ecological interaction between the species. We have no evidence that the extent of such predation, if it occurs, represents any population-level threat to either meltwater lednian or western glacier stonefly, especially given that densities of individuals within many of these populations are high. Therefore, we do not consider predation to be a threat to these species now or in the near future. In summary, the best available scientific and commercial information does not indicate that the meltwater lednian or western glacier stonefly is affected by any diseases, or that natural predation occurs at levels likely to negatively affect either species at the population level. Therefore, we do not find disease or predation to be threats to the meltwater lednian or western glacier stonefly now or in the near future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Section 4(b)(1)(A) of the Endangered Species Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' We consider relevant Federal, State, and Tribal laws and regulations when evaluating the status of the species. A thorough analysis of existing regulatory mechanisms was carried out and described in the proposed listing rule (81 FR 68379, October 4, 2016). No local, State, or Federal laws specifically protect the meltwater lednian or western glacier stonefly.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size/Genetic Diversity

Small population size can increase risk of extinction, if genetic diversity is not maintained (Fausch *et al.* 2006, p. 23; Allendorf *et al.* 1997, entire). Genetic diversity in the meltwater lednian stonefly is declining and lower than that of two other stonefly species (Jordan *et al.* 2017, p. 9). Genetic diversity of western glacier stonefly is lower than other species in the Zapada genus sampled in GNP (Giersch *et al.* 2015, p. 63). It is presumed that low genetic diversity in meltwater lednian stoneflies and western glacier stoneflies is linked to small effective population sizes and population isolation (Jordan *et al.* 2017, p. 9; Giersch *et al.* 2015, p. 63). Population isolation can limit or preclude genetic exchange between populations (Hotaling *et al.* 2017, p. 9; Fausch *et al.* 2006, p. 8). However, it is unclear how far into the future population-level effects from loss of genetic diversity may appear in the meltwater lednian and western glacier stonefly. Loss of genetic diversity is typically not an immediate threat even in isolated populations with small effective population sizes (Palstra and Ruzzante 2008, p. 3441), but rather is a symptom of deterministic processes acting on the population (Jamieson and Allendorf 2012, p. 580). In other words, loss of genetic diversity due to small effective population size typically does not drive species to extinction (Jamieson and Allendorf 2012, entire); other processes, such as habitat degradation, have a more immediate and greater impact on species persistence (Jamieson and Allendorf 2012). We acknowledge that loss of genetic diversity can occur in small populations; however, in this case, it appears that projected effects to habitat are the primary threat to both stonefly species, not a loss of genetic diversity that may take many years to manifest.

Restricted Range and Stochastic (Random) Events

Narrow endemic species can be at risk of extirpation from random events such as fire, flooding, or drought. Random events occurring within the narrow range of endemic species have the potential to disproportionately affect large numbers of individuals or populations, relative to a more widely distributed species. A restricted range and stochastic events may have greater impacts on western glacier stonefly, compared to meltwater lednian stonefly, because of considerably fewer populations. However, meltwater lednian stonefly is a narrow endemic as well and may be at higher risk of random events when compared to a more widely distributed species. The risk to meltwater lednian and western glacier stoneflies from fire appears low, given that most alpine environments within the species' habitats have few trees and little vegetation to burn. The risk to both species from flooding also appears low, given the relatively small watershed areas available to capture and channel precipitation upslope of most stonefly occurrences.

The risk to the meltwater lednian stonefly from drought appears moderate in the near term because 59 of 113 occupied streams are supplied by seasonal or perennial snowmelt, which would be expected to decline first during drought. For the western glacier stonefly, the threat of drought is also moderate because 6 of 16 occupied streams are likely to be affected by variations in seasonal precipitation and snowpack. The risk of drought in the longer term (after 2030 and when complete loss of glaciers is projected) appears high for both stonefly species. Once glaciers melt, drought or extended drought could result in dewatering events in some habitats. Dewatering events would likely extirpate entire populations almost instantaneously. Natural recolonization of habitats affected by drought is unlikely, given the presumed poor dispersal abilities of both stonefly species and general isolation of populations relative to one another (Hauer *et al.* 2007, pp. 108–110). Thus, we conclude that drought (a stochastic event) will be a threat to both the meltwater lednian stonefly and the western glacier stonefly in the future.

Summary of Factor E

The effect of small population size and loss of genetic diversity does not appear to be having immediate impacts on the meltwater lednian stonefly or the western glacier stonefly, given the high densities of individuals within many streams and that potential effects from loss of genetic diversity would likely occur beyond the timeframe in which habitat-related threats are expected to occur. However, the restricted range of the meltwater lednian and western glacier stonefly make both species vulnerable to the stochastic threat of

drought, which is expected to negatively affect both species within the future.

*Summary of Changes From the Proposed Rule*

Based on information received during the peer review process and public comment periods, we made the following substantive changes (listed below) to the Background portion of the preamble to this final listing rule. In addition, we have added species-specific provisions to 50 CFR 17.47 as a result of new rulemaking actions that pertain to the listing of threatened species; these rulemaking actions and the subsequent additions to this rule are described in section II of the preamble (see below), and the regulatory provisions are set forth at the end of this document in the rule language. The prohibitions provided under this 4(d) rule do not differ from those proposed for the species; however, the manner in which they are implemented (via a species-specific rule rather than referring to the ''blanket'' rule at 50 CFR 17.31) has changed.

1. We incorporated new distribution information for the meltwater lednian stonefly and western glacier stonefly. This information became available to us after the proposed listing rule was published and included a small range expansion for the meltwater lednian stonefly (southwestern Alberta, Canada) and large range expansion for western glacier stonefly of about 500 km (311 mi) south from their previously known range, to now include multiple streams in GTNP in Wyoming and the Absaroka/Beartooth Wilderness in Montana. This new information updated the number of known streams occupied by western glacier stonefly from 4 to 16. This information was incorporated into the analyses under Factors A and E.

2. We incorporated genetics information from a new study by Hotaling *et al.* 2017. This new study confirmed through genetic analysis that the western glacier stonefly was present in multiple streams in GTNP in Wyoming and the Absaroka/Beartooth Wilderness in Montana. This information represents the most current assessment of genetic information for western glacier and meltwater lednian stonefly and was not available when the proposed listing rule was published. This new information was incorporated into the analyses under Factors A and E.

3. We incorporated information on how rock glaciers might respond to climate change under Factor A. Rock glaciers are debris-covered glaciers that are expected to melt more slowly than normal glaciers.

4. We incorporated information on site-specific differences in geology, glacial persistence, and stonefly density between GNP and GTNP. This information clarified differences in habitat and stonefly density across the range of the western glacier stonefly and was incorporated into our analysis under Factor A.

5. We updated literature citations throughout Factors A and E. We updated several pieces of literature that were originally cited as unpublished reports, but were subsequently published in scientific journals after the proposed listing rule published in the **Federal Register.** We incorporated one study on meltwater lednian stonefly genetics that was not cited in the proposed rule (Jordan *et al.* 2017) in Factor E. We also incorporated two additional studies (Clark *et al.* 2015; Leppi *et al.* 2012) on the projected effects of climate change on stream runoff in Factor A.

6. We clarified minor inaccuracies related to stonefly distribution and dispersal capability. This included clarifying areas of uncertainty.

7. We incorporated potential effects of population isolation into our analysis of Factor E. We added a paragraph discussing the potential effects of population isolation and reduced genetic diversity on stonefly viability.

8. We changed the terminology used to describe the distribution of the two species. We used the term ''populations'' in the proposed listing rule to reference groups of stoneflies in certain areas that we believed likely constituted an interbreeding population. However, there is no empirical evidence to support the use of the term ''population,'' so we now refer instead to the number of distinct streams that are occupied by both stonefly species when discussing their distribution and current and future status. The terminology change was incorporated into our analyses under Factors A and E.

9. We reevaluated whether critical habitat for both stonefly species is prudent. Our October 4, 2016, proposed rule included a determination that critical habitat for the meltwater lednian stonefly and western glacier stonefly was prudent but not determinable at that time (81 FR 68379). Since that time, the Service finalized regulations related to listing species and designating critical habitat (84 FR 45020, August 27, 2019), which revised the regulations that implement section 4 of the Act and clarify circumstances in which critical habitat may be found not prudent. Regulations at 50 CFR 424.12(a)(1) provide the circumstances when critical habitat may be not prudent, and we have determined that a designation of critical habitat for these species is not prudent, as discussed further below.

*Summary of Comments and Recommendations*

In the proposed rule published on October 4, 2016 (81 FR 68379), we requested that all interested parties submit written comments on the proposal by December 5, 2016. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Kalispell InterLake, Great Falls Tribune, Bozeman Chronicle, Billings Gazette, and Jackson Hole News and Guide. On October 31, 2017, we reopened the comment period on our proposed listing rule to allow the public to comment on new information regarding the known distribution of western glacier stonefly (82 FR 50360). We did not receive any requests for a public hearing. All substantive information provided during both comment periods has either been incorporated directly into this final determination or addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with stoneflies and their habitat, biological needs, and threats. We received responses from three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of meltwater lednian stonefly and western glacier stonefly. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into this final rule as appropriate.

*(1) Comment:* Several peer reviewers noted that new genetics information (*i.e.,* Hotaling *et al.* 2017) for meltwater lednian and western glacier stoneflies was now available that was not available when the proposed listing rule was published.

*Our Response:* We are aware of the genetic analysis by Hotaling *et al.,* and we have fully incorporated their findings and conclusions into this final

listing rule in the Factors A and E analyses.

*(2) Comment:* One peer reviewer noted that at least one stream occupied by western glacier stonefly originates from a rock glacier. Since rock glaciers are covered by debris, their rate of melting may differ from those glaciers not covered by debris. The reviewer suggested we add a brief description of this potential phenomenon.

*Our Response:* We added a paragraph to this final listing rule discussing this phenomenon and its implications for western glacier stonefly habitat in our Factor A analyses.

*(3) Comment:* One peer reviewer noted that the Service did not consider differences in geology, glacial persistence, and stonefly density between GNP and GTNP in the proposed rule.

*Our Response:* We made several clarifications and added information on the suggested topics in this final listing rule in our Factor A analyses.

*(4) Comment:* Several peer reviewers noted that newer literature citations were available to support statements made in the proposed listing rule with regard to stonefly genetics and population isolation.

*Our Response:* We incorporated the newer literature citations (*i.e.,* Giersch 2017, pers. comm.; Giersch *et al.* 2015; Giersch *et al.* 2017; Jordan *et al.* 2017; Hotaling *et al.* 2017) and updated all stonefly occurrence data with the most current information from Giersch *et al.* 2017 in Background and our Factors A and E analyses.

*(5) Comment:* Several peer reviewers noted inaccuracies in the proposed listing rule in regard to how the Service described stonefly distribution and dispersal capability.

*Our Response:* We clarified areas of uncertainty with respect to stonefly distribution and dispersal capability. The Service also added several clarifying statements on stonefly distribution to highlight areas of uncertainty in Background and our Factors A and E analyses.

*(6) Comment:* One peer reviewer noted that the Service did not fully account for the potential effects of population isolation in our threats analysis.

*Our Response:* We added a paragraph on the potential effects of population isolation, including recent genetics information from Jordan *et al.* 2017, in our Factor E analyses.

*(7) Comment:* Several peer reviewers noted that we used the term ''population'' in the proposed listing rule, but that it was never defined or there was no explanation of how the number of occupied streams translated to the number of stonefly populations.

*Our Response:* We deleted any reference to a specific number of stonefly populations in the final listing rule. Instead, we report the number of streams known to be occupied by meltwater lednian and western glacier stoneflies. This approach is consistent with the terminology and methodology used in Giersch *et al.* 2017, which is the best available science on the status and distribution of both stonefly species. These changes were made in Background and in our Factors A and E analyses.

Comments From States

*(8) Comment:* A comment from one State expressed concern that the genetic information on western glacier stonefly relied upon in the proposed listing rule was incomplete. The State provided evidence that a more robust genetic analysis was under way, the results (contained in Hotaling *et al.* 2017) of which would aid in highlighting the distinctness or relatedness among western glacier stoneflies across their known range.

*Our Response:* We were aware of the ongoing genetic analysis by Hotaling *et al.,* and now that the results are available, we have fully incorporated their findings/conclusions into the final listing rule in our Factors A and E analyses.

*(9) Comment:* One State provided the results of a recent genetics study (Hotaling *et al.* 2017) that confirmed western glacier stonefly presence in GTNP and the Absaroka/Beartooth Wilderness. The State did not support listing the western glacier stonefly. Based on the results of the provided information that the species was more widespread than previously believed, the State suggested this information could indicate the species is likely present in more areas to the north and south of where it is currently known.

*Our Response:* We incorporated the results of Hotaling *et al.* 2017 into this final listing rule. A review of satellite imagery indicates there may be some patches of permanent snow/ice (and thus potential western glacier stonefly habitat) in the Wyoming and Wind River ranges of Wyoming, south of Grand Teton National Park. However, we are not aware of any surveys that have been conducted in that area. The USGS has sampled in some areas between Grand Teton National Park/Beartooth and Glacier National Park, but have not documented western glacier stoneflies in that area. An increase in western glacier stonefly redundancy across their range is expected to help the species survive catastrophic events. However, the primary threat to western glacier stonefly habitat is habitat degradation and fragmentation from climate change. We expect climate change to have similar, negative effects on western glacier stonefly habitat rangewide. Thus, increased redundancy, in this case, is not expected to translate into increased resiliency or increased species viability. In addition, we must base our listing determination on the best available scientific and commercial information, and we have no information that western glacier stonefly occur in other areas than where the species is currently known.

Public Comments

*(10) Comment:* One public commenter noted an interest in seeing more information obtained and reviewed in regard to obtaining a better understanding of the true extent of stonefly habitat, the consequences of these species being listed on GNP's visitation and infrastructure, and what measures may be taken on a local level to help these species survive and grow in order to prevent economic and other hardships that come with listing.

*Our Response:* According to the Act, we must base our determination on the best available scientific information. We included the results of the most recent status review of meltwater lednian and western glacier stonefly (*i.e.,* Giersch *et al.* 2017) in this final listing rule in our Factor A analyses. The Service is not allowed to consider economic impacts in our determination on whether to list a species under the Act. However, we believe that those impacts would be minimal, given the limited overlap of stonefly habitats with areas of visitor use and park infrastructure. Conservation measures are addressed in this document below under ''Available Conservation Measures.''

*(11) Comment:* One commenter expressed support for listing both stonefly species and provided a link to a scientific journal article describing a 75 percent decline in winged insects in Germany over the past 27 years.

*Our Response:* The scientific information in the provided journal article indicates a long-term decline in a suite of winged insects in Germany. However, the insects in this study did not have an aquatic life-history component like both meltwater lednian stonefly and western glacier stonefly, and occupied much different habitat types. Further, climate variables were not found to be significant drivers of the documented insect biomass decline. Thus, we did not find the results from the provided study informative to trend

observations of stoneflies. Therefore, we did not include information from the provided study in our assessment of either stonefly species. Rather, we considered studies specific to meltwater lednian stonefly, western glacier stonefly, and other more closely related species in similar geographic areas to be the best available scientific information on which to base our assessment.

*(12) Comment:* Two joint commenters expressed support for listing both stonefly species and provided multiple scientific journal articles for the Service to assess.

*Our Response:* Of the 10 scientific articles provided, 3 (Jordan *et al.* 2016; Giersch *et al.* 2016; Treanor *et al.* 2013) were already included and cited in the proposed listing rule. Three of the other articles provided (Hotaling *et al.* 2017a; Clark *et al.* 2015; Leppi *et al.* 2012) were added to the final listing rule in our Factors A and E analyses. The remaining four articles (Hotaling *et al.* 2017b; Wuebbles *et al.* 2017; Chang and Hansen 2015; Al-Chokhacky *et al.* 2013) were broad in nature (large-scale climate information relevant to other ecosystems and species) and were not included in the final listing rule because we had finer scale information more relevant to western glacier stonefly and meltwater lednian stonefly and their habitats.

*Determination of Western Glacier Stonefly and Meltwater Lednian Stonefly Status*

Status Throughout All of Its Range

We find that the meltwater lednian stonefly is likely to become endangered throughout all of its range within the foreseeable future. The meltwater lednian stonefly occupies a relatively narrow range of alpine habitats that are expected to become fragmented and degraded by climate change, based on empirical glacier melting rates. Meltwater stonefly habitat is likely to be impacted by several factors that are expected to reduce the overall viability of the species to the point that it meets the definition of a threatened species.

We also find that the western glacier stonefly is likely to become endangered throughout all of its range within the foreseeable future. Similar to meltwater lednian stonefly, the western glacier stonefly occupies a relatively narrow range of alpine habitats that are expected to become fragmented and degraded by climate change, based on empirical glacier melting rates. In addition, decreasing distribution of western glacier stonefly has been documented in GNP. Western glacier stonefly habitat is likely to be impacted by several factors that are expected to reduce the overall viability of the species to the point that it meets the definition of a threatened species. Therefore, on the basis of the best available scientific and commercial information, we are listing the meltwater lednian stonefly and western glacier stonefly as threatened species in accordance with sections 3(6) and 4(a)(1) of the Act.

We find that an endangered species status is not appropriate for the meltwater lednian stonefly because the species is not currently in danger of extinction as it faces relatively low near-term risk of extinction. Although the effects of climate change and drought are currently affecting, and expected to continue affecting, the alpine habitats occupied by the meltwater lednian stonefly, meltwater sources are expected to persist in the form of alpine springs and glacial lake outlets after the projected melting of most glaciers in GNP by 2030. Densities and estimated abundance of the meltwater lednian stonefly are currently relatively high. In addition, some habitats that are supplied by seasonal snowpack continue to be occupied by meltwater lednian stonefly. These findings suggest that, as climate change continues to impact stonefly habitat, some populations will likely persist in refugia areas at least through the foreseeable future.

We also find that an endangered species status is not appropriate for the western glacier stonefly because the species is not currently in danger of extinction as it faces relatively low near-term risk of extinction. Although the effects of climate change and drought are currently affecting, and expected to continue affecting, the alpine habitats occupied by the western glacier stonefly, meltwater sources are expected to persist in the form of alpine springs and glacial lake outlets after the projected melting of most glaciers in GNP by 2030. Although only 16 streams are known to be occupied by western glacier stonefly, densities and estimated abundance of the western glacier stonefly are currently relatively high in many streams. These findings suggest that, as climate change continues to impact stonefly habitat, some populations will likely persist in refugia areas at least through the foreseeable future.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we have determined that habitat fragmentation and degradation in the form of declining streamflows and increasing water temperatures resulting from climate change are currently affecting habitat for the meltwater lednian stonefly and the western glacier stonefly (Factor A). Most glaciers in GNP are expected to melt by 2030, based on past empirical melting rates and projections of future air temperature increases in a region that is warming at 1.8 times the global rate. Habitat with a high probability of occupancy for the meltwater lednian stonefly is modeled to decrease 81 percent by 2030 (Muhlfeld et al. 2011, p. 342). Drought is also expected to affect habitat occupied by meltwater lednian stonefly and western glacier stonefly that is supplied by those meltwater sources (Factor E). These threats and responses are reasonably foreseeable because some are already evident and we have no indication that the rate of climate change will slow within the foreseeable future. As a result of this anticipated loss of habitat, only a few refugia streams and springs are expected to persist in the longer term. Recolonization of habitats where known occurrences of either species are extirpated is not anticipated, given the presumed poor dispersal abilities of both species. Thus, after assessing the best available information, we conclude that meltwater lednian stonefly and the western glacier stonefly are not currently in danger of extinction, but are likely to become in danger of extinction within the foreseeable future throughout all of their ranges.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore

consistent with the opinion in that case. Because we have determined that the meltwater lednian stonefly and the western glacier stonefly are likely to become an endangered species within the foreseeable future throughout all of their ranges, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the meltwater lednian stonefly and the western glacier stonefly meet the definition of threatened species. Therefore, we are listing the meltwater lednian stonefly and the western glacier stonefly as threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

*Available Conservation Measures*

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

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

Recovery planning includes the development of a recovery outline within 30 days of when the species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*) or from our Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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

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

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

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

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Forest Service (Flathead and Custer/Gallatin National Forests) and NPS (GNP, GTNP); issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species being listed. The discussion below about the 4(d) rule complies with our policy.

## II. Final Rule Issued Under Section 4(d) of the Act

*Background*

Section 4(d) of the Act states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened

species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also approved 4(d) rules that do not address all of the threats a species faces (*see State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species,'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

In our proposed rule to list the meltwater lednian stonefly and the western glacier stonefly published on October 4, 2016 (81 FR 68379), we referenced a section of the regulation that provided threatened species with the same protections as endangered species also known as ''blanket rules'' (50 CFR 17.31). The Service has since published regulations on August 27, 2019 (84 FR 44753), amending 50 CFR 17.31 and 17.71 that state ''the blanket rules will no longer be in place, but the Secretary will still be required to make a decision about what regulations to put in place for the species.'' While the Service always had the ability to promulgate species-specific 4(d) rules for threatened species, moving forward we will promulgate a species-specific 4(d) rule for each species that we determine meets the definition of a threatened species. In the preamble to our 2016 proposed rule, we determined that a rule that included the prohibitions set forth in 50 CFR 17.21 for endangered species would be necessary and advisable for the conservation of the meltwater lednian stonefly and the western glacier stonefly. Consequently, we are promulgating a species-specific 4(d) rule that outlines the protections that were described in the 2016 proposed rule; see Provisions of the 4(d) Rule, below.

Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the meltwater lednian stonefly and the western glacier stonefly. As discussed under Summary of Biological Status and Threats, the Service has concluded that the meltwater lednian stonefly and the western glacier stonefly are at risk of extinction within the foreseeable future due to loss of habitat due to glacier melting. The provisions of this species-specific 4(d) rule would promote conservation of the meltwater lednian stonefly and the western glacier stonefly by prohibiting take of both species. The provisions of this rule are one of many tools that the Service would use to promote the conservation of the meltwater lednian stonefly and the western glacier stonefly.

*Provisions of the 4(d) Rule*

This 4(d) rule will provide for the conservation of the western glacier stonefly and meltwater lednian stonefly by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

As discussed under Summary of Biological Status and Threats (above), degraded habitats resulting from reduced flows and increased water temperatures (Factor A) are affecting the status of the meltwater lednian stonefly and the western glacier stonefly. Some activities could occur within the range of the species that have the potential to impact individual meltwater lednian stoneflies and the western glacier stoneflies, including: Trail construction and maintenance, road maintenance and repair, etc. Regulating these activities may help preserve the species' remaining populations, slow its rate of decline, and decrease synergistic, negative effects from other stressors.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take may reduce effects to individual stonefly life stages comprising the species' remaining populations.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve western glacier stonefly and meltwater lednian stonefly that may result in otherwise prohibited take without additional authorization. The State of Montana

covers the meltwater lednian stonefly and the western glacier stonefly in Montana's State Wildlife Action Plan (Montana Fish, Wildlife, and Parks 2015, p. 439).

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the western glacier stonefly and meltwater lednian stonefly. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service.

## III. Critical Habitat

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that the Secretary shall designate critical habitat at the time the species is determined to be an endangered species or threatened species to the maximum extent prudent and determinable. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be

expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) After analyzing the best scientific data available, the Secretary otherwise determines that designation of critical habitat would not be prudent.

In our proposed rule to list the meltwater lednian stonefly and western glacier stonefly (81 FR 68379, October 4, 2016), we determined that critical habitat was prudent, but not determinable at that time. That determination regarding prudency was based on our regulations (50 CFR 424.12(a)(1)) as they existed at that time in 2016. Since that time, the Service published regulations related to listing species and designating critical habitat (84 FR 45020, August 27, 2019), which revised the regulations that implement section 4 of the Act and clarify circumstances in which designation of critical habitat may be found to be not prudent, as explained above. Given the revisions to the critical habitat regulations, we have reevaluated our determination on whether designation of critical habitat for these species is prudent.

As explained above, habitats for both the meltwater lednian stonefly and the western glacier stonefly originate from meltwater sources that will be impacted by any projected warming, including glaciers, rock glaciers, and small icefields, perennial and seasonal snowpack, alpine springs, and glacial lake outlets (Hauer *et al.* 2007, p. 107; Giersch *et al.* 2017, p. 2584). The sole threats to meltwater lednian stonefly and western glacier stonefly are the fragmentation and degradation of these habitats in the form of declining streamflows and increasing water temperatures resulting from climate change. Drought is also expected to affect habitat occupied by meltwater lednian stonefly and western glacier stonefly that is supplied by meltwater sources. Given the remote nature of these species' alpine habitats and extremely limited human activity in these areas (see *Habitat* and Factor A discussions above), we found no other habitat-based threats to either species. There are no management actions resulting from consultations under section 7(a)(2) of the Act that could address the impacts of climate change and drought on the meltwater sources that supply the habitats for these species (see the Service's May 14, 2008 Director's Memo on Expectations for Consultations on Actions that Would Emit Greenhouse Gases, which notes that section 7 consultation would not be required to address impacts of a facility's greenhouse gas emissions). For the meltwater lednian stonefly and western glacier stonefly, we find that threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations on these species under section 7(a)(2) of the Act. Therefore, in accordance with 50 CFR 424.12(a)(1), we determine that critical habitat is not prudent for the meltwater lednian stonefly and western glacier stonefly.

*Required Determinations*

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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As part of our responsibilities to communicate meaningfully and work directly with Tribal Governments, we informed the Confederated Kootenai Salish Tribe of our intent to conduct a status review on meltwater lednian stonefly, and solicited any information the Tribe may have regarding the sole population of meltwater lednian stonefly occurring in Tribal wilderness on Confederated Kootenai Salish Tribe land. The Tribe did not provide any information in response to our request.

*References Cited*

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R6–ES–2016–0086 and upon request from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

*Authors*

The primary authors of this final rule are the staff members of the Montana Ecological Services Office.

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

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

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.11(h) by adding entries for ''Stonefly, meltwater lednian'' and ''Stonefly, western glacier'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''Insects'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

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(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * | * | * | * | * |
| **Insects** | | | | |
| * | * | * | * | * |
| Stonefly, meltwater lednian | *Lednia tumana* | Wherever found | T | 84 FR [*Insert* ***Federal Register*** *page where the document begins*]; 11/21/2019; 50 CFR 17.47(c).[4d] |
| Stonefly, western glacier | *Zapada glacier* | Wherever found | T | 84 FR [*Insert* ***Federal Register*** *page where the document begins*]; 11/21/2019; 50 CFR 17.47(c).[4d] |
| * | * | * | * | * |

■ 3. Amend § 17.47 by adding paragraph (c) to read as follows:

**§ 17.47 Special rules—insects.**

* * * * *

(c)Western glacier stonefly (*Zapada glacier*) and meltwater lednian stonefly (*Lednia tumana*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to western glacier stonefly and meltwater lednian stonefly except as provided under paragraph (c)(2) of this section and §§ 17.4 and 17.5. It is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to these species:

(i) Import or export, as set forth at § 17.21(b).

(ii) Take, as set forth at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(3) and (4) for endangered wildlife.

(iii) Possess and engage in other acts, as set forth at § 17.21(d)(2) for endangered wildlife.

(iv) In addition to any other provisions of this part, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, take those threatened species of wildlife that are covered by an approved cooperative agreement to carry out conservation programs.

Dated: November 13, 2019.

**Margaret E. Everson,**

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

[FR Doc. 2019–25195 Filed 11–20–19; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 160426363–7275–02; RTID 0648–XS016]**

## Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2019–2020 Commercial Closure for King Mackerel in the Gulf of Mexico Western Zone

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for commercial king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. NMFS has determined that the commercial quota for king mackerel in the western zone of the Gulf EEZ will be reached by November 21, 2019. Therefore, NMFS closes the western zone of the Gulf EEZ to commercial king mackerel fishing on November 21, 2019. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective at noon, central time, on November 21, 2019, until 12:01 a.m., central time, on July 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf migratory group of king mackerel (Gulf king mackerel) below apply as either round or gutted weight.

The commercial quota for the Gulf king mackerel in the western zone is 1,096,000 lb (497,137 kg) for the current fishing year, July 1, 2019, through June 30, 2020 (50 CFR 622.384(b)(1)(i)).

The western zone of Gulf king mackerel is located in the EEZ between a line extending east from the border of the United States and Mexico, and 87°31.1′ W. long., which is a line extending south from the state boundary of Alabama and Florida. The western zone includes the EEZ off Texas, Louisiana, Mississippi, and Alabama.

Regulations at 50 CFR 622.388(a)(1)(i) require NMFS to close the commercial sector for Gulf king mackerel in the western zone when the zone's commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the commercial quota for Gulf king mackerel in the western zone will be reached by November 21, 2019.

Accordingly, the western zone is closed to commercial fishing for Gulf king mackerel effective at noon, central time, on November 21, 2019, through the end of the current fishing year on June 30, 2020.

During the commercial closure, a person on board a vessel that has been issued a valid Federal commercial or charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in the western zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(ii) and (a)(2), as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)).

Also during the commercial closure, king mackerel from the closed zone, including those harvested under the recreational bag and possession limits, may not be purchased or sold. This prohibition does not apply to king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

**Classification**

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.384(e) and 622.388(a)(1)(i), and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the king mackerel stock. The capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 15, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–25222 Filed 11–18–19; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 84, No. 225
Thursday, November 21, 2019

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

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 7 and Part 160

**[Docket ID OCC–2019–0027]**

**RIN 1557–AE73**

## Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Federal law establishes that national banks and savings associations (banks) may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution in the state where the bank is located. Federal law also provides national banks and Federal savings associations with the authority to enter into and assign contracts. Well-established authority also authorizes banks to sell, assign, or otherwise transfer loans. Despite these clear authorities, recent developments have created uncertainty about the ongoing validity of the interest term after a bank sells, assigns, or otherwise transfers a loan. This rule would clarify that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer.

**DATES:** Comments must be received by January 21, 2020.

**ADDRESSES:** Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Permissible Interest on Loans that are Sold, Assigned, or Otherwise Transferred'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta.*

*Regulations.gov Classic:* Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2019–0027'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

*Regulations.gov Beta:* Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2019–0027'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com*.

- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0027'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta.*

*Regulations.gov Classic:* Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2019–0027'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Regulations.gov Beta:* Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2019–0027'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

**FOR FURTHER INFORMATION CONTACT:** Andra Shuster, Senior Counsel, Karen

McSweeney, Special Counsel, or Priscilla Benner, Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Federal law authorizes national banks and savings associations (banks) to charge interest at the maximum rate permitted to any state-chartered or licensed lending institution in the state where the bank is located. Pursuant to Federal law, national banks and Federal savings associations may also enter into contracts. Inherent in this authority is the authority to assign such contracts. In addition, well-established authority authorizes banks to sell, assign, or otherwise transfer their loans.

Despite these clear authorities, recent developments have created uncertainty about the ongoing validity of the interest term after a bank sells, assigns, or otherwise transfers a loan. After considering the principles discussed below, the OCC has concluded that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer. This proposed rule would codify this conclusion.

## II. Analysis

Various provisions of Federal banking law, taken together, show that Congress created an integrated Federal scheme that permits national banks and Federal savings associations to operate across state lines without being hindered by differing state laws. *See, e.g.,* 12 U.S.C. 24, 85, 86, 371, and 1461 *et seq.* The National Bank Act (NBA) provides for a system of national banks to serve as ''instrumentalities of the federal government,'' [1] which are ''designed to be used to aid the government in the administration of an important branch of the public service.'' [2] The NBA contemplates that national banks will operate nationwide, and accordingly, it provides national banks ''protection from 'possible unfriendly State legislation.' '' [3] Similarly, through the Home Owners' Loan Act (HOLA), ''Congress delegated to the [Federal Home Loan Bank Board (FHLBB)] broad authority to establish and regulate 'a uniform system of [savings and loan] institutions where there are not any now,' and to 'establish them with the force of the government behind them, with a national charter.' '' [4]

To carry out Congress's purposes, the NBA vests in national banks enumerated powers and ''all such incidental powers as shall be necessary to carry on the business of banking.'' 12 U.S.C. 24(Seventh). HOLA provides Federal savings associations with broad authority to engage in banking activities. 12 U.S.C. 1464. These statutes grant national banks and Federal savings associations the power to make contracts, 12 U.S.C. 24(Third) and 1464,[5] and the power to lend money. 12 U.S.C. 24(Seventh) and 1464.

While not expressly stated in these statutes, among the essential rights normally associated with the power to contract is the ability to subsequently assign some or all of the benefits of a contract to a third party.[6] Restatement (Second) of Contracts § 317 (1981). Generally, all contract rights may be assigned in the absence of clear language expressly prohibiting the assignment or if the assignment would ''[(1)] materially change the duty of the obligor or [(2)] materially increase the obligor's burden or risk under the contract or [(3)] the contract involves obligations of a personal nature.'' 29 Williston on Contracts § 74:10 (4th ed.) (citations omitted). *But see* 29 Williston on Contracts § 74:23 (stating that certain assignments may be specifically forbidden by statute or may otherwise be void as against public policy). All ordinary business contracts are assignable, and a contract for money to become due in the future is among the types of contracts that normally may be assigned.[7] Upon assignment, the third-party assignee steps into the shoes of the bank; the assignee acquires and may enforce the rights the bank assigned to it under the contract.[8]

In the banking context, the authority of banks to sell, assign, or otherwise transfer (assign) a loan is a well-established element of the authority to make loans. Since at least 1848, the Supreme Court has recognized that a bank's authority to assign a loan is a power incident to the authority to make one, even if assignment is not expressly mentioned in the statute.[9] Thus, the Federal statutes that provide national banks and Federal savings associations the authority to make loans also confer upon them the power to assign loans. 12 U.S.C. 24(Seventh), 371, and 1464(c); *see also* 12 CFR 7.4008(a), 34.3, and 160.30.

As part of the authority to lend granted to national banks, Federal law establishes a clear and comprehensive scheme governing the interest that a bank may charge. Twelve U.S.C. 85 provides that a national bank may ''charge on any loan . . . interest at the rate allowed by the laws of the State . . . where the bank is located.'' [10] Similarly, 12 U.S.C. 1463(g), which is modeled on and interpreted *in pari materia* with section 85,[11] provides that savings associations may ''[n]otwithstanding any State law . . . charge interest . . . at the rate allowed by the laws of the State in which such savings association is located.'' [12]

The intent of Congress when it originally enacted section 85 in 1864 was to ensure parity between national and state banks in order to allow the new Federal charter to flourish and to establish a uniform national currency.[13] When Congress enacted section 1463(g), it intended to place savings associations on equal footing with their national bank competitors. *See supra* note 11.

[1] *Davis* v. *Elmira Sav. Bank,* 161 U.S. 275, 283 (1896).

[2] *Farmers' & Mechanics' Nat'l Bank* v. *Dearing,* 91 U.S. 29, 33 (1875).

[3] *Beneficial Nat'l Bank* v. *Anderson,* 539 U.S. 1, 10 (2003) (quoting *Tiffany* v. *Nat'l Bank of Mo.,* 85 U.S. 409, 412 (1873)).

[4] *Fid. Fed. Sav. & Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 166 (1982) (citations and footnote omitted).

[5] Office of Thrift Supervision (OTS) letter from Carolyn J. Buck, November 22, 1995, 1995 WL 790839.

[6] Rights authorized by a statute need not always be express—they are often implicit in the other rights given by the statute. *See, e.g., Franklin Nat'l Bank* v. *New York,* 347 U.S. 373, 377–78 (1954) (concluding that the right to accept savings deposits implicitly included the right to advertise).

[7] *See Bank of America, N.A.* v. *Rice,* 780 SE2d 873 (N.C. Ct. App. 2015).

[8] *Dean Witter Reynolds Inc.* v. *Var. Annuity Life Ins. Co.,* 373 F.3d 1100, 1110 (10th Cir. 2004) (stating that it was long-established that ''an assignee stands in the shoes of the assignor'').

[9] *See Planters' Bank of Miss.* v. *Sharp,* 47 U.S. 301, 322–23 (1848); *see also supra* note 6.

[10] Alternatively, section 85 allows a national bank to charge ''1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located.'' 12 U.S.C. 85. Through interpretive letters, the OCC has addressed where a national bank is located for purposes of section 85. *See, e.g.,* OCC Interpretive Letter 822 (Feb. 17, 1998).

[11] *See Gavey Props./762* v. *First Fin. Sav. & Loan Ass'n,* 845 F.2d 519, 521 (5th Cir. 1988) (''Given the similarity of language, the conclusion is virtually compelled that Congress sought to provide federally insured credit institutions with the same 'most-favored lender' status enjoyed by national banks.''); 61 FR 50951, 50968 (Sept. 30, 1996) (''OTS and its predecessor, the FHLBB, have long looked to the OCC regulation and other precedent interpreting the national bank most favored lender provision for guidance in interpreting [12 U.S.C. 1463(g)] and OTS's implementing regulation.''); OTS letter from Harris Weinstein, December 24, 1992, 1992 WL 12005275.

[12] Section 1463(g) also allows savings associations to charge an alternate rate that is based on the relevant Federal Reserve discount rate for 90-day commercial paper. *See supra* note 10.

[13] Cong. Globe, 38th Cong., 1st Sess., 2123–27 (1864). *See Roper* v. *Consurve, Inc.,* 578 F.2d 1106 (5th Cir. 1978), *affirmed* 445 U.S. 326 (1980).

Sections 85 and 1463(g) have been interpreted to permit a bank to charge interest at the highest rate allowed to competing lenders by the state where the bank is located (known as the ''most favored lender'' doctrine) and to export this rate to borrowers in other states, regardless of any other state law purporting to limit the interest permitted on bank loans.[14]

Federal law thus establishes that a bank may enter into a loan contract, charge interest at the maximum rate permitted in the state where it is located, and subsequently assign the loan. These authorities, in turn, provide the fundamental transactional building blocks that are used to construct important portions of the nation's banking system. For example, the ability to originate loans and subsequently securitize them on the secondary market depends upon the ability of banks to assign all or part of their ownership interest in a loan.

Despite the fact that these well-established and heretofore well-understood authorities previously had not been seriously called into question, a recent decision from the United States Court of Appeals for the Second Circuit has created uncertainty regarding the ongoing validity of the interest term determined under section 85 after a national bank assigns a loan.[15] Through this rulemaking, the OCC seeks to end this uncertainty by clarifying that when a bank assigns a loan, interest permissible prior to the assignment will continue to be permissible following the assignment.

Multiple legal principles support the OCC's interpretation. First, well before the passage of the NBA or the HOLA, the Supreme Court recognized the longstanding common law principle of valid-when-made and described it as a ''cardinal rule[ ] in the doctrine of usury.'' [16] The valid-when-made principle provides that if a loan is non-usurious at origination, the loan does not subsequently become usurious when assigned.[17] This longstanding rule relating to usury certainly applies here; a loan by a bank that complies with section 85 or 1463(g) is by definition not usurious when it is originated, and a subsequent assignment of the loan does not render the loan usurious.

Apart from being the natural result if one applies the valid-when-made principle, this conclusion is also supported by banks' ability to assign contracts. As noted above, national banks and Federal savings associations may assign their loan contracts to third parties. Because the assignee steps into the bank's shoes upon assignment, the third party receives the benefit of and may enforce the permissible interest term. Again, the loan does not become usurious after the assignment simply because the third party is enforcing the contractually agreed upon interest term.[18] An assignment does not normally change the borrower's obligation to repay in any material way. *See* 29 Williston on Contracts § 74:10.

Finally, a bank's well-established authority to assign a loan may be unduly curtailed if the bank cannot be certain that interest permissible prior to the assignment will remain permissible afterwards. Congress would not have intended to limit banks' authority in this manner.[19] Even in the mid-nineteenth century, banks' ability to assign their loans was recognized as an important tool to manage liquidity and enhance safety and soundness. As the Supreme Court stated, ''[banks] must be able to assign or sell [their] notes when necessary and proper, as, for instance, to procure more specie in an emergency, or return an unusual amount of deposits withdrawn, or pay large debts for a banking-house.'' [20] The Court further observed that while a bank may have other tools to respond to these circumstances, assigning loans may be the ''wiser and safer'' course of action.[21] Although the banking system has evolved significantly in the 150 years since *Planters' Bank,* banks of all sizes continue to routinely rely on loan assignments and securitization to access alternative funding sources, manage concentrations, improve financial performance ratios, and more efficiently meet customer needs. This risk management tool would be significantly weakened if the permissible interest on assigned loans were uncertain or if assignment of the permissible interest were limited only to third parties that would be subject to the same or higher usury caps.

The conclusion that interest permissible prior to the assignment of a loan continues to be permissible following the assignment is also consistent with the purpose of sections 85 and 1463(g)—to facilitate banks' ability to operate across state lines by eliminating the burden of complying with each state's interest laws. This ability to operate on an interstate basis under a uniform set of standards, including with respect to interest, is fundamental to the character of national banks and has been since their inception.[22] Recognizing the value of this uniformity in applicable interest law, Congress extended the principles of section 85 to savings associations, state-chartered insured depository institutions, and insured credit unions in 1980. *See* 12 U.S.C. 1463(g), 1785, and 1831d. Then, in 2010, while carefully examining the application of state law to Federally-chartered banks, Congress expressly preserved national banks' authority under section 85 and thereby reaffirmed the importance of section 85 and similar statutes to the banking system.[23] Reading sections 85 and 1463(g) as applying only to loans that a bank holds on its books would thwart this statutory scheme and would be inconsistent with the valid-when-made and assignability principles discussed above.

Based on the foregoing, the OCC concludes that, as a matter of Federal law, banks may assign their loans without impacting the validity or enforceability of the interest.

## III. Summary of the Proposal

The OCC would amend 12 CFR 7.4001 and 12 CFR 160.110 by adding a new paragraph, which would provide that interest on a loan that is permissible under sections 85 and 1463(g)(1), respectively, shall not be affected by the sale, assignment, or other transfer of the loan.[24] This rule would

[14] *See Marquette Nat'l Bank of Minneapolis* v. *First of Omaha Serv. Corp.,* 439 U.S. 299, 310–14 (1978) (''[The bank] cannot be deprived of [its] location merely because it is extending credit to residents of a foreign State.'').

[15] *See Madden* v. *Midland Funding, LLC,* 786 F.3d 246 (2nd Cir. 2015).

[16] *See Nichols* v. *Fearson,* 32 U.S. (7 Pet.) 103, 109 (1833).

[17] *See id.* (''[A] contract, which, in its inception, is unaffected by usury, can never be invalidated by any subsequent usurious transaction.''); *Gaither* v. *Farmers & Mechs. Bank of Georgetown,* 26 U.S. (1 Pet.) 37, 43 (1828).

[18] *See Olvera* v. *Blitt & Gaines, P.C.,* 431 F.3d 285, 286, 289 (7th Cir. 2005) (''[T]he assignee of a debt . . . is free to charge the same interest rate that the assignor . . . charged the debtor . . . even if the assignee does not have a license that expressly permits the charging of a higher rate.'').

[19] *See Franklin,* 347 U.S. at 377–78.

[20] *Planters' Bank of Miss.,* 47 U.S. at 323.

[21] *Id.*

[22] ''National banks have been National favorites . . . It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the States . . . .'' *Tiffany,* 85 U.S. at 413. The NBA ''has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states.'' *Easton* v. *Iowa,* 188 U.S. 220, 229 (1903).

[23] Section 1044(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[24] The Federal Deposit Insurance Corporation (FDIC) is also proposing a similar rule based on 12 U.S.C. 1831d. The FDIC has interpreted this provision to be consistent with section 85

Continued

expressly codify what the OCC and the banking industry have always believed and address recent confusion about the impact of an assignment on the permissible interest. This rule would not address which entity is the true lender when a bank makes a loan and assigns it to a third party. The true lender issue, which has been considered by courts recently, is outside the scope of this rulemaking.

## IV. Solicitation of Comments

The OCC invites comment on all aspects of this proposal.

## V. Regulatory Analyses

*Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed the notice of proposed rulemaking and determined that it would not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 755 small entities.[25] The ability to sell, assign, or otherwise transfer a loan is important to all banks, so the OCC expects that all of these small entities would be impacted by the rule. However, the rule does not contain any new recordkeeping, reporting, or significant compliance requirements. Therefore, the OCC anticipates that costs, if any, will be *de minimis* and certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires the OCC to consider whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $100 million (adjusted for inflation) or more annually by state, local, and tribal governments, or by the private sector.

*Riegle Community Development and Regulatory Improvement Act*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The OCC invites comments that will inform its consideration of RCDRIA.

## List of Subjects

*12 CFR Part 7*

National banks, Interest, Usury.

*12 CFR Part 160*

Savings associations, Interest, Usury.

**Office of the Comptroller of the Currency**

For the reasons set out in the preamble, the OCC proposes to amend 12 CFR part 7 and part 160 as follows.

## PART 7—ACTIVITIES AND OPERATIONS

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

**Authority:** 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

### Subpart D—Preemption

■ 2. Section 7.4001 is amended by adding paragraph (e) to read as follows:

**§ 7.4001 Charging interest by national banks at rates permitted competing institutions; charging interest to corporate borrowers.**

* * * * *

(e) *Transferred loans.* Interest on a loan that is permissible under 12 U.S.C. 85 shall not be affected by the sale, assignment, or other transfer of the loan.

## PART 160—LENDING AND INVESTMENT

■ 3. The authority citation for part 160 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

■ 4. Section 160.110 is amended by adding paragraph (d) to read as follows:

**§ 160.110 Most favored lender usury preemption for all savings associations.**

* * * * *

(d) *Transferred loans.* Interest on a loan that is permissible under 12 U.S.C. 1463(g)(1) shall not be affected by the sale, assignment, or other transfer of the loan.

Dated: November 18, 2019.

**Morris R. Morgan,**

*First Deputy Comptroller, Comptroller of the Currency.*

[FR Doc. 2019–25280 Filed 11–20–19; 8:45 am]

BILLING CODE 4810–33–P

(including OCC precedent). *See, e.g.,* FDIC General Counsel's Opinion No. 11, Interest Charges by Interstate State Banks, 63 FR 27282 (May 18, 1998).

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

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 27**

**[Docket No. FAA–2019–0546; Notice No. 27–048–SC]**

## Special Conditions: Bell Helicopter Textron Canada Limited, Model Bell 505, Visual Flight Rules Autopilot and Stability Augmentation System (AP/SAS System)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** These special conditions are proposed for the Bell Helicopter Textron Canada Limited (BHTCL) Bell Model 505 helicopter. This helicopter as modified by S–TEC will have a novel or unusual design feature associated with installation of the autopilot and stability augmentation system (AP/SAS system). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send your comments on or before December 23, 2019.

**ADDRESSES:** Send comments identified by docket number [FAA–2019–0546] using any of the following methods:

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

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

☐ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Andy Shaw, Aerospace Engineer, FAA, Rotorcraft Standards Branch, Policy and Innovation Division, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5384; email *Andy.Shaw@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

### Background

On January 21, 2019, S–TEC applied for a supplemental type certificate (STC) to install an AP/SAS system on the Bell Model 505 helicopter. The Bell Model 505 helicopter is a 14 CFR part 27 normal category, single turbine engine, conventional helicopter designed for civil operation. This helicopter model is capable of carrying up to four passengers with one pilot and has a maximum gross weight of up to 4,475 pounds, depending on the model configuration. The major design features include a 2-blade main rotor, an anti-torque tail rotor system, a skid landing gear, and a visual flight rule basic avionics configuration. S–TEC proposes to modify this model helicopter by installing an AP/SAS system.

The AP/SAS system provides attitude stabilization in two or three axes (pitch and roll with optional yaw) as well as higher-level autopilot functions such as altitude hold, heading command and navigation tracking. However, the possible failure conditions for this system, and their effect on the continued safe flight and landing of the helicopter, are more severe than those envisioned by the present rules.

The effect on safety is not adequately covered under 14 CFR 27.1309 for the application of new technology and new application of standard technology. Specifically, the present provisions of § 27.1309(c) do not adequately address the safety requirements for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions, or for complex systems whose failures could result in major failure conditions. The current regulations are inadequate because when § 27.1309(c) was promulgated, it was not envisioned that a normal category rotorcraft would use systems that are complex or whose failure could result in ''catastrophic'' or ''hazardous/severe-major'' effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety. Possible failure modes exhibited by the S–TEC AP/SAS system could result in a catastrophic event.

### Type Certification Basis

Under 14 CFR 21.101, S–TEC must show that the Bell Model 505 helicopter, as modified by the installed AP/SAS, continues to meet the applicable regulations incorporated by reference in the Type Certificate Number R00008RD. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Number R00008RD are as follows:

14 CFR part 27, dated October 2, 1964, amendment 27–1 through 27–47

14 CFR part 36, amendment 36–1 through 36–30

In addition, the certification basis includes certain equivalent level of safety findings that are not relevant to these special conditions.

The Administrator has determined the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this STC, do not contain adequate or appropriate safety standards for the Bell Model 505 helicopter because of a novel or unusual design feature. Therefore, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they

are issued. Should S–TEC apply for an STC to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38 and they become part of the type certification basis under § 21.101(d).

**Novel or Unusual Design Features**

The Bell Model 505 helicopter will incorporate the following novel or unusual design features: AP/SAS. An autopilot (AP) is a system used to control the trajectory of an aircraft without constant input from the pilot. This allows the pilot to focus on other aspects of operations such as weather and systems. A stability augmentation system (SAS) is another type of automatic flight control system; however, instead of maintaining the aircraft on a predetermined attitude or flight path, the SAS will reduce pilot workload by dampening aircraft buffeting regardless of the attitude or flight path.

**Discussion**

To comply with the provisions of the special conditions, the FAA proposes to require that S–TEC provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by a functional hazard assessment (FHA). This process will ensure that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process is part of the overall safety assessment process discussed in FAA Advisory Circular 27–1B, *Certification of Normal Category Rotorcraft,* and Society of Automotive Engineers document Aerospace Recommended Practice 4761, *Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment.*

These proposed special conditions would require that the AP/SAS installed on a Bell Model 505 helicopter meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Failure conditions are classified according to the severity of their effects on the rotorcraft. Radio Technical Commission for Aeronautics, Inc. (RTCA) Document DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* provides software design assurance levels most commonly used for the major, hazardous/severe-major, and catastrophic failure condition categories. The AP/SAS system equipment must be qualified for the expected installation environment. The test procedures prescribed in RTCA Document DO–160G, *Environmental Conditions and Test Procedures for Airborne Equipment,* are recognized by the FAA as acceptable methodologies for finding compliance with the environmental requirements. Equivalent environment test standards may also be acceptable. Environmental qualification provides data to show that the AP/SAS system can perform its intended function under the expected operating condition. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may also be affected environmentally by the AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

**Applicability**

These special conditions are applicable to the S–TEC AP/SAS installed as an STC approval in Bell Model 505 helicopters, Type Certificate Number R00008RD.

**Conclusion**

This action affects only certain novel or unusual design features for an S–TEC AP/SAS STC installed on one model helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features.

**List of Subjects in 14 CFR Part 27**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are proposed as part of the S–TEC supplemental type certification basis for installation of an autopilot/stabilization augmentation system (AP/SAS) system on Bell Model 505 helicopters.

Instead of the requirements of 14 CFR 27.1309(b) and (c), the following must be met for certification of the AP/SAS system installed on Bell Model 505 helicopters:

a. The equipment and systems must be designed and installed so that any equipment and systems do not adversely affect the safety of the rotorcraft or its occupants.

b. The rotorcraft systems and associated components considered separately and in relation to others systems, must be designed and installed so that:

(1) The occurrence of any catastrophic failure condition is extremely improbable;

(2) The occurrence of any hazardous failure condition is extremely remote; and

(3) The occurrence of any major failure condition is remote.

c. Information concerning an unsafe system operating condition must be provided in a timely manner to the crew to enable them to take appropriate corrective action. An appropriate alert must be provided if immediate pilot awareness and immediate or subsequent corrective action is required. Systems and controls, including indications and annunciations, must be designed to minimize crew errors which could create additional hazards.

Issued in Fort Worth, Texas, on November 13, 2019.

**Jorge Castillo,**

*Manager, Rotorcraft Standards Branch, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2019–25291 Filed 11–20–19; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–104554–18 and REG–104870–18]**

**RIN 1545–BO68 and 1545–BO78**

## Taxable Year of Income Inclusion Under an Accrual Method of Accounting; and Advanced Payments for Goods, Services, and Other Items; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed rule; notice of hearing.

**SUMMARY:** This document provides a notice of public hearing on proposed regulations regarding the timing of income inclusion under section 451 of the Internal Revenue Code.

**DATES:** The public hearing is being held on Tuesday, December 10, 2019, at 10:00 a.m. The IRS must receive

speakers' outlines of the topics to be discussed at the public hearing by Tuesday, December 10, 2019. If no outlines are received by December 3, 2019, the public hearing will be cancelled.

**ADDRESSES:** The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–104554–18 and REG–104870–18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–104554–18 and REG–104870–18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–104554–18 and REG–104870–18).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Charles Gorham, (202) 317–5091; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers), *fdms.database@irscounsel.treas.gov.*

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG–104554–18 and REG–104870–18) that was published in the **Federal Register** on Monday, September 9, 2019 (84 FR 47175 and 47191).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by November 8, 2019, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Tuesday, December 3, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**Martin V. Franks,**

*Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2019–25161 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AQ68**

### Provider-Based Requirements

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations concerning collection and recovery by VA for medical care and services provided to an individual at a VA medical facility for treatment of a nonservice-connected condition. Specifically, this rulemaking would add a regulation that establishes the requirements VA will use to determine whether a VA medical facility has provider-based status. Such determination affects the amount VA can recover from a third party for the cost of the nonservice-connected care. Currently, VA uses the requirements established by the Centers for Medicare and Medicaid Services to determine whether the facility has provider-based status; however, it is necessary for VA to establish its own requirements that are tailored to VA's unique operation and structure.

**DATES:** Comments must be received by VA on or before January 21, 2020.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov*, by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to RIN 2900–AQ68, Provider-Based Requirements. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joseph Duran, Director of Policy and Planning, Office of Community Care (10D), Ptarmigan at Cherry Creek Denver, CO, 80209, *Joseph.Duran2@va.gov* or (303) 372–4629. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VA is authorized under 38 U.S.C. 1729 to recover or collect from a third party the reasonable charges for medical care or services VA furnishes to an individual for a non-service connected disability, to the extent that the individual, or the provider of care or services, would be eligible to receive payment from the third party if the care or services had not been furnished by VA. VA's collection or recovery under section 1729 is limited to care or services furnished by VA for a nonservice-connected disability: Incurred incident to the individual's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; incurred as the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person injured as the result of such a crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime; incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations (no-fault) insurance; or for which the individual is entitled to care (or the payment of expenses of care) under a health plan contract.

VA implements its authority under section 1729 through regulations at title 38 Code of Federal Regulations (CFR) 17.101 through 17.106. More specifically, the methodology that VA uses to determine the amount of its collection or recovery for is established in 38 CFR 17.101. This rulemaking would primarily seek to revise this methodology with regards to calculating the reasonable charges for care and services VA provides on an outpatient basis. Prior to explaining the proposed regulatory changes for § 17.101, we provide the following background on how VA developed its current methodology for charges for outpatient

services. Historically, if VA had a specific item of medical care or service provided on an outpatient basis, VA could charge a professional charge, an outpatient facility charge, or both. These charges were developed so as to be mutually exclusive, with the expectation that both charges could be billed for the same occasion of service.

In April 2000, the Centers for Medicare and Medicaid Services (CMS) published a final rule with comment period that, in pertinent part, codified its long-standing use of provider-based status in regulation at 42 CFR 413.65. 65 FR 18434 (April 7, 2000). In this final rule, CMS explained that, since the Medicare program started, some providers, referred to as main providers, had functioned as a single entity while owning and operating additional departments, locations, and facilities. These departments, locations, and facilities were referred to as provider-based and were treated as part of the main provider for Medicare purposes. In this regard, to the extent that overhead costs of the main provider, such as administrative and general costs, were shared by the provider-based facility, these costs were allowed to flow to the provider-based facility through the cost allocation process in the cost report. This was considered appropriate because these facilities were also operationally integrated, and the provider-based facility was sharing the overhead costs and revenue producing services controlled by the main provider. In the April 2000 final rulemaking, CMS defined the term provider-based status as the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility, that complies with the provisions of this section. 42 CFR 413.65(a)(2). It also established specific requirements that must be met in order for CMS to recognize a facility as having provider-based status. CMS explained that specific criteria were necessary because the designation of provider-based status could result in additional Medicare payments for services furnished at the provider-based facility (outpatient facility charges), and could also increase the coinsurance liability of Medicare beneficiaries for those services. The final rule clarified that 42 CFR 413.65 applied to providers and facilities seeking Medicare payment. As VA does not seek Medicare payment, the requirements and criteria established in 42 CFR 413.65 applies to VA only if VA so establishes through its own regulations.

In December 2003, VA amended 38 CFR 17.101 to establish that VA would use the CMS provider-based criteria in 42 CFR 413.65 to more closely approximate industry standard charge structures and billing practices. 68 FR 70714 (December 19, 2003). That VA rulemaking further established two sets of charges for outpatient care consistent with Medicare: One for use by facilities that had provider-based status and one for facilities that did not have provider-based status. The facilities that had provider-based status could bill both an outpatient professional and facility charge. The facilities that did not have provider-based status could only bill a professional charge. In consideration of the fact that facilities that did not have provider-based status could only bill a professional charge, the professional charge for those facilities would be higher than the professional charge for facilities that had provider-based status, based on Medicare's higher non-facility practice expense relative value units (RVUs).

Currently, VA defines the terms provider-based and non-provider-based in 38 CFR 17.101(a)(5). Section 17.101(a)(5) defines provider-based as the outpatient department of a VA hospital or any other VA health care entity that meets CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges. Under § 17.101(a)(5), non-provider-based is defined as a VA health care entity (such as a small VA community-based outpatient clinic) that functions as the equivalent of a doctor's office or for other reasons does not meet CMS provider-based criteria, and, therefore, is not entitled to bill outpatient facility charges. VA establishes the use of the CMS provider-based criteria in its third-party billing through § 17.101(a)(6), which states in pertinent part that each VA health care entity are designated as either provider-based or non-provider based provider-based entities are entitled to bill outpatient facility charges; non-provider-based entities are not.

For the reasons below, VA proposes to revise 38 CFR 17.101 to remove the current regulatory requirement that VA use the CMS provider-based criteria with regards to VA billing of third parties, and proposes to add a new regulation at 38 CFR 17.100 that would establish the criteria that VA would use instead to determine whether a VA facility has provider-based status. In so doing, VA would model new proposed 38 CFR 17.100 on a majority of the current CMS provider-based criteria in 42 CFR 413.65, but VA's revisions would address the unique structure of VA's health care system, versus the CMS requirements that are more generally applicable to private health care systems. Significantly, VA is an integrated, national health care system and, therefore, some of the CMS requirements in 42 CFR 413.65, especially as they pertain to proximity limitations and licensure, are not appropriate to use for VA facilities. Those CMS requirements that are not appropriate to use for VA facilities are further identified and explained in more detail in the discussions below.

Additionally, to provide a scope for the proposed changes further explained below, we note that as of June 2018, 93 percent out of the total number of VA's facilities from which recoverable costs for care or services are provided (VA's billable facilities) already meet the current CMS provider-based criteria under 42 CFR 413.65(d) and (e) to permit VA to bill both an outpatient professional charge and an outpatient facility charge. Therefore, the proposed changes explained below would only have a potential effect in practical billing practices (to allow for the billing of an outpatient facility charge, in addition to the current billing of an outpatient professional charge) for seven percent of VA's billable facilities. More detail is provided in the section of this rulemaking that discusses the Regulatory Flexibility Act.

**§ 17.100 Requirements for Provider-Based Status**

We propose to add a new regulation at 38 CFR 17.100. Section 17.100 would be located under the undesignated center heading Charges, Waivers, and Collections and would be titled Requirements for provider-based status.

In proposed § 17.100(a), we would describe a clear scope for establishing this section, which is to provide the criteria we would use to determine whether a VA medical facility has provider-based status for purposes of billing for nonservice-connected and non-special treatment authority conditions. We would also explain that while these requirements are modeled after the requirements established in the CMS regulation, 42 CFR 413.65, there are some differences that are designed to address the unique operational activities of the VA health care system.

Proposed § 17.100(b) would contain the definitions that would apply to this section. While some of these terms are based on those definitions in the CMS regulation, most are defined in the context of VA's unique structure and organization as indicated within the discussions of each proposed definition below. This ensures that we use the definitions and terminology that are

most appropriate and applicable to VA's health care system.

Community Based Outpatient Clinic (CBOC) would be defined as a VA-operated, VA-funded, or VA-reimbursed site of care that is not located within a VA Medical Center. We would further explain that a CBOC can provide primary, specialty, subspecialty, mental health, or any combination of health care delivery services that can be appropriately provided in an outpatient setting. A CBOC is unique to VA, and would be consistent with other VA definitions or uses of the term.

Community Living Center (CLC) would be defined as a component of the spectrum of long-term care that provides a skilled nursing environment and houses a variety of specialty programs, such as respite care, dementia care, and skilled nursing care, for persons needing short and long stay services. We would further explain that CLCs are typically located on or near a VA medical facility and are VA-owned and operated, but may be free-standing in the community. This definition of CLC would be consistent with other VA definitions or uses of the term.

Facility would be defined as a point of care where individuals can seek health care services, to include a VA Medical Center, CBOC, Health Care Center, CLC, and Other Outpatient Services site. This definition would specifically reference the facilities within VA that currently provide health care services.

Health Care Center (HCC) would be defined as a VA-owned, VA-leased, VA-contracted, or shared clinic that is operational at least five days per week and provides primary care, mental health care, on site specialty services, and performs ambulatory surgery and/or invasive procedures that may require moderate sedation or general anesthesia. This definition would be consistent with other VA definitions or uses of the term, and is defined to reflect VA's organization and structure.

Main Provider (or parent facility/hospital or PBH) would be defined as a provider that either creates, or acquires ownership of, another facility to deliver additional health care services under its name, ownership, and financial and administrative control. This is consistent with the CMS definition of main provider in 42 CFR 413.65(a)(2). We note that VA generally refers to its main providers as provider-based hospitals (PBHs). Although these facilities operate as main providers operate in the private sector and are not subordinate facilities that would seek provider-based status, VA has historically referred to them as PBHs. For clarity, we will refer to these facilities as main providers in the preamble and regulation text. We would further explain that VAMCs and HCCs can be main providers. This definition would reflect VA's organization and structure, and reference those facilities within VA that are examples of main providers.

Other Outpatient Services (OOS) would be defined as a site that provides outpatient services to veterans, but does not meet the definition of a CBOC or HCC. This definition would be consistent with other VA definitions or uses of the term, as well as VA's structure and organization. Examples of OOS can include sleep centers, post-traumatic stress disorder clinics, and a clinic without primary care or mental health services.

Prospective Payment System (PPS) would be defined as a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, Medicare Severity Diagnosis-Related Groups for inpatient hospital services furnished by most acute care hospitals). This definition would be consistent with the definition used by CMS.

Provider-Based Outpatient Facility (PBO) would be defined as a provider of health care services that is either created by, or acquired by, a main provider for the purpose of furnishing additional health care services under the ownership, administrative, and financial control of the main provider and meets the criteria outlined in this section. CMS does not define the general term of provider-based outpatient facility and instead, CMS separately defines the types of facilities or entities that could obtain provider-based status, to include department of a provider, provider-based entity, and remote location of a hospital. However, for the purposes of VA, it is not necessary to distinguish between the different types of facilities, and therefore, VA will have one term to broadly encompass all provider-based outpatient facilities.

Remote Location of a Hospital would be a CBOC, OOS site, or HCC that is located offsite from the main facility. This definition would differ from the definition provided in 42 CFR 413.65 in order to specifically define this term within the context of VA's facilities and reflect VA's unique organization and structure.

VA Medical Center (VAMC) would be defined as a VA facility that provides at least two categories of care (inpatient, outpatient, residential, or institutional extended care). This definition would be consistent with other VA definitions or uses of the term, as well as VA's structure and organization.

In proposed § 17.100(c), we would set forth the criteria that would be used to determine whether a facility has provider-based status for purposes of billing for nonservice-connected and non-special treatment authority conditions. Section 17.100(c) is largely modeled after the requirements for all facilities or organizations in 42 CFR 413.65(d), additional requirements applicable to off-campus facilities or organizations in 42 CFR 413.65(e), and obligations of hospital outpatient departments and hospital-based entities in 42 CFR 413.65(g).

In proposed § 17.100(c)(1), we would require that the facility seeking provider-based status and the main provider operate under the same license. This requirement would be consistent with the CMS provider-based criteria located at 42 CFR 413.65(d)(1), which generally requires a department of a provider, the remote location of a hospital, or the satellite facility and the main provider operate under the same license. As previously explained, VA is not distinguishing between departments of providers, remote locations of a hospital, satellite facilities, and other provider-based facilities. Therefore, proposed paragraph (c)(1) would state that the facility seeking provider-based status and the main provider operate under the same license. Because VA is a Federal entity, VA facilities are not licensed, and are not required to be licensed, under any State laws or other State authorities. Therefore, we would also explain that VA facilities are not licensed by States but are considered licensed by VA for the purpose of collection and recovery as part of VA's national organization structure and in accordance with VA standards, including those recognized by VA's Office of the Medical Inspector and Inspector General, as well as standards of major healthcare accreditation organizations such as The Joint Commission as applicable to specific VA facilities.

In proposed § 17.100(c)(2), we would require that the clinical services of the facility seeking provider-based status and the main provider be integrated. We would further explain that integration is demonstrated by several factors, which would be listed in the regulation. These factors would include (1) the professional staff at the facility seeking provider-based status has clinical privileges at the main provider; (2) the main provider maintains the same

monitoring and oversight (*i.e.* credentialing and privileging) of the facility seeking provider-based status as it does for any other department of the provider; (3) the medical director of the facility seeking provider-based status maintains a reporting relationship with the chief medical officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the chief medical officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider; (4) the medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility seeking provider-based status, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility seeking provider-based status and the main provider; (5) the medical records for patients treated in the facility are integrated into a unified retrieval system (or cross reference) of the main provider; (6) inpatient and outpatient services of the facility seeking provider-based status and the main provider are integrated, and patients treated at the facility who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider; and (7) inpatient and outpatient services of the facility seeking provider-based status and the main provider are recognized under the main provider's accreditation. The first six factors would be consistent with the CMS criteria located at 42 CFR 413.65(d)(2). However, the seventh factor, regarding accreditation, would be additional factor that demonstrates integration for VA facilities. This would reflect the unique structure and organization of VA, in which inpatient and outpatient services of VA facilities are recognized under the main provider's accreditation.

In proposed § 17.100(c)(3), we would propose to require financial integration of the facility seeking provider-based status and the main provider. Specifically, we would require that the financial operations of the facility seeking provider-based status are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility. We would also require that the costs of a facility that is a hospital department be reported in a cost center of the provider, costs of a provider-based facility other than a hospital department be reported in the appropriate cost center or cost centers of the main provider. This would be consistent with CMS requirements in 42 CFR 413.65(d)(3). However, we would also require that the main provider's integrated health care system manpower and labor budget and the financial status of any provider-based facility be incorporated and readily identified in the main provider's integrated system reports. This additional requirement would reflect that the main provider has administrative and financial control of the provider-based facility, and would be consistent with similar CMS requirements in 42 CFR 413.65(d)(3). This would reflect VA's current structure and organization in which a main provider has such control, particularly budgetary, over facilities.

Under proposed § 17.100(c)(4), we would include a requirement for public awareness. Specifically, we would require that the facility seeking provider-based status be held out to the public (and other payers) as part of the main provider. This would be exhibited by the patients of the facility being made aware that the facility is part of a main provider and that they will be billed accordingly. This would be consistent with the CMS requirement for public awareness in 42 CFR 413.65(d)(4). In addition, we would also propose that all literature, brochures, and public relations newsletters from the facility seeking provider-based status include the relationship between the main provider and the facility. This is current VA practice for facilities associated or affiliated with a main provider and reflects the relationship between the facilities.

Proposed § 17.100(c)(5) would contain obligations when the facility seeking provider-based status is a hospital outpatient department or hospital-based entity, including (1) compliance with the ''antidumping'' rules of 42 CFR 489.20(l), (m), (q), and (r) and 42 CFR 489.24; (2) physician services must be billed with the correct site-of-service so that appropriate physician and practitioner amounts can be determined; (3) physicians are obligated to comply with the non-discrimination provisions in 42 CFR 489.10; (4) the facility seeking provider-based status must treat all Medicare patients seen on an urgent/emergent basis as hospital outpatients; (5) in the case of a patient admitted to the hospital as an inpatient after receiving treatment in the hospital outpatient department or hospital-based facility, payments for services in the hospital outpatient department of hospital-based facility are subject to the payment window provisions applicable to PPS hospitals and to hospitals and units excluded from PPS set forth at 42 CFR 412.2(c)(5) and at 42 CFR 413.40(c)(2), respectively; (6) the hospital outpatient department must meet applicable VA policy pertaining to hospital health and safety programs; and (7) VA must treat any facility that is located on the main hospital campus as a department of the hospital. The criteria described in (1)–(7) are largely consistent with CMS regulations at § 413.65(d)(5) and (g).

We note that we would not propose to include all of the criteria located at § 413.65(g), Obligations of hospital outpatient departments and hospital-based entities, because some of the requirements are not applicable to VA. For example, § 413.65(g)(3) (hospital outpatient departments must comply with all the terms of the hospital's provider agreement) and § 413.65(g)(7) (when a Medicare beneficiary is treated in a hospital outpatient department that is not located on the main provider's campus, the treatment is not required to be provided by the ''antidumping'' rules in § 489.24 of this chapter, and the beneficiary will incur a coinsurance liability for an outpatient visit to the hospital as well as for the physician service, certain requirements must be met) are not included because they are not applicable.

In proposed § 17.100(c)(6), we would include the requirement that the facility seeking provider-based status is operated under the control of the main provider. Such control would require (1) the main provider and the facility seeking provider-based status have the same governing body; (2) the facility seeking provider-based status is operated under the same organizational documents as the main provider (*e.g.* the facility is subject to common bylaws and operating decisions of the main provider's governing body); (3) the main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as code of conduct), and final approval for medical staff appointments in the facility seeking provider-based status. This is modeled after the criteria in § 413.65(e)(1) which requires operation under the ownership and control of the main provider as an additional requirement applicable to off-campus facilities or organizations. However, we propose to remove the

ownership requirements because, in the VA structure, main providers do not own other facilities.

Proposed § 17.100(c)(7) would establish the requirement for administration and supervision of the facility seeking provider-based status. Significantly, the reporting relationship between the facility seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by compliance with further identified requirements. These include (1) the facility seeking provider-based status must be under the direct supervision of the main provider, (2) the facility seeking provider-based status must be operated under the same monitoring and oversight by the main provider as any other department of the provider and is operated just as any other department of the provider with regard to supervision and accountability; and (3) administrative functions (*i.e.* billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services) of the facility seeking provider-based status are integrated with those of the main provider.

We would further explain that as part of the requirement for the same monitoring and oversight located in proposed § 17.100(c)(7)(ii), the facility director or individual responsibility for daily operations at the facility must maintain a reporting relationship with a manager at the main provider that has the same frequency, intensity and level of accountability that exists in the relationship between the main provider and its existing departments, and is accountable to the governing body of the main provider, in the same manner as any department head of the provider. In addition, we would explain that the requirement of integrated administrative functions, as set forth in proposed § 17.100(c)(7)(iii), includes that either the same employees or group of employees handle the identified administrative functions for the facility and main provider, or those functions are contracted out under the same contract agreement; or are handled under different contract agreements, with the contract of the facility or organization being managed by the main provider. The criteria under proposed § 17.100(c)(7) are consistent with those under the CMS regulations at 42 CFR 413.65(e)(2).

Lastly, under proposed § 17.100(d), we would illustrate how the criteria are applied when VA does not own the facility, but operates under a contract, and in the situation when the employees at a VA facility are contract employees. We would explain that, (1) a VA facility that is seeking provider-based status that exists under contract arrangements, where only VA patients are seen, may be designated as provider-based as long as the provider-based requirements in this section are met; (2) A VA facility seeking provider-based status that exists under contract arrangements, where VA patients and non-VA patients are seen at the same non-VA owned facility, will have the same provider-based status as the non-VA owned facility that is hosting the VA facility; and (3) a VA owned and operated facility seeking provider-based status, where some or all of the staff are contracted employees, may be designated as provider-based as long as the provider-based requirements in this section are met. This is because the facility is still considered VA owned and operated, regardless of whether the staff is contracted or not.

The CMS requirements include numerous other provisions that are applicable to private health care systems, but are not applicable to the VA health care system. For example, in the proposed rulemaking we are not including the information in 42 CFR 413.65(b) or (c) on what is required to seek a determination of provider-based status from CMS and what is required for reporting material changes in relationships to CMS, because VA and not CMS will make the determination of whether a VA facility has provider-based status.

In addition, this proposed rulemaking does not include the CMS criteria at 42 CFR 413.65(e)(3) regarding location requirements. These include, generally, that the facility is located within a 35 mile radius of the campus of the potential main provider or that the facility is owned and operated by a hospital that has a disproportionate share adjustment greater than 11.75 percent and that the facility demonstrates a high level of integration with the main provider by showing that it serves the same patient population as the main provider. Although in the private sector, mileage between the main provider and the facility seeking provider-based status demonstrates a level of integration, we believe that the same is not true for VA.

VA is a nationwide health care system that is structured to require all facilities that are not main providers be controlled by and financially and administratively integrated with the main provider in its region, regardless of mileage. In this regard, each designated region has one main provider and when VA acquires or creates a new facility (that is not a main provider), the new facility is automatically paired with the main provider that is in its region. The new facility is assigned a shared station number with the main provider that has a unique suffix and is under the main provider's control. We emphasize that the pairing is only based on location to the extent that the new facility is within the main provider's region; it does not depend upon a certain mileage requirement. For example, in the State of Maine, there is one main provider and all other facilities, regardless of distance from the main provider, are administratively and financially integrated with and controlled by the main provider. It does not matter whether the facility is 20 miles away or 200 miles away. Therefore, VA believes that the location requirement is not a relevant criterion to determine integration within the VA system.

Moreover, the proposed rulemaking does not include the requirements for joint ventures under 42 CFR 413.65(f), management contracts under 42 CFR 413.65(h), inappropriate treatment of a facility or organization as provider-based under 42 CFR 413.65(j), temporary treatment as provider-based under 42 CFR 413.65(k), correction of errors under 42 CFR 413.65(l), the status of Indian Health Service and Tribal facilities and organizations under 42 CFR 413.65(m), FQHCs and look alikes under 42 CFR 413.65(n), and effective date of provider-based status under 42 CFR 413.65(o). VA believes that these provisions are not pertinent to VA's structure as a national health care system for veterans, and therefore, we will not include these or similarly not relevant provisions into the proposed rulemaking.

**§ 17.101 Collection or Recovery by VA for Medical Care or Services Provided or Furnished to a Veteran for a Nonservice-Connected Disability**

We propose to revise § 17.101(a)(5) by removing the definitions of provider-based and non-provider-based. The term provider-based outpatient facility will be defined in § 17.100(b)(2). Therefore, we do not believe that it needs to be defined in § 17.101. We also propose to remove the definition of non-provider-based. CMS does not define that term in § 413.65 and we do not believe it is necessary to define. If a facility does not meet the criteria in § 17.100, the facility will simply not have provider-based status.

We propose to amend § 17.101(a) by first stating that the paragraph will cover charges related to provider-based

status. We would explain that facilities that have provider-based status by meet the criteria in § 17.100 would be entitled to bill outpatient facility charges and professional charges. The professional charges for these facilities would be produced by the methodologies set forth in this section based on facility expense RVUs. Facilities that do not have provider-based status because it did not meet the criteria in § 17.100 would not be permitted to bill outpatient facility charges and could only bill a professional charge. The professional charges for these facilities would be produced by the methodologies set forth in this section based on non-facility practice expense RVUs.

**§ 17.106 VA Collection Rules; Third-Party Payers**

As previously discussed, under 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for medical care or services from a third party under four circumstances. In addition, section 1729(f) provides that no law of any State or of any political subdivision of a State, and no provision of any contract or other agreement, shall operate to prevent recovery or collection by the United States under this section or with respect to care or services furnished under section 1784 of this title. VA has established rules for third party payers in 38 CFR 17.106. Specifically, § 17.106(f) contains the general rules for the administration of section 1729 and this part, with clarifying examples of when a third-party may not reduce, offset, or request a refund for payments made to VA. Section 17.106(f)(2) explicitly provides that the list of examples is not exclusive. We propose to add another example to 38 CFR 17.106(f)(2) to clarify that third parties cannot reduce or refuse payment based on VA's designation that a facility is provider-based.

**Effect of Rulemaking**

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

**Paperwork Reduction Act**

This rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small facilities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Over 90 per cent of VA's current billing facilities presently engage in the practices that would be enabled by this rule for a remaining small percentage of VA facilities. Additionally, while the rule would allow for recognition of an additional set of billable charges for the small percentage of VA facilities that to not already engage in such practices, the rule would not guarantee such charges would be paid by third parties or collected by VA. The estimated average annual potential impact of less than $4 million would otherwise not be significant when considered to apply to the aggregate of typical third-party insurers or payers in the U.S. health care industry at large. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

**Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that it is a significant regulatory action under Executive Order 12866, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD.

This proposed rule is not subject to the requirements of E.O. 13771 because this proposed rule results in no more than *de minimis* costs.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule is not likely to have such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008—Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this

document on May 3, 2019, for publication.

**Consuela Benjamin,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

## PART 17—MEDICAL

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

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Add § 17.100 under the undesignated center heading ''Charges, Waivers, and Collections'' to read as follows:

### § 17.100 Requirements for provider-based status.

(a) *Scope.* This section establishes the criteria that VA uses to determine whether a VA medical facility is designated as provider-based for purposes of billing for non-service-connected and non-special treatment authority conditions.

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

*Community Based Outpatient Clinic (CBOC).* A CBOC is a VA-operated, VA-funded, or VA-reimbursed site of care that is not located within a VA Medical Center. A CBOC can provide primary, specialty, subspecialty, mental health, or any combination of health care delivery services that can be appropriately provided in an outpatient setting.

*Community Living Center (CLC).* A CLC is a component of the spectrum of long-term care that provides a skilled nursing environment and houses a variety of specialty programs for persons needing short and long stay services. VA CLCs are typically located on, or near a VA medical facility and are VA-owned and operated, but may be free-standing in the community.

*Facility.* A facility is a point of care where individuals can seek VA health care services, to include a VA Medical Center, CBOC, Health Care Center, CLC, and Other Outpatient Services site.

*Health Care Center (HCC).* An HCC is a VA-owned, VA-leased, VA-contracted or shared clinic that is operational at least five days per week and provides primary care, mental health care, on site specialty services, and performs ambulatory surgery and/or invasive procedures that may require moderate sedation or general anesthesia.

*Main provider.* A main provider (or parent facility/hospital or provider-based hospital (PBH)) is a provider that either creates, or acquires ownership of, another facility to deliver additional health care services under its name, ownership, and financial and administrative control. For example, VA Medical Centers and HCCs can be main providers.

*Other Outpatient Services (OOS).* A site that provides outpatient services to veterans, but does not meet the definition of a CBOC or HCC per this section.

*Prospective Payment System (PPS).* A Prospective Payment System (PPS) is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, Medicare Severity Diagnosis-Related Groups for inpatient hospital services furnished by most acute care hospitals).

*Provider-based outpatient facility (PBO).* A provider-based outpatient facility is a provider of health care services that is either created by, or acquired by, a main provider for the purpose of furnishing additional health care services under the ownership, administrative, and financial control of the main provider, and meets the criteria outlined in this section.

*Remote location of a hospital.* A remote location of a hospital is a CBOC, OOS Site, or HCC that is located offsite from the main facility.

*VA Medical Center (VAMC).* A VAMC is a VA facility that provides at least two categories of care (inpatient, outpatient, residential, or institutional extended care).

(c) *Criteria for provider-based status.* In order to be designated as a provider-based facility, the following criteria must be met:

(1) *Licensure.* The facility seeking provider-based status and the main provider must operate under the same license. VA facilities are not licensed by States but all VA facilities are considered licensed for the purpose of collection and recovery by VA as part of VA's national organization structure and in accordance with VA standards, including standards established or recognized by VA's Offices of the Medical Inspector and Inspector General and major healthcare accreditation organizations.

(2) *Clinical services.* The clinical services of the facility seeking provider-based status and the main provider must be integrated. Integration is demonstrated by the following:

(i) The professional staff of the facility has clinical privileges at the main provider.

(ii) The main provider maintains the same monitoring and oversight (*i.e.* credentialing and privileging) of the facility seeking provider-based status as it does for any other department of the provider.

(iii) The medical director of the facility seeking provider-based status maintains a reporting relationship with the chief medical officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the chief medical officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider.

(iv) The medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility seeking provider-based status, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility seeking provider-based status and the main provider.

(v) Medical records for patients treated in the facility seeking provider-based status are integrated into a unified retrieval system (or cross reference) of the main provider.

(vi) Inpatient and outpatient services of the facility seeking provider-based status and the main provider are integrated, and patients treated at the facility who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider.

(vii) Inpatient and outpatient services of the facility seeking provider-based status and the main provider are recognized under the main provider's accreditation.

(3) *Financial integration.* The financial operations of the facility seeking provider-based status are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility. The costs of a facility that is a hospital department are reported in a cost center of the provider, costs of a facility other than a hospital department are reported in the appropriate cost center or cost centers of the main provider. The main provider's integrated health care system manpower and labor budget and the

financial status of any facility seeking provider-based status is incorporated and readily identified in the main provider's integrated system reports.

(4) *Public awareness.* The facility seeking provider-based status must be held out to the public (and other payers) as part of the main provider. Patients of the facility must be made aware that the facility is part of a main provider and that they will be billed accordingly. All literature, brochures, and public relations newsletters from the facility seeking provider-based status must provide the relationship between the main provider and the facility.

(5) *Obligations of hospital outpatient departments and hospital-based facilities.* If the facility seeking provider-based status is a hospital outpatient department or hospital-based facility, the facility must fulfill the obligations described in this paragraph:

(i) The hospital outpatient department must comply with the antidumping rules of 42 CFR 489.20(l), (m), (q), and (r) and § 489.24.

(ii) Physician services furnished in hospital outpatient departments or hospital-based facilities must be billed with the correct site-of-service so that appropriate physician and practitioner payment amounts can be determined based on their geographical location.

(iii) Physicians who work in hospital outpatient departments or hospital-based facilities are obligated to comply with the non-discrimination provisions in 42 CFR 489.10(b).

(iv) Hospital outpatient departments must treat all Medicare patients seen on an urgent/emergent basis as hospital outpatients.

(v) In the case of a patient admitted to the hospital as an inpatient after receiving treatment in the hospital outpatient department or hospital-based facility, payments for services in the hospital outpatient department or hospital-based facility are subject to the payment window provisions applicable to PPS hospitals and to hospitals and units excluded from PPS set forth at 42 CFR 412.2(c)(5) and at 42 CFR 413.40(c)(2), respectively.

(vi) The hospital outpatient department must meet applicable VA policies pertaining to hospital health and safety programs.

(vii) VA must treat any facility that is located on the main hospital campus as a department of the hospital.

(6) *Operation under the control of the main provider.* The facility seeking provider-based status is operated under the control of the main provider. Control of the main provider requires:

(i) The main provider and the facility seeking provider-based status have the same governing body.

(ii) The facility seeking provider-based status is operated under the same organizational documents as the main provider. For example, the facility seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the main provider.

(iii) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as code of conduct), and final approval for medical staff appointments in the facility seeking provider-based status.

(7) *Administration and Supervision.* The reporting relationship between the facility seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by compliance with all of the following requirements:

(i) The facility seeking provider-based status is under the direct supervision of the main provider.

(ii) The facility seeking provider-based status is operated under the same monitoring and oversight by the main provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility director or individual responsible for daily operations at the facility:

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and its existing departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility seeking provider-based status are integrated with those of the main provider where the facility is based: billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility and the main provider, or the administrative functions for both the facility and the main provider are contracted out under the same contract agreement; or are handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(d) *Illustrations of how the criteria are applied.* (1) A VA facility that is seeking provider-based status that exists under contract arrangements, where only VA patients are seen, may be designated as provider-based if the provider-based requirements in this section are met.

(2) A VA facility seeking provider-based status that exists under contract arrangements, where VA patients and non-VA patients are seen at the same non-VA owned facility, will have the same provider-based status as the non-VA owned facility that is hosting the VA facility.

(3) A VA owned and operated facility seeking provider-based status, where some or all of the staff are contracted employees, may be designated as provider-based if the provider-based requirements in this section are met.

■ 2. Amend § 17.101 by:

■ a. Revising the section heading;

■ b. Removing the definitions ''Non-provider-based'' and ''Provider-based'' from paragraph (a)(5); and

■ c. Revising paragraph (a)(6).

The revisions read as follows:

**§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a non-service connected disability.**

(a) * * *

(6) *Provider-based status and charges.* Facilities that have provider-based status by meeting the criteria in § 17.100 are entitled to bill outpatient facility charges and professional charges. The professional charges for these facilities are produced by the methodologies set forth in this section based on facility expense RVUs. Facilities that do not have provider-based status because they do not meet the criteria in § 17.100 are not permitted to bill outpatient facility charges and can only bill a professional charge. The professional charges for these facilities are produced by the methodologies set forth in this section based on non-facility practice expense RVUs.

* * * * *

■ 3. Amend § 17.106 by adding paragraph (f)(2)(viii) to read as follows:

**§ 17.106 VA collection rules; third-party payers.**

* * * * *

(f) * * *

(2) * * *

(viii) A third party may not reduce or refuse payment if the facility where the medical treatment was furnished is designated by VA as provider-based, but

the facility does not meet the provider-based status requirements under 42 CFR 413.65 Centers.

* * * * *

[FR Doc. 2019–24880 Filed 11–20–19; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2019–0553; FRL–10002–39–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 2019 Amendments to West Virginia's Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision updates the effective date of the national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods for those NAAQS that West Virginia incorporates by reference into its state regulations. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 23, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0553, at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2021. Mr. Schulingkamp can also be reached via electronic mail at *schulingkamp.joseph@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On May 6, 2019, the West Virginia Department of Environmental Protection (WVDEP) submitted a formal revision to its SIP pertaining to amendments of Legislative Rule, 45CSR8—Ambient Air Quality Standards. The SIP submittal updates the version of the federal NAAQS and the associated monitoring reference and equivalent methods for those NAAQS that West Virginia incorporates by reference into West Virginia's legislative rules.

### I. Summary of SIP Revision

WVDEP has historically chosen to incorporate by reference the federal NAAQS, found at 40 CFR part 50, and the associated federal ambient air monitoring reference methods and equivalent methods for these NAAQS found at 40 CFR part 53. When incorporating by reference these federal regulations, WVDEP has specified that it is incorporating by reference these regulations as they existed on a certain date. The incorporation by reference of the NAAQS that is currently SIP-approved by EPA incorporates by reference 40 CFR parts 50 and 53 as they existed on June 1, 2017. This SIP revision updates the State's incorporation by reference of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively. Since the last West Virginia incorporation by reference of June 1, 2017, EPA reviewed the primary standards for oxides of nitrogen ($NO_X$), as required by CAA section 109(d), and retained the current 1-hour and annual nitrogen dioxide ($NO_2$) standards without revision. *See* 83 FR 17226. EPA has not made any changes to the ambient air monitoring reference methods or any ambient air monitoring equivalent methods since the last effective date of the West Virginia rule.

The amendments to the legislative rule include the following changes: To section 45–8–1 (General), the filing, effective, and incorporation by reference dates are changed to reflect the update of the legislative rule, subsection 1.5 was renumbered to subsection 1.6, and a new subsection 1.5 (Sunset Provision) was added; to section 45–8–3 (Adoption of Standards), the dates of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods that are to be incorporated by reference are changed. The filing and effective dates of the legislative rule were updated to April 24, 2019 and June 1, 2019 respectively. The date of the federal rules in 40 CFR parts 50 and 53 that are being incorporated by reference into 45–8–3 are changed from June 1, 2017 to June 1, 2018.

### II. Proposed Action

EPA is proposing to approve the West Virginia SIP revision updating the date of incorporation by reference, which was submitted on May 6, 2019. EPA is soliciting public comments on the update to West Virginia's incorporation by reference. Please note that EPA is not seeking public comment on the level of the NAAQS being incorporated by reference into the West Virginia regulations. An opportunity for public comment on the level of each individual NAAQS was given when EPA proposed each such NAAQS. Relevant comments will be considered before taking final action.

### III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 45CSR8, as effective on June 1, 2019. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting

Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, revising the incorporation by reference date of 45CSR8, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: October 28, 2019.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2019–25166 Filed 11–20–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2019–0552; FRL–10002–38–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Negative Declaration for the Oil and Gas Control Techniques Guideline

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the District of Columbia. This revision pertains to a negative declaration for the October 2016 Oil and Natural Gas Control Techniques Guideline (CTG) (2016 Oil and Gas CTG). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 23, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0552 at *https://www.regulations.gov,* or via email to *Spielberger.susan@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2021. Mr. Schulingkamp can also be reached via electronic mail at *schulingkamp.joseph@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 27, 2016, EPA published in the **Federal Register** the ''Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' See 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compounds (VOC) emissions from select oil and natural gas industry emission sources. CAA section 182(b)(2)(A) requires that for ozone nonattainment areas classified as Moderate, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. CAA section 184(b)(1)(B) extends this requirement to states in the Ozone Transport Region (OTR). States are required to adopt RACT controls that are at least as stringent as those found within the CTG. If no sources are found within the jurisdiction of the states, the state may submit as a SIP revision a negative declaration stating that there are no applicable sources in the state.

### II. Summary of SIP Revision and EPA Analysis

On July 17, 2019, the District of Columbia's Department of Energy and Environment (DOEE), on behalf of the District of Columbia, submitted a revision to its SIP concerning a negative declaration for the 2016 Oil and Gas CTG. In its submittal, DOEE conducted a search of its sources to determine if the District has any sources that fall within the applicability of the 2016 Oil and Gas CTG. DOEE reviewed the following sources of information: DOEE's Air Quality Division's permitting database for potential sources subject to the 2016 Oil and Gas

CTG, the Energy Information Administration's data regarding natural gas pipelines and areas of oil and gas development, the Department of Homeland Security's database of critical infrastructure which includes natural gas compressor stations, the District's Department of Consumer and Regulatory Affairs database which would include a basic business license for broad categories of businesses, and the District's point and area source inventory. Within each database or system reviewed, the District found no sources subject to the 2016 Oil and Gas CTG. After completing this search, the District has declared that no sources subject to the 2016 Oil and Gas CTG exist within the District.

## III. Proposed Action

EPA is proposing to approve the District's SIP revision concerning the negative declaration for the 2016 Oil and Gas CTG, which was submitted on July 17, 2019. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, addressing the District's negative declaration for the 2016 Oil and Gas CTG, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: October 28, 2019.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2019–25167 Filed 11–20–19; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R08–OAR–2019–0276; FRL–10002–15–Region 8]**

## Approval and Promulgation of Implementation Plans; State of Utah; Salt Lake County, Utah County, and Ogden City $PM_{10}$ Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes and State Implementation Plan Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on January 4, 2016, which include revisions to Utah's Division of Administrative Rule (DAR) R307–110–10 and maintenance plans for the Salt Lake County, Utah County, and Ogden City nonattainment areas (NAAs) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns ($PM_{10}$), and on March 6, 2019, which include $PM_{10}$ redesignation requests and supplemental information for Salt Lake County, Utah County and Ogden City. These submittals demonstrate that the Salt Lake County, Utah County and Ogden City areas have attained the $PM_{10}$ National Ambient Air Quality Standards (NAAQS), request redesignation to attainment and include maintenance plans for the areas demonstrating attainment for fifteen years. Also, the EPA is proposing approval of Utah's February 27, 2017 submittal, which includes rule revisions to address our October 19, 2016 conditional approval of Utah's DAR R307–302 revisions that were submitted May 9, 2013, May 20, 2014, and September 8, 2015. Additionally, the EPA is proposing to approve SIP revisions submitted by the State of Utah on February 15, 2019, with additional non-substantive changes submitted on July 1, 2019, August 20, 2019, and October 15, 2019, which includes revisions that are located in DAR R307–110–17 and SIP Subsections IX.H.1–2. The EPA is taking this action pursuant to section 107, 110, and 175A of the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before December 23, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0276, to the Federal Rulemaking Portal: *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points

you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Crystal Ostigaard, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov*.

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

## I. Background

Under section 109 of the Act, the EPA has promulgated NAAQS for certain pollutants, including $PM_{10}$ (40 CFR 50.2(b)). Once the EPA promulgates a NAAQS, section 107 of the Act specifies a process for the designation of all areas within a state, generally as either an attainment area (an area attaining the NAAQS) or as a NAA (an area not attaining the NAAQS, or that contributes to nonattainment of the NAAQS in a nearby area). For $PM_{10}$, certain areas have also been designated ''unclassifiable.'' These various designations, in turn, trigger certain state planning requirements.

For all areas, regardless of designation, section 110 of the Act requires that each state adopt and submit for EPA approval a plan to provide for implementation, maintenance and enforcement of the NAAQS. This plan is commonly referred to as a SIP. Section 110 contains requirements that a SIP must meet in order to be approved by the EPA.[1] For NAAs, SIPs must meet additional requirements contained in part D of Title I of the Act. Usually, SIPs include measures to control emissions of air pollutants from various sources, including stationary, mobile and area sources. For example, a SIP may specify emission limits at power plants or other industrial sources.

Under the 1990 amendments to the CAA, Salt Lake and Utah Counties were designated nonattainment for $PM_{10}$ and classified as Moderate areas by operation of law as of November 15, 1990 (56 FR 56694, 56840; November 6, 1991). The air quality planning requirements for $PM_{10}$ Moderate NAAs are set out in Title I, part D, subparts 1 and 4 of the Act. As described in section 110 and 172 of the Act, areas designated nonattainment based on a failure to meet the $PM_{10}$ NAAQS are required to develop SIPs with sufficient control measures to expeditiously attain and maintain the NAAQS.

On July 8, 1994, the EPA approved the $PM_{10}$ SIP for Salt Lake and Utah Counties (59 FR 35036), including approval of R307–110–10, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter. The SIP included a demonstration of attainment and various control measures, including emission limits at stationary sources. Because emissions of sulfur dioxide ($SO_2$) and nitrogen oxides ($NO_X$) contribute significantly to the $PM_{10}$ problem in the area, the SIP included limits on emissions of $SO_2$ and $NO_X$ in addition to emissions of $PM_{10}$. Additionally, approval of R307–110–10, incorporated by reference (IBR) the Utah SIP, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter and made this section a part of Utah's SIP approved rules.

On December 6, 1999, the EPA approved revisions to the road salting and sanding programs for the two counties (64 FR 68031). On July 1, 2002, the EPA approved a new rule, R307–310, Salt Lake County: Trading of Emission Budgets for Transportation Conformity, to the Salt Lake County $PM_{10}$ SIP that allowed trading between $PM_{10}$ and $NO_X$ motor vehicle emissions budgets (MVEBs) for transportation conformity determinations (67 FR 44065). Additionally, on September 2, 2008 (73 FR 51222), the EPA approved updates to R307–310, Salt Lake County: Trading of Emission Budgets for Transportation Conformity.

On June 18, 2001 (66 FR 32752), the EPA approved a one-year attainment date extension for the Salt Lake County NAA to December 31, 1995 and determined that the Salt Lake County NAA attained by this extended attainment date. Additionally, within the June 18, 2001 (66 FR 32752) action, the EPA approved a two-year attainment date extension for the Utah County NAA to December 31, 1996 and determined that the Utah County NAA attained by this extended attainment date.

On December 23, 2002, the EPA approved additional revisions to the Utah County $PM_{10}$ SIP that updated attainment demonstrations, established new 24-hour emission limits for major stationary sources, established new MVEBs and approved an update to R307–110–10 (67 FR 78181). On May 18, 2015 (80 FR 28193), the EPA approved a new rule, R307–311, Utah County: Trading of Emission Budgets for Transportation Conformity, which is the mechanism for allowing trading from MVEB of $PM_{10}$ to MVEB for $NO_X$.

On September 26, 1995, the EPA designated Ogden City as nonattainment for $PM_{10}$ and classified the area as Moderate under section 107(d)(3) of the Act (60 FR 38726, July 28, 1995). On January 7, 2013 (78 FR 885), the EPA finalized a clean data determination (CDD) for Ogden City which suspended Utah's obligation to make SIP submissions for attainment related requirements which includes an attainment demonstration, reasonably available control measures (RACM)/reasonably available control technology (RACT), reasonable further progress (RFP), contingency measures and milestone reports.

On October 19, 2016 (81 FR 71988), the EPA conditionally approved revisions to R307–302, Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties based on Utah's commitment letter dated May 19, 2016. On February 27, 2017, Utah submitted revisions to R307–302 in accordance with that conditional approval. When the EPA takes final action on today's proposal, it will complete the action on the revisions described in the conditional approval.

On October 11, 2017 (82 FR 47149), the EPA approved revisions to R307–

[1] EPA's approval of a SIP has several consequences. For example, after the EPA approves a SIP, the EPA and citizens may enforce the SIP's requirements in Federal court under section 113 and section 304 of the Act; in other words, the EPA's approval of a SIP makes the SIP ''Federally enforceable.'' Also, once the EPA has approved a SIP, a state cannot unilaterally change the Federally enforceable version of the SIP. Instead, the state must submit a SIP revision for EPA review and approval.

11–17 titled ''Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits'' and SIP Subsection IX. H.1–4, which established emissions limits for $PM_{10}$, $NO_X$, and $SO_2$ for certain stationary sources in the NAAs.

## II. The EPA's Evaluation

### *A. EPA's Evaluation of Utah's SIP Revisions*

(i) R307–302, Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties

The EPA conditionally approved rule revisions to R307–302—Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties, and the rule's RACM analysis in our October 19, 2016 (81 FR 71988) final rule based on a May 19, 2016 commitment letter from the Utah Division of Air Quality (UDAQ). Rule R307–302 is an existing rule that was approved by the EPA on February 14, 2006 (71 FR 7679). This rule establishes emission standards for fireplaces and solid fuel burning devices used in residential, commercial, institutional and industrial facilities and associated outbuilding used to provide comfort heating.

On February 27, 2017, the State of Utah submitted revisions to R307–302, based on the commitment letter and made additional revisions to provide further clarification and remove redundancies within the rule. The revisions contained in the February 27, 2017 submission include: (1) Shortening the title of the rule to ''R307–302. Solid Fuel Burning Devices''; (2) updating the Purpose of the rule for better clarification; (3) updating the Definitions to include ''Seasoned wood means wood that has a moisture content of less than or equal to 25%.''; (4) revising the Applicability to include clarification on the solid fuel burning device and where this rule is applicable; (5) revised terminology throughout the rule to provide better alignment; (6) revised to include ''Prohibited Fuels'' and additional language to support this revision; and (7) removal of the term ''Phase 2'' in the Prohibition section to be consistent with the 2015 New Source Performance Standard.

The Utah Air Quality Board proposed revisions to R307–302 for public comment on August 3, 2016, with the public comment period held from October 1 to October 31, 2016. UDAQ received comments from one commenter; which included cursory questions about R307–302.[2] UDAQ summarizes these comments and responded within the February 1, 2017 submittal. There were no requests for a public hearing. The Utah Air Quality Board adopted the revision to R307–302 on December 7, 2016, and it became effective on February 1, 2017.

(ii) R307–110–10

Section R307–110–10 incorporates the amendments to Section IX.A into state rules, thereby making them effective as a matter of state law. This is a ministerial provision and does not by itself include any SIP measures.

(iii) R307–110–17

Section R307–110–17 incorporates the amendments to Section IX.H into state rules, thereby making them effective as a matter of state law. This is a ministerial provision and does not by itself include any control measures.

(iv) Subsection IX.H.1–2

1. Subsection IX.H.1. General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, $PM_{10}$ Requirements. This section establishes general requirements for record keeping, reporting and monitoring for the stationary sources subject to emissions limits under subsections IX.H.2–4. Additionally, this section establishes general refinery requirements, addressing limitations on emitting units common to the refineries in the NAAs. These general refinery requirements include limits at fluid catalytic cracking units, limits on refinery fuel gas, restrictions on liquid fuel oil consumption, requirement for sulfur removal units and requirements for hydrocarbon flares.

Revisions that were submitted on February 15, 2019, for Subsection IX.H.1. provided clarifications, removed implementation dates that have passed and cleaned up other aspects of this section. These revisions are generally non-substantive and do not affect the stringency of the SIP; thus, the EPA is proposing to approve these revisions.

2. Subsection IX.H.2. Source Specific Emission Limitations in Salt Lake County $PM_{10}$ Nonattainment/Maintenance Area. This section establishes specific emission limitations for 13 sources. Major stationary sources were identified based on their potential to emit (PTE) of 100 tons per year (tpy) or more of $PM_{10}$, $NO_X$, or $SO_2$. Revisions for Subsection IX.H.2. were submitted on February 15, 2019, and with non-substantive revisions submitted on July 1, 2019, August 20, 2019, and October 15, 2019. A summary of the current emission limits for retained sources, are outlined in Table 1, below, and a summary of the proposed new emission limits are outlined in Table 2 below. We are proposing to approve the revisions specified in the below tables.

TABLE 1—CURRENT SOURCE SPECIFIC EMISSION LIMITATIONS IN THE SALT LAKE COUNTY $PM_{10}$ NONATTAINMENT AREA

| Source | Pollutant | Process unit | Mass based limits (tpd) | Concentration based limits | Alternative emission limits |
|---|---|---|---|---|---|
| Big West Oil Company | $NO_X$ | Source-Wide | 0.80 | | |
| | $SO_2$ | Source-Wide | 0.60 | | |
| Chevron Products Company | $NO_X$ | Source-Wide | 2.1 | | |
| | $SO_2$ | Source-Wide | 1.05 | | |
| Holly Refining and Marketing Company. | $NO_X$ | Source-Wide | 2.09 | | |
| | $SO_2$ | Source-Wide | 0.31 | | |
| Tesoro Refining & Marketing Company. | $NO_X$ | Source-Wide | 1.988 | | |
| | $SO_2$ | Source-Wide | 3.1 | | |

tpd = tons per day.

[2] February 1, 2017 State of Utah Submittal for R307–302; Comments and Final Adoption Memo.

TABLE 2—PROPOSED SOURCE SPECIFIC EMISSION LIMITATIONS IN THE SALT LAKE COUNTY $PM_{10}$ NONATTAINMENT AREA

| Source | Pollutant | Process Unit | Mass based limits (tpd) | Concentration based limits | Alternative emission limits |
|---|---|---|---|---|---|
| Big West Oil Company | $NO_X$ | Source-Wide | *0.80 | | 195 tons per rolling 12-month period. |
| | $SO_2$ | Source-Wide | *0.60 | | 140 tons per rolling 12-month period. |
| Chevron Products Company | $NO_X$ | Source-Wide | *2.1 | | 766.5 tons per rolling 12-month period. |
| | $SO_2$ | Source-Wide | *1.05 | | 383.3 tons per rolling 12-month period. |
| | $NO_X$ | Rich-Burn Compressor Engine Number K35001. | | 236 parts per million, volumetric dry (ppmvd) at 0% O2. | |
| | $NO_X$ | Rich-Burn Compressor Engine Number K35002. | | 208 ppmvd at 0% O2. | |
| | $NO_X$ | Rich-Burn Compressor Engine Number K35003. | | 230 parts per million dry volume (ppmdv) at 0% O2. | |
| Holly Refining and Marketing Company. | $NO_X$ | Source-Wide | *2.09 | | 347.1 tons per rolling 12-month period. |
| | $SO_2$ | Source-Wide** | *0.31 | | 110.3 tons per rolling 12-month period. |
| Tesoro Refining & Marketing Company. | $NO_X$ | Source-Wide | 2.3 | | 475 tons per rolling 12-month period. |
| | $SO_2$ | Source-Wide | 3.8 | | 300 tons per rolling 12-month period. |
| Utah Municipal Power Association: West Valley Power Plant. | $NO_X$ | Source-Wide | | 5 ppmdv (15% O2 dry) on 30-day rolling average. | |

*These limits are not being revised.
**Excluding routine SRU turnaround maintenance emissions.

Additional revisions within Subsection IX.H.2. include tables that directs the owner/operator to install specified control emissions from the equipment listed in the tables by January 1, 2019. The specific point sources, along with the emission units and the specific control equipment are included in Table 3, below. We are proposing to approve the inclusion of these tables within each specified source section.

TABLE 3—PROPOSED SOURCE SPECIFIC EMISSION UNITS AND ACCOMPANYING CONTROL EQUIPMENT

| Source | Emision unit | Control equipment |
|---|---|---|
| Big West Oil Company | FCCU Regenerator | Flue gas blowback "Pall Filter," quaternary cyclones with fabric filter. |
| | H–404 #1 Crude Heater | Ultra-low $NO_X$ burners. |
| | Refinery Flares | Subpart Ja, and MACT CC flaring standards. |
| | SRU | Tail gas incinerator and redundant caustic scrubber. |
| | Product Loading Racks | Vapor recovery and vapor combustors. |
| | Wastewater Treatment System | API separator fixed cover, carbon adsorber canisters to be installed 2019. |
| Chevron Products Company | Boilers: 5, 6, 7 | Low $NO_X$ burners and flue gas recirculation (FGR). |
| | Cooling Water Towers | High efficiency drift eliminators. |
| | Crude Furnaces F21001, F21002 | Low $NO_X$ burners. |
| | Crude Oil Loading | Vapor Combustion Unit (VCU). |
| | FCC Regenerator Stack | Vacuum gas oil hydrotreater, Electrostatic precipitator (ESP) and cyclones. |
| | Flares: Flare 1, 2 | Flare gas recovery system. |
| | HDS Furnaces F64010, F64011 | Low $NO_X$ burners. |
| | Reformer Compressor Drivers K35001, K35002, K35003. | Selective Catalytic Reduction (SCR). |
| | Sulfur Recovery Unit 1 | Tail gas treatment unit and tail gas incineration. |
| | Sulfur Recovery Unit 2 | Tail gas treatment unit and tail gas incineration. |
| | Wastewater Treatment Plant | Existing wastewater controls system of induced air flotation (IAF) and regenerative thermal oxidation (RTO). |
| Holly Refining and Marketing Company | Process heaters and boilers | Boilers 8 & 11: LNB+SCR<br>Boilers 5, 9 & 10: SCR<br>Process heaters 20H2, 20H3, 23H1, 24H1, 25H1: ULNB. |
| | Cooling water towers 10, 11 | High efficiency drift eliminators. |
| | FCCU regenerator stacks | WGS with Lo-Tox. |
| | Flares | Flare gas recovery system. |
| | Sulfur recovery unit | Tail gas incineration and WGS with Lo-Tox. |

TABLE 3—PROPOSED SOURCE SPECIFIC EMISSION UNITS AND ACCOMPANYING CONTROL EQUIPMENT—Continued

| Source | Emision unit | Control equipment |
|---|---|---|
| | Wastewater treatment plant | API separators, dissolved gas floatation (DGF), moving bed bio-film reactors (MBBR). |
| Tesoro Refining & Marketing Company | FCCU/CO Boiler | Wet Gas Scrubber, LoTOx. |
| | Furnace F–1 | Ultra Low $NO_X$ Burners. |
| | Tanks | Tank Degassing Controls. |
| | North and South Flares | Flare Gas Recovery. |
| | Furnace H–101 | Ultra Low $NO_X$ Burners. |
| | Truck loading rack | Vapor recovery unit. |
| | Sulfur recovery unit | Tail Gas Treatment Unit. |
| | API separator | Floating roof (single seal). |

Additional revisions are found within Subsection IX.H.2.h. Kennecott Utah Copper (KUC): Power Plant and Tailings Impoundment. Table 4, below, provides the current emission limits and the updated emissions limits, including for start-up/shut-down limits. We are proposing to approve these limits and the additional start-up/shut-down limitations found in the Natural Gas and Coal sections.

TABLE 4—$NO_X$ LIMITS FOR KENNECOTT UTAH COPPER (KUC): POWER PLANT AND TAILINGS IMPOUNDMENT FOR UNIT #4

| Fuel being burned | Normal operation or start-up/shut-down | ppmdv 3% $O_2$ | lbs/hr | lbs/MMBtu | lbs/event |
|---|---|---|---|---|---|
| Natural Gas | Normal | 30 | 32 | 0.04 | |
| | Start-up/Shut-down | | | | 395 |
| Coal | Normal | 30 | 32 | 0.04 | |
| | Start-up/Shut-down | | | | 395 |

Other revisions are contained in Subsection IX.H.2.k.; (1) Subsection IX.H.2.k.ii.A., where the natural gas/refinery fuel gas combustion using: Low $NO_X$ burners (LNB): Is revised from 41 lbs/MMbtu to 0.051 lbs/MMbtu; (2) Subsection IX.H.2.k.ii.B., which includes new language ''Stack testing is not required for natural gas/refinery fuel gas combustion equipment with a $NO_X$ CEMS''; (3) Subsection IX.H.2.k.iii.B., new language includes ''SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.1.f.''; and (4) new sections are added: Subsection IX.H.2.k.iii.C. and Subsection IX.H.2.k.iv. We are proposing approval of these revisions.

Other revisions are contained in Subsection IX.H.2.l.i. and ii. where the emission point Boiler numbers were updated; Boiler #4 will be de-commissioned, and Boiler #9 will be installed and operational by December 31, 2019; and the initial test dates were updated for the renumbered Boilers. Additionally, Subsection IX.H.2.l.iii. was removed since the facility completed the requirement by the specified date of January 1, 2019. Subsection IX.H.2.m. was updated with the new facility name of ''Utah Municipal Power Association: West Valley Power Plant.'' We are proposing to approve these revisions.

Additional revisions were submitted on February 15, 2019, July 1, 2019, August 20, 2019, and October 15, 2019, that included clarifications, stack test requirements, updating specific calculations, corrections, and non-substantive changes. We are proposing to approve the remaining revisions within Subsection IX.H.1. and 2. that was not specifically discussed in the tables and paragraphs above.

(v) Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and RFP toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state be adopted by the state after reasonable notice and public comment.

The Utah SIP revisions at Subsection IX.H.2 required additional analysis to satisfy CAA 110(l) requirements due to a modification of the source-wide caps for $NO_X$ and $SO_2$ at the Tesoro Refining and Marketing Company. For Tesoro, Utah increased the allowable daily emissions caps for both $NO_X$ and $SO_2$ but has added a rolling 12-month cap for both pollutants. The inclusion of a 12-month rolling cap effectively lowers the allowable annual emissions, as outlined in Table 5 and Table 6 below. From Table 5 and Table 6, we see that while the daily emissions cap for $NO_X$ and $SO_2$ are slightly increased, and the rolling allowable 12-month average emissions decreased by 250.62 tons and 831.5 tons, respectively. Monitoring data from the Salt Lake City area for both $NO_2$ and $SO_2$ are shown in Table 7 below. As shown in Table 7, the current design values for $SO_2$ are an order of magnitude lower than their respective standards, and the $NO_2$ design values are 40%–50% lower than their respective standards. Due to Salt Lake City's low $NO_2$ and $SO_2$ monitored values, the minimal increase in $NO_X$ and $SO_2$ allowable daily emissions in combination with the overall decrease in allowable $NO_X$ and $SO_2$ annual emissions from the Tesoro facility will not interfere with the areas ability to attain and maintain the $NO_2$ and $SO_2$ NAAQS.

TABLE 5—PROPOSED TESORO DAILY AND ANNUAL CAP REVISIONS FOR $NO_X$

| Facility | Current $NO_X$ daily cap (tpd) | Proposed $NO_X$ daily cap (tpd) | Current potential $NO_X$ annual emissions (tons) | Proposed $NO_X$ annual emissions (tons) |
|---|---|---|---|---|
| Tesoro Refining and Marketing Company | 1.988 | 2.3 | 725.62 | 475 |

TABLE 6—PROPOSED TESORO DAILY AND ANNUAL CAP REVISIONS FOR $SO_2$

| Facility | Current $SO_2$ daily cap (tpd) | Proposed $SO_2$ daily cap (tpd) | Current potential $SO_2$ annual emissions (tons) | Proposed $SO_2$ annual emissions (tons) |
|---|---|---|---|---|
| Tesoro Refining and Marketing Company | 3.1 | 3.8 | 1131.5 | 300 |

TABLE 7—SALT LAKE CITY $NO_2$ AND $SO_2$ MONITORING DATA (2016–2018) IN PARTS PER BILLION (ppb)

| Pollutant standard | NAAQS value (ppb) | Monitored design values (ppb) |
|---|---|---|
| $NO_2$ Annual Standard | 53 | 30.1 |
| $NO_2$ 1-hour Standard | 100 | 53 |
| $SO_2$ 24-hour Standard* | 140 | 2 |
| $SO_2$ Annual Standard* | 30 | 0 |
| $SO_2$ 1-hour Standard | 75 | 7 |

*The 1971 $SO_2$ 24-hour and annual standards were revoked in 2010, but the Salt Lake City area remains a nonattainment for the 1971 standards until a maintenance plan and redesignation request are submitted by the state and approved by the EPA.

Within the $PM_{10}$ maintenance plan, Utah used the revised annual PTE limit when projecting the 2019, 2024, 2028 and 2030 emissions inventory.[3] The inclusion of the PTE did not prevent the area from demonstrating continued maintenance of the $PM_{10}$ NAAQS. Similarly, Utah used the annual PTE values for the modeled attainment demonstration of fine particulate matter ($PM_{2.5}$), submitted on February 15, 2019. With the inclusion of Tesoro's revised limits, Utah demonstrated that the Salt Lake City $PM_{2.5}$ NAA was still able to model attainment of the $PM_{2.5}$ NAAQS. We are not acting on any aspect of the Salt Lake City $PM_{2.5}$ Serious SIP within this proposed rule; the reference above is only being used as a support to our CAA section 110(l) analysis.

The Utah SIP revisions that the EPA is proposing to approve do not interfere with any applicable requirements of the Act, including attainment or RFP. The DAR section R307–110–10, R307–110–17, and Subsection IX.H.1–2, submitted on January 4, 2016, February 15, 2019, July 1, 2019, August 20, 2019, and October 15, 2019, are intended to strengthen the SIP. Therefore, CAA section 110(l) requirements are satisfied.

[3] January 4, 2016, Utah $PM_{10}$ Maintenance Plans, Technical Support Document (TSD), Chapter 3: Baseline and Projected Inventories.

*B. What requirements must be followed for redesignation to attainment?*

In order for a NAA to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the CAA must be met:

(i) We must determine that the area has attained the NAAQS;

(ii) The applicable implementation plan for the area must be fully approved under section 110(k) of the Act;

(iii) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area must meet all requirements applicable to the area under section 110 and part D of the CAA.

Our September 4, 1992 guidance entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (referred to in this action as the Calcagni Memorandum) outlines how to assess the adequacy of redesignation requests against the conditions listed above.

On January 4, 2016, and on March 6, 2019, the Governor of Utah submitted revisions to the SIP for the Salt Lake County, Utah County and Ogden City NAAs and requested that the EPA redesignate the areas to attainment for $PM_{10}$. The following is a brief discussion of how Utah's redesignation request and maintenance plans meet the requirements of the Act for redesignation of the Salt Lake County, Utah County, and Ogden City areas to attainment for $PM_{10}$.

*C. Do the redesignation requests and maintenance plans meet the CAA requirements?*

(i) Attainment of $PM_{10}$ NAAQS

Whether an area has attained the $PM_{10}$ NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. *See* 40 CFR part 50 and 40 CFR part 50, appendix K. A state must demonstrate that an area has attained the $PM_{10}$ NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum $PM_{10}$ concentrations. The data, which must be quality assured and recorded in the EPA's Air Quality System (AQS), must show that the average annual number of

expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. In making this showing, three consecutive years of complete air quality data must be used.

Between 2016 and 2018, Utah operated six $PM_{10}$ monitors, which were either State and Local Air Monitoring Stations (SLAMS) or National Air Monitoring Sites (NAMS), in the Salt Lake County, Utah County and Ogden City NAAs. Of this total, three are in the Salt Lake County NAA, two are in the Utah County NAA and one is in the Ogden City NAA. As part of the redesignation request for Salt Lake County, Utah County and Ogden City, Utah submitted ambient air quality data from the monitoring sites which demonstrates that the area has attained the $PM_{10}$ NAAQS. This air quality data had been quality-assured and placed in AQS on a quarterly basis. Table 8 below shows expected exceedances for 2016–2018 for all monitors in the $PM_{10}$ NAAs.

TABLE 8—2015–2017 AND 2016–2018 EXPECTED $PM_{10}$ EXCEEDANCES FOR MONITOR SITES IN THE $PM_{10}$ NONATTAINMENT AREAS

| AQS ID | Monitor site | Nonattainment area | 2015–2017 24-hour $PM_{10}$ | 2016–2018 24-hour $PM_{10}$ |
|---|---|---|---|---|
| | | | Average annual exceedances | Average annual exceedances |
| 49–035–1001 | Magna | Salt Lake County | *0.3 | *0.3 |
| 49–035–3006 | Hawthorn | Salt Lake County | *0 | *0 |
| 49–035–3013 | Herriman | Salt Lake County | *0.7 | 0.3 |
| 49–049–0002 | North Provo | Utah County | *0 | ..... |
| 49–049–4001 | Lindon | Utah County | *0 | 0 |
| 49–057–0002 | Ogden | Ogden City | *0.4 | 0 |

* Incomplete.[4]

The three-year averages were either 0 or less than 1.0, which indicates the Salt Lake County, Utah County and Ogden City areas attained the 24-hour $PM_{10}$ NAAQS. In addition, there have been no reported exceedances of the $PM_{10}$ NAAQS so far in 2019. Further information on $PM_{10}$ monitoring is presented in Subsections IX.A.11.b(1), IX.A.12.b(1), and IX.A.13.b(1) of the Salt Lake County, Utah County and Ogden City maintenance plans, respectively. We have evaluated the ambient air quality data and Utah has adequately demonstrated that the $PM_{10}$ NAAQS has been attained in the Salt Lake County, Utah County and Ogden City areas.

(ii) Fully Approved State Implementation Plan

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Those states containing initial Moderate $PM_{10}$ NAAs were required to submit a SIP by November 15, 1991, which demonstrated attainment of the $PM_{10}$ NAAQS by December 31, 1994. However, under section 188(d) of the CAA, Moderate $PM_{10}$ NAAs are eligible for up to two one-year extensions of their attainment dates if they meet certain requirements of the Act. On June 8, 2001 (66 FR 32752), the EPA finalized a one-year extension for the Salt Lake County NAA and two one-year extensions for the Utah County NAA. The Salt Lake and Utah Counties Moderate attainment date of December 31, 1994 was extended to December 31, 1995, and December 31, 1996, respectively. Within the June 8, 2001 (66 FR 32752) final action, the EPA also determined that the Salt Lake and Utah Counties attained by these extended attainment dates.

Section 107(d)(3)(E)(ii) of the CAA states that for NAAs to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the areas under section 110(k). We approved the Salt Lake County and Utah County $PM_{10}$ attainment plans on July 8, 1994 (59 FR 35036). The SIP included a demonstration of attainment and various control measures, including emission limits at stationary sources. Because emissions of $SO_2$ and $NO_X$ contribute significantly to the $PM_{10}$ problem in the areas, the SIPs included limits on emissions of $SO_2$ and $NO_X$ in addition to emissions of $PM_{10}$.

The EPA's prior actions on Salt Lake and Utah Counties $PM_{10}$ SIPs, along with Ogden City $PM_{10}$ CDD, Utah SIP section Part H, and R307–403 are discussed in Section I: Background above.

(iii) Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The Salt Lake County area plan was adopted in June 1991 and approved by the EPA on July 8, 1994 (59 FR 35036). The Utah County area plan was adopted in September 1990, modified in June 1991, and approved by the EPA on July 8, 1994 (59 FR 35036). The Utah County area plan was revised and adopted on June 5, 2002 and July 3, 2002, and the EPA approved these revisions on December 23, 2002 (67 FR 78181). The SIP's emission control plans were based on emission reductions from stationary sources, re-entrained road dust controls, woodburning restrictions, and mobile source emission control programs. These permanent and enforceable control measures are explained below.

As part of the $PM_{10}$ SIP, Utah has been implementing emission limits

[4] 40 CFR part 50, Appendix K specifies that "when data for a year are incomplete, it is necessary to compute an estimated number of exceedances for that year by adjusting the observed number of exceedances." This process is described in Appendix K, section 3.0. While some of the quarters have missing sample days as seen in the AQS report found in the accompanying docket, none of the quarters where data is considered incomplete has exceedances in the same quarter during the design value period. Additionally, the missing data are not during an inversion period and exceedances would not be expected. Therefore, the missing data do not affect the expected number or exceedances in Table 8.

found in Subsection IX.H.1–4. The titles for Subsection IX.H.1–4 include: (1) General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, $PM_{10}$ Requirements; (2) Source Specific Emission Limitations in Salt Lake County $PM_{10}$ Nonattainment/Maintenance Area; (3) Source Specific Emission Limitations in Utah County $PM_{10}$ Nonattainment/Maintenance Area; and (4) Interim Emission Limits and Operating Practices. The revisions approved on October 11, 2017 (82 FR 47149), established emission limitations and related requirements for certain stationary sources of $PM_{10}$, $NO_X$ and $SO_2$, as well as updates of the inventory of major stationary sources to accurately reflect the current sources in both the Salt Lake County and Utah County areas.

Utah has also implemented multiple area source rules in the Salt Lake County, Utah County and Ogden City areas. Some area source rules that would impact $PM_{10}$ NAAs include controls on solid fuel burning devices (R307–302), road salting/sanding (R307–307), fugitive emissions/dust (R307–309) and aggregate processing (R307–312).[5] On February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988), and October 2, 2019 (84 FR 52368) the EPA approved revisions to several area source rules and approved new rules for $PM_{2.5}$ NAAs into the Utah SIP, which provide direct and indirect benefits to $PM_{10}$ NAAs.

Additionally, on October 19, 2016 (81 FR 71988), the EPA finalized a conditional approval of certain revisions to R307–302–5 (Solid Fuel Burning Devices) based on a commitment letter from the director of UDAQ. In that letter, Utah committed to ''establishing a prohibition on fuel types that can't be burned in a solid fuel burning device at any time.'' With UDAQ's February 27, 2017 submittal, R307–302–5 was revised to represent what was in the commitment letter, which satisfied the condition specified in the conditional approval. Accordingly, when the EPA takes final action on today's proposal, it will complete the EPA's action on the May 9, 2013, May 20, 2014, and September 8, 2015 submittals for R307–302.

The mobile source control measures implemented in the $PM_{10}$ SIP include inspection and maintenance (I/M) programs in Salt Lake, Utah and Weber Counties. On August 1, 2005 (70 FR 44055) and November 2, 2005 (70 FR 66264), the EPA approved the I/M programs for Salt Lake County and Utah County, respectively. On September 14, 2005, the EPA approved the I/M program in Weber county (70 FR 54267).

We have evaluated the various State and Federal control measures and historical emissions inventories and believe that the improvement in air quality in the Salt Lake and Utah Counties NAAs have resulted from emission reductions that are permanent and enforceable.

(iv) Fully Approved Maintenance Plan Under Section 175A of the Act

Section 107(d)(3)(E) of the Act requires that, for a NAA to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the Act. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, a state must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10-year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. *See* sections 175A(b) and (d). The Calcagni Memorandum outlines five core elements that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are explained in detail below.

a. Attainment Inventory

The EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (*see* 57 FR 13498, April 16, 1992) and the Calcagni Memorandum referenced above. Under our interpretations, $PM_{10}$ maintenance plans should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to maintain the NAAQS.

An emissions inventory was developed and submitted with the $PM_{10}$ maintenance plan for the Salt Lake County, Utah County and Ogden City areas on December 4, 2015. This submittal contains a base year of 2011, interim-year projection inventories for 2019, 2024 and 2028, and projected maintenance inventory of 2030. The emissions contained in the inventories include sources of $PM_{10}$ and $PM_{10}$ precursor emissions located within a regional area called a modeling domain. The modeling domain encompasses all three areas within the state that were designated as nonattainment for $PM_{10}$: Salt Lake County, Utah County and Ogden City, as well as a bordering region.[6]

Since this bordering region is so large (the modeling domain was used for the larger region of $PM_{2.5}$ nonattainment), a ''core area'' within this domain was identified wherein a higher degree of accuracy was included. Within this core area (which includes Weber, Davis, Salt Lake and Utah Counties), SIP-specific inventories were prepared to include seasonal adjustments and forecasting to represent each of the projection years. In the bordering regions, outside the core area, the 2011 National Emissions Inventory (NEI) was used in the analysis. There were four general categories of sources included in these inventories: Large stationary sources, smaller area sources, on-road mobile sources and off-road mobile sources.

For each of these source categories, the pollutants that were inventoried included: $PM_{10}$, $SO_2$, $NO_X$, volatile organic compounds (VOC) and ammonia ($NH_3$). $SO_2$ and $NO_X$ are specifically defined as $PM_{10}$ precursors, and the Community Multi-scale Air Quality Model (CMAQ) model also considers ammonia and VOC to be contributing factors in the formation of secondary aerosol. More detailed descriptions of the 2011 base-year inventory and the 2019, 2024, 2028 and 2030 projection inventories can be found in section IX.A.11.c, IX.A.12.c, and IX.A.13.c, Maintenance Plan, subsection (2) Attainment Inventory of the Salt Lake County, Utah County, and Ogden City Maintenance Plans, and in the technical support document (TSD). Utah's submittal contains detailed emission inventory information that was prepared in accordance with the EPA emission inventory guidance.[7] Summary of emission figures from 2011 base year and the projected inventories are provided in Table 9, 10 and 11, below.

[5] *See* January 4, 2016 State of Utah Submittal for $PM_{10}$ Maintenance Plans/Redesignation Requests; TSD; Chapter 3.

[6] January 4, 2016 State of Utah submittal for Salt Lake County, Utah County, and Ogden City $PM_{10}$ Maintenance Plan; Figure IX.A.11.1.

[7] EPA's current guidance on the preparation of $PM_{10}$ emission inventories includes, ''$PM_{10}$ Emission Inventory Requirements,'' September 1994, ''Emission Inventory Improvement Program Technical Report Serious, Volumes I–VII,'' July 1997 and September 1999, ''Revised 1999 National Emission Inventory Preparation Plan,'' February 2001, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'', May 2017 .

TABLE 9—SALT LAKE COUNTY NAA; ACTUAL EMISSIONS FROM 2011 AND EMISSION PROJECTIONS FOR 2019, 2024, 2028, AND 2030

[Tons per day (tpd)]

| Year | Source category | $PM_{10}$ | $SO_2$ | $NO_X$ | VOC | $NH_3$ |
|---|---|---|---|---|---|---|
| 2011 Baseline | Area Sources | 5.50 | 0.37 | 9.14 | 30.35 | 3.82 |
| | Non-Road | 7.12 | 0.32 | 11.71 | 6.38 | 0.00 |
| | Point Sources | 4.04 | 8.90 | 15.56 | 2.97 | 0.20 |
| | Mobile Sources | 10.95 | 0.28 | 57.96 | 35.35 | 1.14 |
| | 2011 Total | 27.61 | 9.87 | 94.37 | 75.05 | 5.16 |
| 2019 | Area Sources | 4.88 | 0.35 | 5.84 | 22.06 | 4.18 |
| | Non-Road | 8.28 | 0.36 | 9.11 | 5.94 | 0.01 |
| | Point Sources | 11.29 | 7.72 | 22.17 | 3.77 | 0.26 |
| | Mobile Sources | 10.88 | 0.31 | 25.79 | 21.16 | 0.89 |
| | 2019 Total | 35.33 | 8.74 | 62.91 | 52.93 | 5.34 |
| 2024 | Area Sources | 5.03 | 0.51 | 5.41 | 22.83 | 4.48 |
| | Non-Road | 8.83 | 0.40 | 8.48 | 6.22 | 0.01 |
| | Point Sources | 11.52 | 8.16 | 22.36 | 3.86 | 0.29 |
| | Mobile Sources | 11.28 | 0.29 | 17.16 | 16.63 | 0.89 |
| | 2024 Total | 36.66 | 9.36 | 53.41 | 49.54 | 5.67 |
| 2028 | Area Sources | 5.25 | 0.43 | 5.58 | 23.80 | 4.67 |
| | Non-Road | 9.27 | 0.44 | 8.43 | 6.54 | 0.01 |
| | Point Sources | 11.72 | 8.57 | 22.55 | 3.95 | 0.31 |
| | Mobile Sources | 11.82 | 0.28 | 13.88 | 13.94 | 0.91 |
| | 2028 Total | 38.06 | 9.72 | 50.44 | 48.23 | 5.90 |
| 2030 | Area Sources | 5.36 | 0.34 | 5.63 | 24.30 | 4.76 |
| | Non-Road | 9.52 | 0.46 | 8.50 | 6.72 | 0.01 |
| | Point Sources | 11.83 | 8.82 | 22.68 | 4.00 | 0.32 |
| | Mobile Sources | 12.07 | 0.28 | 12.59 | 13.34 | 0.93 |
| | 2030 Total | 38.78 | 9.90 | 49.40 | 48.36 | 6.02 |

TABLE 10—UTAH COUNTY NAA; ACTUAL EMISSIONS FROM 2011 AND EMISSION PROJECTIONS FOR 2019, 2024, 2028, AND 2030

[tpd]

| Year | Source category | $PM_{10}$ | $SO_2$ | $NO_X$ | VOC | $NH_3$ |
|---|---|---|---|---|---|---|
| 2011 Baseline | Area Sources | 3.90 | 0.28 | 5.61 | 13.02 | 6.62 |
| | Non-Road | 3.53 | 0.02 | 4.24 | 2.31 | 0.00 |
| | Point Sources | 0.28 | 0.29 | 1.03 | 0.18 | 0.18 |
| | Mobile Sources | 4.90 | 0.13 | 24.64 | 11.89 | 0.49 |
| | 2030 Total | 12.61 | 0.72 | 35.52 | 27.40 | 7.29 |
| 2019 | Area Sources | 3.79 | 0.29 | 2.15 | 10.68 | 6.47 |
| | Non-Road | 4.80 | 0.02 | 3.04 | 1.95 | 0.01 |
| | Point Sources | 0.87 | 0.44 | 3.24 | 0.86 | 0.43 |
| | Mobile Sources | 6.04 | 0.17 | 13.77 | 6.43 | 0.46 |
| | 2019 Total | 15.50 | 0.92 | 22.20 | 19.92 | 7.37 |
| 2024 | Area Sources | 2.83 | 0.35 | 1.80 | 11.66 | 5.98 |
| | Non-Road | 5.19 | 0.02 | 2.45 | 1.90 | 0.01 |
| | Point Sources | 0.92 | 0.47 | 3.42 | 0.91 | 0.43 |
| | Mobile Sources | 6.37 | 0.16 | 9.01 | 5.22 | 0.48 |
| | 2024 Total | 15.31 | 1.00 | 16.68 | 19.69 | 6.90 |
| 2028 | Area Sources | 3.06 | 0.27 | 1.81 | 12.49 | 5.92 |
| | Non-Road | 5.68 | 0.02 | 2.17 | 1.92 | 0.01 |
| | Point Sources | 0.96 | 0.49 | 3.58 | 0.96 | 0.43 |
| | Mobile Sources | 6.97 | 0.16 | 7.28 | 4.60 | 0.51 |
| | 2028 Total | 16.67 | 0.94 | 14.84 | 19.97 | 6.87 |

TABLE 10—UTAH COUNTY NAA; ACTUAL EMISSIONS FROM 2011 AND EMISSION PROJECTIONS FOR 2019, 2024, 2028, AND 2030—Continued

[tpd]

| Year | Source category | $PM_{10}$ | $SO_2$ | $NO_X$ | VOC | $NH_3$ |
|---|---|---|---|---|---|---|
| 2030 | Area Sources | 3.17 | 0.18 | 1.78 | 12.90 | 5.89 |
| | Non-Road | 6.25 | 0.02 | 2.07 | 1.94 | 0.01 |
| | Point Sources | 0.99 | 0.49 | 3.67 | 0.98 | 0.43 |
| | Mobile Sources | 7.66 | 0.16 | 6.81 | 4.54 | 0.54 |
| | 2030 Total | 18.07 | 0.85 | 14.33 | 20.36 | 6.87 |

TABLE 11—OGDEN CITY NAA; ACTUAL EMISSIONS FROM 2011 AND EMISSION PROJECTIONS FOR 2019, 2024, 2028, AND 2030

[tpd]

| Year | Source category | $PM_{10}$ | $SO_2$ | $NO_X$ | VOC | $NH_3$ |
|---|---|---|---|---|---|---|
| 2011 Baseline | Area Sources | 0.85 | 0.08 | 2.12 | 5.67 | 0.86 |
| | Non-Road | 0.90 | 0.00 | 1.32 | 0.91 | 0.00 |
| | Point Sources | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Mobile Sources | 2.09 | 0.05 | 12.18 | 8.58 | 0.22 |
| | 2011 Total | 3.84 | 0.13 | 15.62 | 15.16 | 1.08 |
| 2019 | Area Sources | 0.61 | 0.08 | 1.21 | 3.87 | 0.88 |
| | Non-Road | 1.00 | 0.00 | 0.84 | 0.77 | 0.00 |
| | Point Sources | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Mobile Sources | 2.07 | 0.06 | 6.68 | 5.26 | 0.17 |
| | 2019 Total | 3.68 | 0.14 | 8.73 | 9.90 | 1.05 |
| 2024 | Area Sources | 0.65 | 0.12 | 1.16 | 4.18 | 0.95 |
| | Non-Road | 1.05 | 0.00 | 0.70 | 0.77 | 0.00 |
| | Point Sources | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Mobile Sources | 2.11 | 0.06 | 4.50 | 4.19 | 0.17 |
| | Total | 3.81 | 0.18 | 6.36 | 9.14 | 1.12 |
| 2028 | Area Sources | 0.71 | 0.10 | 1.21 | 4.38 | 0.99 |
| | Non-Road | 1.13 | 0.00 | 0.66 | 0.78 | 0.00 |
| | Point Sources | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Mobile Sources | 2.17 | 0.05 | 3.12 | 3.42 | 0.17 |
| | 2028 Total | 4.01 | 0.15 | 4.99 | 8.58 | 1.16 |
| 2030 | Area Sources | 0.71 | 0.08 | 1.21 | 4.50 | 0.99 |
| | Non-Road | 1.17 | 0.00 | 0.64 | 0.80 | 0.00 |
| | Point Sources | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | Mobile Sources | 2.22 | 0.05 | 2.83 | 3.26 | 0.17 |
| | 2030 Total | 4.10 | 0.13 | 4.68 | 8.56 | 1.16 |

Following our review, we have determined that Utah prepared an adequate attainment inventory for the Salt Lake County, Utah County and Ogden City areas.

b. Maintenance Demonstration

The Calcagni Memorandum states that where modeling was relied on to demonstrate maintenance, the plan should contain a summary of the air quality concentrations expected to result from the application of the control strategies. Also, the plan should identify and describe the dispersion model or other air quality model used to project ambient concentrations. The maintenance demonstrations for the Salt Lake County, Utah County and Ogden City areas used a regional photochemical model.

Prior to the development of the $PM_{10}$ maintenance plans, UDAQ conducted a technical analysis to support the development of Utah's 24-hour SIP for $PM_{2.5}$. That analysis included preparation of emissions inventories and meteorological data, and the evaluation and application of a regional photochemical model. Outside of the springtime high wind events and wildfires, the Wasatch Front experiences high 24-hour $PM_{10}$ concentrations under stable meteorological conditions in the winter during cold air pool temperature inversions. These are the same episodes where the Wasatch Front sees its highest concentrations of $PM_{2.5}$ that sometimes exceed the 24-hour $PM_{2.5}$ NAAQS. Most (60% to 90%) of the $PM_{10}$ observed during high wintertime pollution days consists of $PM_{2.5}$. The dominant species of the wintertime $PM_{10}$ is secondarily formed particulate nitrate, which is also the dominant species of $PM_{2.5}$. Given these similarities, the $PM_{2.5}$ modeling analysis was utilized as the foundation for the $PM_{10}$ maintenance plans.

The CMAQ model performance evaluation for the $PM_{10}$ maintenance plans builds on the detailed model performance evaluation that was part of the UDAQ's previous $PM_{2.5}$ SIP process. UDAQ used the same modeling episode that was used in the $PM_{2.5}$ SIP, which is the 45-day modeling episode from the winter of 2009–2010. The modeled meteorological datasets from the Weather Research and Forecasting (WRF) model for the $PM_{10}$ Plans are the same datasets used for the $PM_{2.5}$ SIP. Also, the CMAQ version (4.7.1) and CMAQ model setup for the $PM_{10}$ modeling matches the $PM_{2.5}$ SIP setup.

For these reasons, much of the information presented in the $PM_{10}$ maintenance plans pertains specifically to the $PM_{2.5}$ evaluation. The information was supplemented with information pertaining to $PM_{10}$, most notably with respect to the $PM_{10}$ model performance evaluation.

For $PM_{10}$, the CMAQ model performance was acceptable at all locations in northern Utah. CMAQ was able to reproduce the multiday buildup and washout of the pollution episodes during the 2009–2010 winter and was able to reproduce the peak $PM_{10}$ concentrations during most of the other two episodes modeled, January 11–20, 2007, and February 14–18, 2008. However, the model simulation for the 2010 January 8–14 episode failed to build to the high $PM_{10}$ concentration (>80 micrograms per cubic meter (μg/m³)) observed at the monitors. This episode featured an ''early model washout,'' which had similar results for $PM_{2.5}$.

After determining that the model had acceptable performance for the 2009–2010 inversion episodes, the model was utilized to make future-year attainment projections. The first step in projecting future $PM_{10}$ concentrations is to quantify current pollution levels which are expressed as a Baseline Design Value (BDV). The BDV is consistent with the form of the 24-hour $PM_{10}$ NAAQS where the probability of exceeding the standard should be no greater than once per calendar year. Thus, the BDV is calculated as the 3-year average of second highest measured 24-hour average $PM_{10}$ concentration each year. Table 12 below, provides the BDV for the five monitors that span the three NAAs: Salt Lake County, Utah County and Ogden City. These values were calculated based on data collected during the 2011–2014 time-period.

TABLE 12—BASELINE DESIGN VALUE FOR EACH MONITOR IN THE $PM_{10}$ NAAS (μg/m³)

| Site | $PM_{10}$ NAA | 2011–2014 BDV |
|---|---|---|
| Ogden | Ogden City | 88.2 |
| Hawthorne | Salt Lake County | 100.9 |
| Magna | Salt Lake County | 70.5 |
| Lindon | Utah County | 111.4 |
| North Provo | Utah County | 124.4 |

For each future year, an attainment projection is made by calculating a concentration termed the Future Design Value (FDV). This calculation is made for each monitor included in the analysis, and then compared to the NAAQS (150 μg/m³). When the FDV is smaller than the NAAQS at every monitor in the NAA, this would demonstrate attainment for the area in that specific future year. In making future-year projections, the output from the CMAQ model is not considered the final answer; rather the model is used in a relative sense. In doing this, a comparison is made using the predicted concentrations for both the year in question and a pre-selected base-year, which is 2011. This comparison results in a Relative Response Factor (RRF) which is calculated as the ratio of the model predicted $PM_{10}$ concentration in the future year to the modeled $PM_{10}$ concentration in the 2011 base year. Finally, the FDV is calculated by multiplying the BDV with the RRF. Additional discussions pertaining to the RRF can be found in the maintenance plans for the three NAAs: Salt Lake County, Utah County and Ogden City. The FDV's are compared to the NAAQs in order to determine whether attainment is predicted at each monitoring location. An RRF greater than one indicates the model predicted $PM_{10}$ is greater in the future year than in the 2011 base year, and typically is a result of increased emissions in the future year associated with projected population growth. Table 13 below provides FDV results for each monitor and projection year and shows that no FDV exceeds the NAAQS. Therefore, continued attainment is demonstrated in all three NAAs.

TABLE 13—BASELINE DESIGN VALUES, RELATIVE RESPONSE FACTORS, AND FUTURE DESIGN VALUES FOR ALL MONITORS AND FUTURE PROJECTION YEARS

[Units of design values are μg/m³, while RRF's are dimensionless]

| Monitor | 2011 BDV | 2019 RRF | 2019 FDV | 2024 RRF | 2024 FDV | 2028 RRF | 2028 FDV | 2030 RRF | 2030 FDV |
|---|---|---|---|---|---|---|---|---|---|
| Ogden | 88.2 | 1.05 | 92.6 | 1.04 | 91.7 | 1.04 | 91.7 | 1.05 | 92.6 |
| Hawthorne | 100.9 | 1.09 | 110.0 | 1.09 | 110.0 | 1.11 | 112 | 1.12 | 113.0 |
| Magna | 70.5 | 1.14 | 80.4 | 1.13 | 79.7 | 1.14 | 80.4 | 1.15 | 81.1 |
| Lindon | 111.4 | 1.16 | 129.2 | 1.12 | 12.8 | 1.14 | 127.0 | 1.16 | 129.2 |
| North Provo | 124.4 | 1.15 | 143.1 | 1.12 | 139.3 | 1.13 | 140.6 | 1.15 | 143.1 |

According to the Calcagni Memorandum, any assumptions concerning emission rates must reflect permanent, enforceable measures. A state cannot take credit in the maintenance demonstration for reductions unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. States are expected to maintain implemented control strategies despite redesignation to attainment,

unless such measures that achieve equivalent reductions. Emission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.

In preparing the Salt Lake County, Utah County and Ogden City maintenance plans, Utah made revisions to their control strategies found in Section IX.H.1, 2, 3 and 4. These revisions were approved by the EPA on October 11, 2017 (82 FR 47149). Additionally, on February 15, 2019, and with non-substantive changes submitted on July 1, 2019, August 20, 2019, and on October 15, 2019, the State of Utah submitted revisions to Section IX.H.1–2. We are acting on these revisions within this action and our analysis of the revisions are discussed above in section II.A of this proposed rule.

As discussed above in section II.C.iii. of this proposed rule, Utah has also implemented multiple area source rules in the Salt Lake County, Utah County and Ogden City areas. Some area source rules that would impact $PM_{10}$ NAAs include controls on solid fuel burning devices, road salting/sanding, fugitive emissions/dust, and aggregate processing. On February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988) and October 2, 2019 (84 FR 52368) the EPA acted on area source rules for $PM_{2.5}$ NAAs which would provide direct and indirect benefits to $PM_{10}$ NAAs. As discussed above, we are also acting on revisions to the state's solid fuel burning devices rule within this action.

The EPA believes Utah has adequately demonstrated that the Salt Lake County, Utah County and Ogden City areas will maintain the $PM_{10}$ NAAQS to 2030.

c. Monitoring Network

Once a NAA has been redesignated to attainment, the state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plans should contain provisions for continued operation of air quality monitors that will provide such verification. We approve these monitoring sites annually, and any future change would require discussion and approval from the EPA. In its January 4, 2016 submittal, Utah commits to maintaining an ambient monitoring network for $PM_{10}$ in Salt Lake County, Utah County and Ogden City, in accordance with 40 CFR part 58 and the Utah SIP.

d. Verification of Continued Attainment

Utah's maintenance plan submittal for Salt Lake County, Utah County and Ogden City, indicates how the State will track the progress of the maintenance plans. This is necessary due to the fact that the emissions projections made for the maintenance demonstrations depend on assumptions of point and area source growth. In Sections IX.A.11.c.(9), IX.A.12.c.(9) and IX.A.13.c.(9), Utah commits to track and document measured mobile source parameters (*e.g.,* vehicle miles traveled, congestion, fleet mix, etc.) and changes in new and modified stationary source permits. If these and the resulting emissions change significantly over time, the State will perform appropriate studies to determine: (1) Whether additional and/or re-sited monitors are necessary and (2) whether mobile and stationary source emission projections are on target.

e. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the purposes of section 175A, the state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The plan should discuss the measures to be adopted and a schedule and procedure for adoption and implementation. The contingency plan must require that the state will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation. The state should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

As stated in Sections IX.A.11.c.(10), IX.A.12.c.(10), and IX.A.13.c.(10) of the Salt Lake County, Utah County and Ogden City maintenance plans, triggering the contingency plan does not automatically require a revision to the SIP, nor does it necessarily mean the area will be redesignated once again to nonattainment. Instead, the State will normally have an appropriate timeframe to correct the potential violation with implementation of one or more adopted contingency measures. In the event that violations continue to occur, additional contingency measures will be adopted until the violations are corrected.

Upon notification of a potential violation of the $PM_{10}$ NAAQS, the State will develop appropriate contingency measures intended to prevent or correct a violation of the $PM_{10}$ standard. Information about historical exceedances of the standard, the meteorological conditions related to the recent exceedances, and the most recent estimates of growth and emissions will be reviewed. The possibility that an exceptional event occurred will also be evaluated.

Upon monitoring a potential violation of the $PM_{10}$ NAAQS, including exceedances flagged as exceptional events but not concurred with by the EPA, the State will take the following actions: (1) The State will identify the source(s) of $PM_{10}$ causing the potential violation, and report the situation to EPA Region 8 within four months of the potential violation; and (2) The State will identify a means of corrective action within six months after a potential violation.

The Salt Lake County maintenance plan list of contingency measures includes: (1) Re-evaluate the thresholds at which a red or yellow burn day is triggered, as established in R307–302; and (2) Further controls on stationary sources to include the controls previously approved into the $PM_{10}$ SIP by the EPA (effective August 8, 1994). The sources are listed in Section IX.A.11.c.(10)(b).

The Utah County maintenance plan list of contingency measures includes: (1) Re-evaluate the thresholds at which a red or yellow burn day is triggered, as established in R307–302; and (2) Further controls on stationary sources.

The Ogden City maintenance plan list of contingency measures includes: (1) Re-evaluate the thresholds at which red or yellow burn day is triggered, as established in R307–302; and (2) Expand the road salting and sanding program in R307–307 to include Weber County.

The State will then hold a public hearing to consider the contingency measures identified to address the potential violation. The State will require implementation of such corrective action no later than one year after a violation is confirmed. Any contingency measure adopted and implemented will become part of the next revised maintenance plan submitted to the EPA for approval.

Based on the above, we find that the contingency measures provided in the Salt Lake County, Utah County and Ogden City $PM_{10}$ maintenance plans are

sufficient and meet the requirements of section 175A(d) of the CAA.

f. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, Utah is required to submit a revision to the maintenance plans eight years after the redesignation of the Salt Lake County, Utah County and Ogden City areas to attainment for $PM_{10}$. This revision is to provide for maintenance of the NAAQS for an additional ten years following the first ten-year period. In the Salt Lake County, Utah County and Ogden City maintenance plans, Utah committed to submit a revised maintenance plan eight years after the approval of the redesignation request and maintenance plan.

(v) Meeting Applicable Requirements of Section 110 and Part D of the Act

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the Act. We interpret this to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we do not need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

a. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Utah SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. These requirements were met with Utah's November 15, 1991, February 1, 1995, May 13, 2002, and July 3, 2002 submittals for the Salt Lake County and Utah County $PM_{10}$ NAAs. We approved these submittals on July 8, 1994 (59 FR 35036), December 6, 1999 (64 FR 68031), July 1, 2002 (67 FR 44065), and December 23, 2002 (67 FR 78181). Ogden City $PM_{10}$ NAA satisfied section 110(a)(2) when the EPA finalized a CDD on January 7, 2013 (78 FR 885).

b. Part D Requirements

Before a $PM_{10}$ NAA may be redesignated to attainment, the state must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all NAAs, while subpart 4 of part D establishes specific requirements applicable to $PM_{10}$ NAAs. The General Preamble (*see* 57 FR 13530, *et seq.*) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), 172(c)(7) (the section 110(a)(2) air quality monitoring requirements), and 172(c)(9) (contingency measures). It is also worth noting that we interpreted the requirements of section 172(c)(2) (RFP) and 172(c)(6) (other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. *See* Calcagni Memorandum and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

The requirements of section 172(c) and 189(a) regarding attainment of the $PM_{10}$ NAAQS, and the requirements of section 172(c) regarding RFP, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory, have been satisfied through our July 8, 1994 (59 FR 35036), December 6, 1999 (64 FR 68031), June 8, 2001 (66 FR 32752), July 1, 2002 (67 FR 44065), December 23, 2002 (67 FR 78181), February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988), October 11, 2017 (82 FR 47149) and October 2, 2019 (84 FR 52368) approvals of the Salt Lake County and Utah County $PM_{10}$ SIPs and the demonstration that the area is attaining the NAAQS. These requirements for the Ogden City $PM_{10}$ NAA were satisfied with our January 7, 2013 (78 FR 885) CDD which suspended Utah's obligation to make a SIP submission for attainment related requirements which includes: An attainment demonstration, RACM/RACT, RFP, contingency measures, and milestone reports. With this action we will satisfy Utah's obligation to submit an emissions inventory for the Ogden City $PM_{10}$ NAA. Additionally, the Ogden City $PM_{10}$ NAA attained by the Moderate $PM_{10}$ attainment date of December 31, 2000.[8] The expected exceedances for 1998–2000 was 0.[9]

We approved the requirements of the part D new source review permit program for Utah on July 25, 2019 (84 FR 35831). Once the Salt Lake County, Utah County and Ogden City areas are redesignated to attainment, the prevention of significant deterioration (PSD) requirements of part C of the Act will apply. We must ensure that the State has made any needed modifications to its PSD regulations so that Utah's PSD regulations will apply in the Salt Lake County, Utah County and Ogden City areas after redesignation. Utah's PSD regulations, R307–405 Permits: Major Sources in Attainment or Unclassified Areas (PSD), which we approved as meeting all applicable Federal requirements on July 15, 2011 (76 FR 41712) and January 29, 2016 (81 FR 4957), apply to any area designated unclassifiable or attainment and, thus, will become fully effective in the Salt Lake County, Utah County and Ogden City areas upon redesignation of the areas to attainment.

*D. Have the transportation conformity requirements been met?*

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA section 176(c)(1)(B)). The EPA's conformity rule at 40 CFR part 93, subpart A (sections 93.100 to 93.129) requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the EPA's conformity rule typically requires a demonstration that emissions from the Regional Transportation Plan (RTP), as applicable, and the Transportation Improvement Program (TIP) are consistent with the MVEB contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). The EPA notes that a MVEB is usually defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance areas.

According to 40 CFR 93.118(b)(2), when a maintenance plan has been submitted, mobile source emissions from an RTP or TIP must be less than or equal to the MVEB established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes MVEBs. If the maintenance plan does not establish MVEBs for any years other than the last year of the maintenance plan, the demonstration of consistency with the MVEBs must be accompanied by a

[8] July 28, 1995 Direct Final Rule; Designation of Area for Air Quality Planning Purposes, Utah, Designation of Ogden City $PM_{10}$ Nonattainment Area.

[9] 1998–2000 Expected Exceedances AQS Report.

qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. For analysis years after the last year of the maintenance plan, emissions must be less than or equal to the MVEBs established for the last year of the maintenance plan. In addition, we note that if an EPA-approved NAA control strategy implementation plan has established MVEBs for years in the timeframe of the transportation plan, then mobile source emissions in these years must be less than or equal to the NAA's control strategy implementation plan's MVEBs for these years.

With respect to previously established MVEBs, we note for the Salt Lake County nonattainment plan, Utah had previously adopted MVEBs for 2003. These budgets were 40.3 tons per day of primary $PM_{10}$ and 32.3 tons per day of $NO_X$. These budgets were derived by the Wasatch Front Regional Council (WFRC), a local Metropolitan Planning Organization (MPO) for the Salt Lake City and Ogden urban areas, in conjunction with the EPA, by using the Salt Lake County $PM_{10}$ SIP element attainment year (2003) emission inventories and adjusted for winter weekday vehicle miles traveled (VMT) rates. The above noted $PM_{10}$ and $NO_X$ MVEBs have continued to apply for the WFRC's RTP and TIP conformity determinations since 2003.

In the Utah County nonattainment plan, the State had previously adopted MVEBs for 2003 and two future horizon years which were used in transportation planning, 2010 and 2020. On December 23, 2002 (67 FR 78181), the EPA approved the Utah County MVEBs as presented in Table 14 below.

TABLE 14—HISTORICAL UTAH COUNTY TRANSPORTATION CONFORMITY MVEBS

| Year | Primary $PM_{10}$ (tons/day) | $NO_X$ (tons/day) |
|---|---|---|
| 2003 ..... | 6.57 | 20.35 |
| 2010 ..... | 7.74 | 12.75 |
| 2020 ..... | 10.34 | 5.12 |

In addition to the above On July 1, 2002 (67 FR 44065) the EPA approved the State's rule R307–310 for Salt Lake County: ''Trading of Emission Budgets for Transportation Conformity.'' R307–310 allows trading between the $PM_{10}$ and $NO_X$ MVEBs for purposes of demonstrating transportation conformity by the WFRC. Similarly, on May 18, 2015 (80 FR 28193), the EPA approved the State's rule R307–311 for Utah County: ''Trading of Emission Budgets for Transportation Conformity.'' R307–311 also allows trading between the $PM_{10}$ and $NO_X$ MVEBs for purposes of demonstrating transportation conformity by the Mountainland Association of Governments (MAG) who is the MPO for Utah County.

For the Ogden City $PM_{10}$ NAA, we designated Ogden City as nonattainment on July 28, 1995 (60 FR 38726). Using our CDD approach, on July 30, 2012, the EPA proposed to determine that the Ogden City NAA was currently attaining the 24-hour NAAQS for $PM_{10}$, based on certified, quality assured data for the years 2009 through 2011, and that Utah's obligation to submit certain CAA requirements would be suspended for so long as the area continued to attain the $PM_{10}$ NAAQS (77 FR 44544). We finalized our proposal with our final rule dated January 7, 2013 (78 FR 885). $PM_{10}$ NAAs like Ogden City, that have an approved CDD, are required to use the interim emissions test, described in 40 CFR 93.119, to demonstrate conformity (*see* 40 CFR 93.109(c)(5) and (6)). As applicable, the WFRC, which is the applicable MPO for Ogden City, has been performing conformity determinations for the Ogden City $PM_{10}$ NAA using the 40 CFR 93.119 interim emissions test. The WFRC demonstrates that RTP and TIP conformity determinations show that projected future year $PM_{10}$ and $NO_X$ emissions will be at or below the established and updated 1990 level of $PM_{10}$ and $NO_X$ emissions.

For the Ogden City, Salt Lake County and Utah County maintenance plans, the State is establishing transportation conformity MVEBs for direct $PM_{10}$ and $NO_X$ for 2030. The derivation of these 2030 MVEBs is provided as follows:

a. Ogden City

The Ogden City maintenance area and the corresponding 2030 MVEBs are presented in Table 15 below:

TABLE 15—OGDEN CITY MAINTENANCE AREA TRANSPORTATION CONFORMITY 2030 MVEBS

| 2030 $PM_{10}$ MVEB (tons per day) | 2030 $NO_X$ MVEB (tons per day) |
|---|---|
| 1.50 | 1.00 |

We note that the originally modeled 2030 maintenance year had mobile sources emissions levels of 0.71 tons per winter-weekday of direct $PM_{10}$ and 0.70 tons per winter-weekday of $NO_X$. These levels of 2030 mobile sources direct $PM_{10}$ and $NO_X$ would typically become the MVEBs for 2030. However, our conformity rule does allow the implementation plan to quantify explicitly the amount by which motor vehicle emissions could be higher while still demonstrating compliance with the maintenance requirement (*see* 40 CFR 93.124(a)). These additional emissions that can be allocated to the applicable MVEB are considered the ''safety margin.'' As defined in 40 CFR 93.101, safety margin represents the amount of emissions by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for demonstrating maintenance. The implementation plan can then allocate some or all of this ''safety margin'' to the applicable MVEBs for transportation conformity purposes. The State performed additional modeling for 2030 and established that the $PM_{10}$ and $NO_X$ mobile source emissions could be increased to arrive at those MVEB figures presented in Table 15 above.

b. Salt Lake County

The Salt Lake County maintenance area and the corresponding 2030 MVEBs are presented in Table 16 below:

TABLE 16—SALT LAKE COUNTY MAINTENANCE AREA TRANSPORTATION CONFORMITY 2030 MVEBS

| 2030 $PM_{10}$ MVEB (tons per day) | 2030 $NO_X$ MVEB (tons per day) |
|---|---|
| 24.00 | 21.00 |

We note that the originally modeled 2030 maintenance year had mobile sources emissions levels of 12.07 tons per winter-weekday of direct $PM_{10}$ and 12.59 tons per winter-weekday of $NO_X$. These levels of 2030 mobile sources direct $PM_{10}$ and $NO_X$ would typically become the MVEBs for 2030. As with the Ogden City maintenance area noted above, the State elected to also use the above described safety margin modeling procedure to arrive at the applicable 2030 MVEBs for the Salt Lake County maintenance area. As such, the State performed additional modeling for 2030 and established that the $PM_{10}$ and $NO_X$ mobile source emissions could be increased to arrive at those MVEB figures presented in Table 16 above.

c. Utah County

The Utah County maintenance area and the corresponding 2030 MVEBs are presented in Table 17 below:

TABLE 17—UTAH COUNTY MAINTENANCE AREA TRANSPORTATION CONFORMITY 2030 MVEBS

| 2030 $PM_{10}$ MVEB (tons per day) | 2030 $NO_X$ MVEB (tons per day) |
|---|---|
| 12.28 | 8.34 |

We note that the originally modeled 2030 maintenance year had mobile sources emissions levels of 7.66 tons per winter-weekday of direct $PM_{10}$ and 6.81 tons per winter-weekday of $NO_X$. These levels of 2030 mobile sources direct $PM_{10}$ and $NO_X$ would typically become the MVEBs for 2030. As with the Ogden City maintenance area noted above, the State elected to also use the above described safety margin modeling procedure to arrive at the applicable 2030 MVEBs for the Utah County maintenance area. As such, the State performed additional modeling for 2030 and established that the $PM_{10}$ and $NO_X$ mobile source emissions could be increased to arrive at those MVEB figures presented in Table 17 above.

During the development of the Salt Lake County and Utah County $PM_{10}$ maintenance plans, the EPA became aware of a potential inconsistency regarding the VMT being used. The MAG and WFRC MPOs initially used elevated 2030 VMT numbers, for the development of the Salt Lake County and Utah County $PM_{10}$ SIP maintenance plans, that exceeded the actual MPO's own projected VMT numbers for 2030. Our understanding was the MPOs intention was to secure sufficient $PM_{10}$ and $NO_X$ 2030 MVEBs, for RTP/TIP transportation conformity determinations, that would take into consideration the rate of brisk growth within Utah and to also protect air quality for the duration of the respective $PM_{10}$ maintenance plan. The UDAQ advised that as demonstrated through air quality modeling, used to develop the maintenance plans, it was established that in using the 2030 $PM_{10}$ and $NO_X$ mobile source emissions derived with the elevated VMT, both maintenance plans were still able to demonstrate maintenance of the $PM_{10}$ NAAQS. In addition, the UDAQ further advised that the derived $PM_{10}$ and $NO_X$ MVEBs also contained an added ''safety margin'' of additional mobile sources emissions as described in 40 CFR 93.124(a).

During our review of both $PM_{10}$ maintenance plans, we noted that the elevated VMT numbers, used in part to develop the 2030 MVEBs, were not explicitly identified and quantified in the maintenance plans or the associated TSD. This is necessary as per 40 CFR 93.118(e)(4)(iii) and 40 CFR 93.124(a). Based on a recommendation from the EPA, the TSDs for each maintenance plan were subsequently supplemented by the UDAQ to appropriately detail the derivation of the 2030 VMT figures, the associated $PM_{10}$ and $NO_X$ mobile source emissions, and the 2030 MVEBs. This additional, supplemental TSD information was included with a submittal letter from the Governor dated February 21, 2019, which is provided in the docket.

Based on our above evaluation and our review of the submitted additional TSD supplemental technical information, we have determined that the three maintenance plans appropriately address the applicable transportation conformity requirements in 40 CFR 93, Subpart A and we are proposing approval of the 2030 $PM_{10}$ and $NO_X$ MVEBs as described above.

*E. Did Utah follow the proper procedures for adopting this action?*

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The Act also requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (*see* section 110(k)(1) of the Act and 57 FR 13565, April 16, 1992). Our completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. We attempt to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) of the Act if a completeness determination is not made within six months after receipt of the submission.

On September 2, 2015, the Utah Air Quality Board proposed for public comment for the Salt Lake County, Utah County and Ogden City maintenance plans and redesignation requests. The public comment period was held from October 1, 2015, to November 2, 2015. Comments were submitted by industry, environmental associates, and the EPA. The EPA submitted written comments dated November 2, 2015, on Utah's draft $PM_{10}$ maintenance plans and TSD. On December 2, 2015, the Utah Air Quality Board adopted R307–110–10, Utah SIP Subsections IX.A.11, IX.A.12, and IX.A.13 and it became effective on December 3, 2015. UDAQ submitted these revisions to the EPA on January 4, 2016. Additionally, on March 6, 2019, the Governor of Utah submitted a redesignation request for the Salt Lake County, Utah County and Ogden City $PM_{10}$ NAAs and included supplemental information. This information was necessary in order to complete our review of the maintenance plans and technical support information.

## III. Proposed Action

We are proposing to approve the Governor of Utah's submittal of January 4, 2016, that contains revisions to R307–110–10 and the $PM_{10}$ maintenance plans for Salt Lake County, Utah County and Ogden City $PM_{10}$ NAAs. We are also proposing to approve the Governor of Utah's submittal of March 6, 2019, that contains the redesignation requests for the Salt Lake County, Utah County and Ogden City $PM_{10}$ NAAs to attainment for the 1987 $PM_{10}$ standards and provided supplemental information. We are using 2016–2018 ambient air quality data from Salt Lake County, Utah County and Ogden City NAAs as the basis for our decision. In addition, we are approving the emissions inventories found within the maintenance plans to cover the one element of the Moderate $PM_{10}$ nonattainment SIP that was not suspended with the CDD for the Ogden City NAA.

We are proposing to approve this redesignation request, the maintenance plans, and R307–110–10 revisions because UDAQ has adequately addressed all of the requirements of the Act for redesignation to attainment applicable to the Salt Lake County, Utah County and Ogden City $PM_{10}$ NAAs. Upon the effective date of a subsequent final action, the Salt Lake County, Utah County and Ogden City areas designation status under 40 CFR part 81 will be revised to attainment.

We are also proposing to approve R307–110–17 and revisions for Section IX.H.1 and 2 that were submitted on February 15, 2019, and with non-substantive changes submitted on July 1, 2019, August 20, 2019, and on October 15, 2019. Additionally, we are proposing approval of the revisions in R307–302 for incorporation into the Utah SIP as submitted by the State of Utah on May 9, 2013, May 20, 2014, September 8, 2015 and February 27, 2017. This proposal will complete the EPA's October 19, 2016 (81 FR 71988) conditional approval action on the May 9, 2013, May 20, 2014 and September 8,

2015 submittals for R307–302 from UDAQ.

## IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to R307–110–10; R307–110–17; R307–302; Section IX.H.1 and 2; maintenance plans for Salt Lake County, Utah County and Ogden City $PM_{10}$ NAAs; and the Governor of Utah's redesignation requests for Salt Lake County, Utah County and Ogden City $PM_{10}$ NAAs to attainment. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects

*40 CFR Part 52*

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

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, and Wilderness areas.

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

Dated: November 15, 2019.

**Gregory Sopkin,**

*Regional Administrator, EPA Region 8.*

[FR Doc. 2019–25176 Filed 11–20–19; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 84, No. 225

Thursday, November 21, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 18, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by December 23, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### National Agricultural Statistics Service

*Title:* Rental Rates Pilot.

*OMB Control Number:* 0535–0264.

*Summary of Collection:* The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. NASS will conduct a survey of select agricultural operations in three regions: Northwest (10 counties in the State of Washington), Southern Plains (10 counties in Northern Texas) and Mississippi River (10 counties in Arkansas). Each selected farmer or rancher will be asked to provide data on: (1) Non-irrigated cropland acres rented in 2019 for cash, share of crop production, or for free; (2) Dollars per acre paid in 2019 for cash rent on non-irrigated cropland acres rented; and (3) Percent share of revenue and expenditures for the renter and landowner. General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204.

*Need and Use of the Information:* There are some areas of the country where share rental arrangements predominate, but the current cash rental rates survey (OMB Control Number 0535–0002) does not account for this arrangement. In an effort to obtain a more complete picture of rental arrangements, this pilot project is proposed. USDA–Farm Production and Conservation Mission Area (USDA–FPAC) will determine if the share rental data could potentially increase the precision of estimates in counties where share renting predominates and set annual Conservation Reserve Program (CRP) payment rates that more accurately reflect market conditions. The United States Department of Agriculture's Farm Service Agency has entered into an interagency agreement with NASS to conduct this pilot survey. If this pilot is successful, NASS will submit a change request to include share rental arrangements to the production rental rates survey for future years.

*Description of Respondents:* A sample of all active agricultural operations in Washington, Arkansas, and Texas.

*Number of Respondents:* 1,500.

*Frequency of Responses:* Reporting: Once a year.

*Total Burden Hours:* 536.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2019–25228 Filed 11–20–19; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–455–805]**

### Emulsion Styrene-Butadiene Rubber From Poland: 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 emulsion styrene-butadiene rubber (ESB rubber) from Poland is being sold at less than normal value during the period of review (POR) February 24, 2017 through August 31, 2018.

**DATES:** Applicable November 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Stephen Bailey, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0193.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 19, 2019, we published the *Preliminary Results* of this administrative review.[1] We invited interested parties to comment on the

[1] *See Emulsion Styrene-Butadiene Rubber From Poland: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 34858 (July 19, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

*Preliminary Results.*[2] On August 19, 2019, we received a case brief from Lion Elastomers, LLC. (the petitioner).[3] No other interested party submitted comments. A hearing was not requested.

**Scope of the Order**

The merchandise subject to the order is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber).[4] The products subject to this order are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Analysis of Comments Received**

All issues raised in the case brief by the petitioner to this administrative review are addressed in the IDM. A list of the issues raised is attached to this notice as an appendix. The IDM is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic versions of the IDM are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the record and comments received from the petitioner regarding the *Preliminary Results,* Commerce has made no changes to the *Preliminary Results.* As stated in the *Preliminary Results,* we found that the application of facts otherwise available with adverse inferences, for Synthos Dwory 7 Spolka z Ograniczona Odpowiedzialnoscia Spolka Jawna's (SP.ZO.O.S.J.) (Synthos Dwory's) dumping margin, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), was warranted. For further discussion, *see* the IDM.

**Final Results of the Administrative Review**

We determined that the following weighted-average dumping margin exists for the period February 24, 2017 through August 31, 2018:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Synthos Dwory 7 Spolka z Ograniczona Odpowiedzialnoscia Spolka Jawna's (SP.ZO.O.S.J.) ..... | 44.54 |

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate 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).

For entries of subject merchandise during the POR exported/produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the company(ies) involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the respondent noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 25.43 percent, the all-others rate established in the investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

[2] *Id.*

[3] *See* Petitioner's Letter, ''Antidumping Review of Emulsion Styrene-Butadiene Rubber (ESBR) from Poland: Case Brief,'' dated August 19, 2019 (Case Brief).

[4] For a complete description of the scope of the order, *see* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Emulsion Styrene-Butadiene Rubber from Poland,'' dated concurrently with, and hereby adopted by, this notice (IDM).

[5] *See Emulsion Styrene-Butadiene Rubber from Poland: Final Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 33061 (July 19, 2017); *see also Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders,* 82 FR 42790 (September 12, 2017).

Dated: November 15, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of the Issues
Comment 1: Application of Adverse Facts Available (AFA) to Synthos Dwory
VI. Recommendation

[FR Doc. 2019–25261 Filed 11–20–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–062, C–570–063]**

## Cast Iron Soil Pipe Fittings From the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request for changed circumstances reviews (CCRs), the Department of Commerce (Commerce) is initiating CCRs of the antidumping duty (AD) and countervailing duty (CVD) orders on cast iron soil pipe fittings from the People's Republic of China (China). We have preliminarily determined that Wor-Biz Industrial Product Co., Ltd. (Anhui) (Wor-Biz Industrial) is the successor-in-interest to Wor-Biz Trading Co., Ltd. (Anhui) (Wor-Biz Trading) (collectively, Wor-Biz), and as a result should be accorded the same treatment previously accorded to that company. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable November 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Michael Bowen at (202) 482–0768 (AD) or Dennis McClure at (202) 482–5973 (CVD), Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 31, 2018, Commerce published the AD and CVD orders on imports of cast iron soil pipe fittings from China.[1] On June 7, 2019, Wor-Biz requested that Commerce conduct expedited CCRs for these AD/CVD orders to determine that Wor-Biz Industrial is the successor-in-interest to Wor-Biz Trading.[2] In its request, Wor-Biz addressed the factors Commerce analyzes with respect to successor-in-interest determinations in the AD context, and provided documentation in support.[3] On July 19, 2019, we issued a questionnaire requesting Wor-Biz to state the reasons, with particularity, for which good cause exists to initiate a CCR less than 24 months after the date of publication of the final determinations of the AD and CVD investigations, as required by 19 CFR 351.216(c).[4] On August 20, 2019, Wor-Biz re-filed its request, in which it stated why good cause to initiate these CCRs exists.[5] On October 2, 2019, Commerce determined that additional time was necessary to consider Wor-Biz's request, and therefore, in accordance with 19 CFR 351.302(b), Commerce extended the time period for determining whether to initiate the requested CCRs by an additional 45 days, until November 18, 2019.[6] On October 9, 2019, we issued an additional supplemental questionnaire[7] and we subsequently received, on October 16, 2019, additional information relevant to successor-in-interest determinations in a CVD context.[8] Commerce received no comments from interested parties on Wor-Biz's CCR request.

### Scope of the Orders

The merchandise covered by the scope of these orders is cast iron soil pipe fittings, finished and unfinished, regardless of industry or proprietary specifications, and regardless of size. Cast iron soil pipe fittings are nonmalleable iron castings of various designs and sizes, including, but not limited to, bends, tees, wyes, traps, drains (other than drain bodies), and other common or special fittings, with or without side inlets.

Cast iron soil pipe fittings are classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe fittings are manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888. Hub and spigot pipe fittings have hubs into which the spigot (plain end) of the pipe or fitting is inserted. Cast iron soil pipe fittings are generally distinguished from other types of nonmalleable cast iron fittings by the manner in which they are connected to cast iron soil pipe and other fittings.

Excluded from the scope are all drain bodies. Drain bodies are normally classified in subheading 7326.90.86.88 of the Harmonized Tariff Schedule of the United States (HTSUS).

The cast iron soil pipe fittings subject to the scope of these orders are normally classified in subheading 7307.11.0045 of the HTSUS: Cast fittings of nonmalleable cast iron for cast iron soil pipe. They may also be entered under HTSUS 7324.29.0000 and 7307.92.3010. The HTSUS subheadings and specifications are provided for convenience and customs purposes only; the written description of the scope of these orders is dispositive.

### Initiation of Changed Circumstances Reviews

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, Commerce will conduct a CCR upon a request from an interested party for a review of an AD or CVD order which shows changed circumstances sufficient to warrant a review of the order, but will not do so less than 24 months after the date of publication of the final determinations of the AD and CVD investigations absent a finding of good cause.[9] The information submitted by Wor-Biz supporting its claim that Wor-Biz

[1] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 44570 and *Cast Iron Soil Pipe Fittings from the People's Republic of China: Countervailing Duty Order,* 83 FR 44566, both dated August 31, 2018 (collectively, the *Orders*).

[2] *See* Wor-Biz's Letter, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Request for an Expedited Changed Circumstances Review,'' dated June 7, 2019.

[3] *Id.*

[4] *See* Commerce's Letter, ''Request for Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Cast Iron Soil Pipe Fittings from the People's Republic of China,'' dated July 19, 2019.

[5] *See* Wor-Biz's Letter, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Request for an Expedited Changed Circumstances Review,'' dated August 20, 2019 (Wor-Biz's Second CCR Submission).

[6] *See* Commerce's Letter, ''Request for Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Cast Iron Soil Pipe Fittings from the People's Republic of China: Extension of Initiation Deadline,'' dated October 2, 2019.

[7] *See* Commerce's Letter, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Changed Circumstances Review Supplemental Questionnaire,'' dated October 9, 2019.

[8] *See* Wor-Biz's Letter, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Wor-Biz's Supplemental Response,'' dated October 16, 2019 (Wor-Biz's Third CCR Submission).

[9] *See* 19 CFR 351.216(c).

Industrial is the successor-in-interest to Wor-Biz Trading, demonstrates both good cause and changed circumstances sufficient to initiate these reviews.[10]

Specifically, Wor-Biz states that good cause exists because a CCR is necessary to ensure that Wor-Biz's U.S. customers can accurately identify Wor-Biz by its new English name as the exporter of subject merchandise, and to ensure that cash deposits are collected at Wor-Biz's company-specific rates calculated during the AD and CVD investigations.[11] Commerce has previously found good cause exists to initiate a CCR less than 24 months after the date of publication of a final determination when a respondent has changed its name, as this ensures that CBP is able to assess entries at the appropriate cash deposit rate.[12]

Additionally, the information submitted by Wor-Biz regarding its changed circumstances demonstrates that Wor-Biz's request is based solely on a change in its English name. Specifically, effective October 31, 2019, Wor-Biz Trading legally changed the company's English name to Wor-Biz Industrial Product Co., Ltd. (Anhui).[13] The evidence submitted in support of Wor-Biz's request demonstrates that Wor-Biz Industrial is the same business entity as its predecessor and that Wor-Biz merely changed the company's English name; the Chinese company name remains the same.

Therefore, in accordance with the above-referenced regulation, Commerce is initiating CCRs to determine whether Wor-Biz Industrial is the successor-in-interest to Wor-Biz Trading.

## Preliminary Results

When it concludes that expedited action is warranted, Commerce may publish the notice of initiation and preliminary results of a CCR concurrently.[14] Commerce has combined the notice of initiation and preliminary results in successor-in-interest CCRs when sufficient documentation has been provided supporting the request to make a preliminary determination.[15] In this instance, because we have on the record information to support the request for AD and CVD preliminary determinations, we find that expedited action is warranted, and we are combining the notice of initiation and the notice of preliminary results, in accordance with 19 CFR 351.221(c)(3)(ii).

## AD Methodology

In a CCR, we generally consider a company to be the successor to another company for AD cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor.[16] In making an AD CCR determination, Commerce examines a number of factors including, but not limited to, changes in: (1) Management; (2) production; (3) suppliers; and (4) customer base.[17] While no one or several of these factors is dispositive, Commerce will generally consider one company to be the successor to another if its resulting operation is essentially the same as that of its predecessor.[18] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.[19]

In its CCR submissions, Wor-Biz provided evidence demonstrating that Wor-Biz Industrial's operations are not materially dissimilar from those of Wor-Biz Trading. Specifically, Wor-Biz Industrial is managed and operated by the same management teams as those of Wor-Biz Trading.[20] Further, Wor-Biz Industrial has not added, or discontinued use of, production facilities as a result the English name change.[21] Finally, there have been no material changes to the company's suppliers or customer base.[22] Based on the foregoing, we preliminarily determine that Wor-Biz Industrial is the successor-in-interest to Wor-Biz Trading and, as such, that it is entitled to Wor-Biz Trading's AD cash deposit rate with respect to entries of subject merchandise.

## CVD Methodology

As a general rule, in a CVD CCR, Commerce will make an affirmative CVD successorship finding (*i.e.,* that the respondent company is the same subsidized entity for CVD cash deposit purposes as the predecessor company) where there is no evidence of significant changes in the respondent's: (1) Operations; (2) ownership; and (3) corporate and legal structure during the relevant period (*i.e.,* the ''look-back window'') that could have affected the nature and extent of the respondent's subsidy levels.[23] Where Commerce makes an affirmative CVD successorship finding, the successor's merchandise will be entitled to enter under the predecessor's cash deposit rate.[24] Here, we find no evidence of significant changes between Wor-Biz Industrial's and Wor-Biz Trading's operations, ownership, or its corporate or legal structure that could have had an impact on Wor-Biz's subsidy levels.[25] Specifically, all record information with respect to Wor-Biz's trading operations,[26] shareholders,[27] and corporate and legal structure[28] demonstrates that Wor-Biz Industrial is the same subsidized entity as its

[10] *See* 19 CFR 351.216(d).

[11] *See* Wor-Biz's Second CCR Submission.

[12] *See, e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China,* 81 FR 44588 (July 8, 2016) (''Sailun Jinyu HK demonstrated good cause for initiating a CCR pursuant to 19 CFR 351.216(c) because it has only changed its name and no other aspect of the company's operations, and conducting this review ensures that the appropriate deposit rate applies to Sailun Jinyu HK.''); and *Certain Aluminum Foil and Common Alloy Aluminum Sheet from the People's Republic of China; Notice of Initiation and Preliminary Determination of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 84 FR 48909 (September 17, 2019).

[13] *See* Wor-Biz's Second CCR Submission.

[14] *See* 19 CFR 351.221(c)(3)(ii).

[15] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 82 FR 9561 (February 7, 2017), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 82 FR 14691 (March 22, 2017).

[16] *Id.*

[17] *See Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China,* 79 FR 48117,48118 (August 15, 2014), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review,* 79 FR 58740 (September 30, 2014).

[18] *Id.*

[19] *See, e.g., Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,* 81 FR 76561 (November 3, 2016) (Solar Cells China 2016), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Review,* 81 FR 91909 (December 19, 2016).

[20] *See* Wor-Biz's Second CCR Submission at Exhibits 8–9.

[21] *Id.* at 4. Wor-Biz is only a trading company and does not produce subject merchandise.

[22] *Id.* at Exhibits 4–7.

[23] *See Certain Pasta from Turkey: Preliminary Results of Countervailing Duty Changed Circumstances Review,* 74 FR 47225 (September 15, 2009). Here, the relevant period, or ''look-back window,'' is December 31, 2016 (end of the period of investigation) through August 20, 2019 (date of the resubmitted CCR request).

[24] *See Multilayered Wood Flooring from the People's Republic of China: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 82 FR 9561 (February 7, 2017).

[25] *See* Wor-Biz's Second CCR Submission.

[26] *Id.* at Exhibits 4–7.

[27] *Id.* at Exhibit 8.

[28] *Id.* at Exhibits 1–2.

predecessor.[29] Accordingly, we preliminarily determine that Wor-Biz Industrial is the successor-in-interest to Wor-Biz Trading and, as such, that it is entitled to Wor-Biz Trading's CVD cash deposit rate with respect to entries of subject merchandise.

Should our final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise exported by Wor-Biz Industrial the AD and CVD cash deposit rates applicable to Wor-Biz Trading, effective the date of publication of the final results.

## Public Comment

Any interested party may request a hearing within 14 days of publication of this notice, in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of this notice.[30] Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 7 days after the case briefs.[31] Any hearing, if requested, will normally be held two days after rebuttal briefs/comments are due, in accordance with 19 CFR 351.310(d)(1). Parties who submit case briefs or rebuttal briefs in these CCRs are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included. Consistent with 19 CFR 351.216(e), we will issue the final results of these CCRs no later than 270 days after the date on which these reviews were initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary findings.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: November 15, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019–25263 Filed 11–20–19; 8:45 am]

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[29] *See* Wor-Biz's Third CCR Submission at 1 and Exhibit S–1.

[30] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[31] Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for the filing of rebuttal briefs.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–891, A–580–904]**

## Forged Steel Fittings From India and the Republic of Korea: Initiation of Less-Than-Fair-Value Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable November 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** Caitlin Monks or Charlotte Baskin-Gerwitz, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670 or (202) 482–4880, respectively.

**SUPPLEMENTARY INFORMATION:**

## The Petitions

On October 23, 2019, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of forged steel fittings from India and the Republic of Korea (Korea), filed in proper form by Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioners).[1] The Petitions were accompanied by a countervailing duty (CVD) petition concerning imports of forged steel fittings from India.[2] The petitioners are a domestic producer of forged steel fittings and a certified union that represents workers who produce forged steel fittings.[3]

On October 28 and November 4, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[4] The petitioners filed responses to the supplemental questionnaires on October 30, November 4, and November 6, 2019.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of forged steel fittings from India and Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing forged steel fittings in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (D) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested AD investigations.[6]

## Periods of Investigation

Because the Petitions were filed on October 23, 2019, the period of investigation (POI) for the India and Korea AD investigations is October 1, 2018 through September 30, 2019, pursuant to 19 CFR 351.204(b)(1).

## Scope of the Investigations

The products covered by these investigations are forged steel fittings from India and Korea. For a full description of the scope of these investigations, *see* the Appendix to this notice.

[1] *See* Petitioners' Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from India and the Republic of Korea,'' dated October 23, 2019 (the Petitions).

[2] *Id.*

[3] *See* Volume I of the Petitions at 2.

[4] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from India and the Republic of Korea: Supplemental Questions,'' dated October 28, 2019 (General Issues Supplemental); ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from India: Supplemental Questions,'' dated October 28, 2019; ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from the Republic of Korea: Supplemental Questions,'' dated May 14, 2019; Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from India: Phone Call with Counsel to the Petitioners,'' dated November 4, 2019; and Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from India and the Republic of Korea: Phone Call with Counsel to the Petitioners,'' dated November 4, 2019 (Scope Memo).

[5] *See* Petitioners' Letters, ''Forged Steel Fittings from India and the Republic of Korea: Response to General Issues Questionnaire,'' dated October 30, 2019 (General Issues Supplement); ''Forged Steel Fittings from Korea: Response to Supplemental Questionnaire,'' dated October 30, 2019; ''Forged Steel Fittings from India: Response to Antidumping Questionnaire,'' dated October 30, 2019; ''Forged Steel Fittings from India and the Republic of Korea: Response on Revisions to the Scope,'' dated November 4, 2019; and ''Forged Steel Fittings from India: Response to Additional Antidumping Questions,'' dated November 6, 2019.

[6] *See* the ''Determination of Industry Support for the Petitions'' section, *infra.*

**Comments on the Scope of the Investigations**

During our review of the Petitions, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] As a result, the scope of the Petitions was modified to clarify the description of the merchandise covered by the Petitions. The description of the merchandise covered by these investigations, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on December 2, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 12, 2019, which is 10 calendar days from the initial comment deadline.[10]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

**Filing Requirements**

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

**Comments on Product Characteristics**

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of forged steel fittings to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe forged steel fittings, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on December 2, 2019, which is 20 calendar days from the signature date of this notice.[12] Any rebuttal comments must be filed by 5:00 p.m. ET on December 12, 2019. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

[7] *See* General Issues Supplemental; *see also* Scope Memo.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* 19 CFR 351.303(b).

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.*

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the Petitions.[15] Based on our analysis of the information submitted on the record, we have determined that forged steel fittings, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2018, as well as the 2018 production of Capitol Manufacturing Company LLC (Capitol Manufacturing), a U.S. producer of forged steel fittings that supports the Petitions.[17] The petitioners compared the production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.[18] We relied on data provided by the petitioners for purposes of measuring industry support.[19]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[20] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act, because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act, because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[23] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

## Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; and declines in the domestic industry's production, capacity utilization, U.S. shipments, and financial performance.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[26]

## Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of forged steel fittings from India and Korea. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

## Export Price

For India and Korea, the petitioners based export price (EP) on the average unit values (AUVs) of publicly available import data. The petitioners made deductions from U.S. price for foreign inland freight and foreign brokerage and handling charges.[27]

## Normal Value

For Korea, the petitioners based NV on home market prices obtained through market research for forged steel fittings produced in and sold, or offered for sale, in Korea within the POI.[28]

For India, the petitioners were unable to obtain information relating to the prices charged for forged steel fittings produced in and sold, or offered for sale, in India or third country prices.[29] The petitioners therefore calculated normal value based on constructed value (CV).[30] For further discussion of

v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] *See* Volume I of the Petitions at 12–14; *see also* General Issues Supplement at 6.

[16] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from India (India AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from India and the Republic of Korea (Attachment II); *see also* Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, this notice and on file electronically *via* ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Commerce building.

[17] *See* Volume I of the Petitions at 4 and Exhibits I–3 and I–4.

[18] *Id.* at 4–5 and Exhibits I–3 and I–4; *see also* General Issues Supplement at 6–8 and Exhibit 12.

[19] *See* Volume I of the Petitions at 4–5 and Exhibits I–3 and I–4; *see also* General Issues Supplement at 6–8 and Exhibit 12. For further discussion, *see* India AD Initiation Checklist at Attachment II; *see also* Korea AD Initiation Checklist at Attachment II.

[20] *See* India AD Initiation Checklist at Attachment II; *see also* Korea AD Initiation Checklist at Attachment II.

[21] *See* section 732(c)(4)(D) of the Act; *see also* India AD Initiation Checklist at Attachment II; and Korea AD Initiation Checklist at Attachment II.

[22] *See* India AD Initiation Checklist at Attachment II; *see also* Korea AD Initiation Checklist at Attachment II.

[23] *See* India AD Initiation Checklist at Attachment II; *see also* Korea AD Initiation Checklist at Attachment II.

[24] *See* Volume I of the Petitions at 22 and Exhibit I–15.

[25] *Id.* at 16–35 and Exhibits I–1, I–14, I–15 and I–17 through I–20.

[26] *See* India AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from India and the Republic of Korea (Attachment III); *see also* Korea AD Initiation Checklist, at Attachment III.

[27] *See* India AD Initiation Checklist; *see also* Korea Initiation Checklist.

[28] *See* Korea Initiation Checklist.

[29] *See* India AD Initiation Checklist.

[30] *Id.*

CV, *see* the section ''Normal Value Based on Constructed Value.'' [31]

**Normal Value Based on Constructed Value**

As noted, the petitioner was unable to obtain information relating to the prices charged for forged steel fittings produced in India, or third country prices; accordingly, the petitioner based NV on CV.[32] Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, packing expenses, and profit. For India, the petitioner calculated the COM based on the input factors of production and its own usage rates. The input factors of production were valued using publicly available data on costs specific to India during the proposed POI.[33] Specifically, the prices for raw materials, reclaimed steel scrap, and packing inputs were valued using publicly available import and domestic price data for India.[34] Labor and energy costs were valued using publicly available sources for India.[35] The petitioner calculated factory overhead, SG&A expenses, financial expenses, and profit for India based on the ratios found in the experience of a producer of identical or comparable merchandise from India.[36]

**Fair Value Comparisons**

Based on the data provided by the petitioners, there is reason to believe that imports of forged steel fittings from India and Korea are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for forged steel fittings from India range from 52.48 to 293.40 percent and from Korea range from 45.31 to 198.38 percent.[37]

**Initiation of LTFV Investigations**

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of forged steel fittings from India and Korea are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

**Respondent Selection**

In the Petitions, the petitioners named 12 companies in India [38] and four companies in Korea,[39] as producers/exporters of forged steel fittings. Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents in India and Korea based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the Appendix.

Between November 5 and November 6, 2019, Commerce released CBP data on imports of forged steel fittings from India and Korea under APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[40] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

**Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of India and Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of forged steel fittings from India and/or Korea are materially injuring, or threatening material injury to, a U.S. industry.[41] A negative ITC determination for any country will result in the investigations being terminated with respect to that country.[42] Otherwise, these investigations will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [43] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[44] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on

[31] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[32] *See* India AD Initiation Checklist; *see also* Korea AD Initiation Checklist.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *See* Volume I of the Petitions at Exhibit I–13.

[39] *Id.*

[40] *See* Memoranda, ''Antidumping Duty Investigation of Forged Steel Fittings from India: Release of Customs Data from U.S. Customs and Border Protection,'' dated November 6, 2019; and ''Antidumping Duty Investigation of Forged Steel Fittings from Korea: Release of Customs Data from U.S. Customs and Border Protection,'' dated November 5, 2019.

[41] *See* section 733(a) of the Act.

[42] *Id.*

[43] *See* 19 CFR 351.301(b).

[44] *See* 19 CFR 351.301(b)(2).

the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

**Particular Market Situation Allegation**

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[45] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 12, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigations**

The merchandise covered by these investigations is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The scope includes integrally reinforced forged branch outlet fittings, regardless of whether they have one or more ends that is a socket welding, threaded, butt welding end, or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS–SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and it does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casings. Pursuant to the applicable standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of forged steel fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class rating (expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, nipples, and all fittings that have a maximum pressure rating of 300 pounds per square inch/PSI or less.

Also excluded from the scope are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API11B;
- American Society of Mechanical Engineers (ASME) B16.9;
- Manufacturers Standardization Society (MSS) SP–75;
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAEJ1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411;
- Hydraulic hose fittings (*e.g.,* fittings used in high pressure water cleaning applications, in the manufacture of hydraulic engines, to connect rubber dispensing hoses to a dispensing nozzle or grease fitting) made to ISO 12151–1, 12151–2, 12151–3, 12151–4, 12151–5, or 12151–6;
- Underwriter's Laboratories (UL) certified electrical conduit fittings;
- ASTM A153, A536, A576, or A865;
- Casing Conductor Connectors made to proprietary specifications;
- Machined steel parts (*e.g.,* couplers) that are not certified to any specifications in this scope description and that are not for connecting steel pipes for distributing gas and liquids;
- Oil country tubular goods (OCTG) connectors (*e.g.,* forged steel tubular connectors for API 5L pipes or OCTG for offshore oil and gas drilling and extraction);
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541; and

[45] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

• International Organization for Standardization (ISO) ISO6150–B.

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2019–25043 Filed 11–20–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–892]**

### Forged Steel Fittings From India: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable November 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** Lauren Caserta, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On October 23, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of forged steel fittings from India, filed in proper form on behalf of Bonney Forge Corporation, a domestic producer of forged steel fittings, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), a certified labor union whose members include workers at the facilities in which the domestic like product is produced (collectively, the petitioners).[1] The Petition was accompanied by antidumping duty (AD) petitions concerning imports of forged steel fittings from India and the Republic of Korea (Korea).[2]

On October 28, 2019, Commerce requested further information pertaining to certain aspects of the Petition in supplemental questionnaires.[3] The petitioners filed responses to the supplemental questionnaires on October 30, 2019.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of India (GOI) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of forged steel fittings in India, and that imports of such products are materially injuring, or threatening material injury to, the forged steel fittings industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigation, the Petition is accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry, because the petitioners are an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.[5]

#### Period of Investigation

Because the Petition was filed on October 23, 2019, the period of investigation (POI) is January 1, 2018 through December 31, 2018.[6]

#### Scope of the Investigation

The products covered by this investigation are forged steel fittings from India. For a full description of the scope of this investigation, *see* the Appendix to this notice.

#### Comments on the Scope of the Investigation

During our review of the Petition, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on December 2, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 12, 2019, which is 10 calendar days from the initial comments deadline.[10]

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

#### Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized

[1] *See* Petitioners' Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from India and the Republic of Korea,'' dated October 23, 2019 (the Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Forged Steel Fittings from India: Supplemental Questions,'' dated October 28, 2019; and ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from India and the Republic of Korea and Countervailing Duties on Imports of Forged Steel Fittings from India: Supplemental Questions,'' dated October 28, 2019.

[4] *See* Petitioners' Letters, ''Forged Steel Fittings from India: Response to Supplemental Questionnaire,'' dated October 30, 2019; and ''Forged Steel Fittings from India and the Republic of Korea: Response to General Issues Questionnaire,'' dated October 30, 2019 (General Issues Supplement).

[5] *See* the ''Determination of Industry Support for the Petition'' section, *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* General Issues Supplemental.

[8] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

**Consultations**

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOI of the receipt of the Petition and provided them the opportunity for consultations with respect to the Petition.[12] Consultations were held with the GOI on November 7, 2019.[13]

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.[16] Based on our analysis of the information submitted on the record, we have determined that forged steel fittings, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2018, as well as the 2018 production of Capitol Manufacturing Company LLC (Capitol Manufacturing), a U.S. producer of forged steel fittings that supports the Petition.[18] The petitioners compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[19] We relied on data provided by the petitioners for purposes of measuring industry support.[20]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.[21] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to,

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* Memorandum, ''Countervailing Duty Petition on Forged Steel Fittings from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated October 24, 2019.

[13] *See* Memorandum, ''Consultations with Government of India Officials regarding the Countervailing Duty Petition on Forged Steel Fittings from India,'' dated November 8, 2019.

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] *See* Volume I of the Petition at 12–14; *see also* General Issues Supplement at 6.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Forged Steel Fittings from India (India CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Forged Steel Fittings from India and the Republic of Korea (Attachment II). This checklist is dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Commerce building.

[18] *See* Volume I of the Petition at 4 and Exhibits I–3 and I–4.

[19] *Id.* at 4–5 and Exhibits I–3 and I–4; *see also* General Issues Supplement at 6–8 and Exhibit 12.

[20] *See* Volume I of the Petition at 4–5 and Exhibits I–3 and I–4; *see also* General Issues Supplement at 6–8 and Exhibit 12. For further discussion, *see* India CVD Initiation Checklist at Attachment II.

[21] *See* India CVD Initiation Checklist at Attachment II.

[22] *Id.; see also* section 702(c)(4)(D) of the Act.

[23] *See* India CVD Initiation Checklist at Attachment II.

the Petition.[24] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry, within the meaning of section 702(b)(1) of the Act.

**Injury Test**

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25] Further, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners also demonstrate that subject imports from India, which has been designated as a least developed country under section 771(36)(B) of the Act, exceed the negligibility threshold of four percent.[26]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; and declines in the domestic industry's production, capacity utilization, U.S. shipments, and financial performance.[27] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

**Initiation of CVD Investigation**

Based on the examination of the Petition and supplemental response, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of forged steel fittings from India benefit from countervailable subsidies conferred by the GOI. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 36 of the 45 alleged programs. For a full discussion of the basis for our decision to initiate (or not initiate) on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

**Respondent Selection**

In the Petition, the petitioner named 12 companies in India as producers/exporters of forged steel fittings.[29] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of forged steel fittings from India during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix.

On November 7, 2019, Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[30] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the GOI and the Government of Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of forged steel fittings from India are materially injuring, or threatening material injury to, a U.S. industry.[31] A negative ITC determination will result in the investigation being terminated with respect to that country.[32] Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation

[24] *Id.*

[25] *See* Volume I of the Petition at 22 and Exhibit I–15.

[26] *Id.*

[27] *Id.* at 16–35 and Exhibits I–1, I–14, I–15 and I–17 through I–20.

[28] *See* India CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from India and the Republic of Korea.

[29] *See* Volume I of the Petition at Exhibit I–13.

[30] *See* Memorandum, ''Forged Steel Fittings from India; Release of Customs Data from U.S. Customs and Border Protection,'' dated November 7, 2019.

[31] *See* section 703(a)(2) of the Act.

[32] *See* section 703(a)(1) of the Act.

identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *https://www.govinfo.gov/content/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[33] Parties must use the certification formats provided in 19 CFR 351.303(g).[34] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

[33] *See* section 782(b) of the Act.

[34] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702(c)(2) and 777(i) of the Act and 19 CFR 351.203(c).

Dated: November 12, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The scope includes integrally reinforced forged branch outlet fittings, regardless of whether they have one or more ends that is a socket welding, threaded, butt welding end, or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS–SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and it does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casings. Pursuant to the applicable standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of forged steel fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class rating (expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, nipples, and all fittings that have a maximum pressure rating of 300 pounds per square inch/PSI or less.

Also excluded from the scope are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B;
- American Society of Mechanical Engineers (ASME) B16.9;
- Manufacturers Standardization Society (MSS) SP–75;
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411;
- Hydraulic hose fittings (*e.g.,* fittings used in high pressure water cleaning applications, in the manufacture of hydraulic engines, to connect rubber dispensing hoses to a dispensing nozzle or grease fitting) made to ISO 12151–1, 12151–2, 12151–3, 12151–4, 12151–5, or 12151–6;
- Underwriter's Laboratories (UL) certified electrical conduit fittings;
- ASTM A153, A536, A576, or A865;
- Casing conductor connectors made to proprietary specifications;
- Machined steel parts (*e.g.,* couplers) that are not certified to any specifications in this scope description and that are not for connecting steel pipes for distributing gas and liquids;
- Oil country tubular goods (OCTG) connectors (*e.g.,* forged steel tubular connectors for API 5L pipes or OCTG for offshore oil and gas drilling and extraction);
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541; and
- International Organization for Standardization (ISO) ISO6150–B.

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2019–25044 Filed 11–20–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–848]**

### Emulsion Styrene-Butadiene Rubber From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that emulsion styrene-butadiene rubber (ESB rubber) from Mexico is being sold at less than normal value during the period of review (POR) February 24, 2017 through August 31, 2018. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable November 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 15, 2018, Commerce initiated the antidumping duty administrative review on ESB rubber from Mexico.[1] The review covers one producer/exporter of the subject merchandise, Industrias Negromex S.A. de C.V. (Negromex). Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[2] As a result, the revised deadline for the preliminary results of this administrative review became July 12, 2019. On June 21, 2019, we extended the preliminary results until September 10, 2019.[3] On August 30, 2019, we extended the preliminary results until November 12, 2019.[4] Interested parties are invited to comment on these preliminary results.

#### Scope of the Order

The product covered by this administrative review is ESB rubber from Mexico. For a full description of the scope, *see* the Preliminary Decision Memorandum.[5]

#### Methodology

Commerce is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is made available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exists for the period February 24, 2017 through August 31, 2018:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Industrias Negromex S.A. de C.V | 2.61 |

#### Assessment Rate

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If Negromex's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate an importer-specific *ad valorem* assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[6] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. If Negromex's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

In accordance with our practice, for entries of subject merchandise during the POR produced by Negromex for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those 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 the final results of this review.

#### Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of ESB rubber from Mexico 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 companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[2] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Memorandum, ''Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated August 30, 2019.

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Mexico: 2nd Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated November 12, 2019

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Emulsion Styrene-Butadiene Rubber from Mexico; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] In these preliminary 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).

proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 19.52 percent, the all-others rate established in the less-than-fair-value investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure and Public Comment**

We intend to disclose the calculations performed for these preliminary results to the interested parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[10] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR .351.221(b)(4).

Dated: November 12, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Comparisons to Normal Value
V. Date of Sale
VI. U.S. Price
VII. Normal Value
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2019–25262 Filed 11–20–19; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11173 (March 3, 2016).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.310(c).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Board of Overseers of the Malcolm Baldrige National Quality Award

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Board of Overseers of the Malcolm Baldrige National Quality Award (Board) will meet in open session on Tuesday, December 10, 2019. The purpose of this meeting is to review and discuss the work of the private sector contractor, which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Malcolm Baldrige National Quality Award (Award), and information received from NIST and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award in order to make such suggestions for the improvement of the Award process as the Board deems necessary. Details on the agenda are noted in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The meeting will be held on Tuesday, December 10, 2019, from 8:30 a.m. Eastern time until 4:00 p.m. Eastern time. The meeting will be open to the public.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Building 101, Lecture Room D, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, telephone number (301) 975–2361, or by email at *robert.fangmeyer@nist.gov.*

**SUPPLEMENTARY INFORMATION:**

*Authority:* 15 U.S.C. 3711a(d)(2)(B) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Board will meet in open session on Tuesday, December 10, 2019, from 8:30 a.m. Eastern time until 4:00 p.m. Eastern time. The Board is currently composed of eleven members selected for their preeminence in the field of organizational performance excellence and appointed by the Secretary of Commerce. The Board consists of a balanced representation from U.S. service, manufacturing, small business, nonprofit, education, and health care industries. The Board includes members familiar with the quality, performance improvement operations, and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The purpose of this meeting is to review

and discuss the work of the private sector contractor, which assists the NIST Director in administering the Award, and information received from NIST and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award in order to make such suggestions for the improvement of the Award process as the Board deems necessary. The Board shall make an annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process. The agenda will include: Report from the Judges Panel of the Malcolm Baldrige National Quality Award, Baldrige Program Business Plan Status Report, Baldrige Foundation Fundraising Update, Products and Services Update, and Recommendations for the NIST Director. The agenda may change to accommodate Board business. The final agenda will be posted on the NIST Baldrige Performance Excellence website at *http://www.nist.gov/baldrige/community/overseers.cfm.* The meeting will be open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's affairs are invited to request a place on the agenda. On December 10, 2019, approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the Baldrige website at *http://www.nist.gov/baldrige/community/overseers.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak, but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland, 20899–1020, via fax at 301–975–4967 or electronically by email to *robyn.verner@nist.gov.*

All visitors to the National Institute of Standards and Technology site must pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Robyn Verner no later than 8:00 a.m. Eastern Time, Tuesday, December 10, 2019 and she will provide you with instructions for admittance. Non-U.S. citizens must submit additional information and should contact Ms. Verner for instructions. Ms. Verner's email address is *robyn.verner@nist.gov* and her phone number is (301) 975–2361. Please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Verner or visit: *http://www.nist.gov/public_affairs/visitor/.*

**Kevin A. Kimball,**

*Chief of Staff.*

[FR Doc. 2019–25184 Filed 11–20–19; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Construction Safety Team Advisory Committee Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Construction Safety Team (NCST) Advisory Committee (Committee) will hold an open meeting via teleconference on Monday, December 2, 2019, from 1:30 p.m. to 5:30 p.m. Eastern Time. The primary purpose of this meeting is to finalize the Committee's annual report to Congress. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee.*

**DATES:** The NCST Advisory Committee will meet on Monday, December 2, 2019, from 1:30 p.m. until 5:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held via teleconference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Davis, Management and Program Analyst, Disaster and Failure Studies Program, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, Maryland 20899–8604. Benjamin Davis' email address is *Benjamin.Davis@nist.gov;* and his phone number is (301) 975–6071.

**SUPPLEMENTARY INFORMATION:** The Committee was established pursuant to Section 11 of the NCST Act (Pub. L. 107–231, codified at 15 U.S.C. 7301 *et seq.*). The Committee is currently composed of six members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams. The Committee advises the Director of NIST on carrying out the NCST Act; reviews the procedures developed for conducting investigations; and reviews the reports issued documenting investigations. Background information on the NCST Act and information on the NCST Advisory Committee is available at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will meet on Monday, December 2, 2019, from 1:30 p.m. until 5:30 p.m. Eastern Time. The meeting will be open to the public and will be held via teleconference. There will be no central meeting location. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number. The primary purpose of this meeting is to finalize the Committee's annual report due to Congress. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Public comments can be provided via email or by teleconference attendance. Approximately fifteen minutes will be reserved for public comments; speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Benjamin Davis at *Benjamin.Davis@nist.gov,* by 5:00

p.m. Eastern Time, Monday, November 25, 2019.

Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements to the NCST, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, or electronically by email to *Benjamin.Davis@nist.gov.*

Anyone wishing to attend this meeting via teleconference must register by 5:00 p.m. Eastern Time, Monday, November 25, 2019, to attend. Please submit your full name, email address, and phone number to Benjamin Davis at *Benjamin.Davis@nist.gov;* his phone number is (301) 975–6071.

**Kevin A. Kimball,**

*Chief of Staff.*

[FR Doc. 2019–25183 Filed 11–20–19; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Marine Recreational Information Program Social Network Analysis In-Person Survey.

*OMB Control Number:* 0648–xxxx.

*Form Number(s):* None.

*Type of Request:* Regular (new collection).

*Number of Respondents:* 180.

*Average Hours per Response:* 0.5.

*Burden Hours:* 90.

*Needs and Uses:* NOAA Fisheries needs to educate and inform anglers about Marine Recreational Information Programs (MRIP) generally, and the agency is looking to identify how and where anglers get and share their information to more effectively communicate with recreational anglers on data collection issues by focusing communications efforts on important channels. In 2020, MRIP will conduct the Social Network Analysis In-Person Survey, which is the follow up to the 2019 Social Network Analysis Mail Survey. The subsequent analysis will allow MRIP to more effectively engage with its audiences by identifying key influencers and information pathways, and identifying the areas of greatest need and greatest opportunity for relationship-building. Data gathered will include angler use of and trust in different sources and channels of fisheries management information. These data will be used to identify key information sources for recreational anglers, evaluate regional differences in information sources, and evaluate recreational angler confidence in management and data collection efforts. The information obtained will allow MRIP to more effectively communicate with recreational anglers on data collection issues by focusing communications efforts on important network channels.

*Affected Public:* Individuals or Households.

*Frequency:* One-time reporting.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–25232 Filed 11–20–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XT025]**

### Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Shark Research Fishery Permits; Letters of Acknowledgment

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

**ACTION:** Notice of intent; request for comments; public webinar.

**SUMMARY:** NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), and shark research fishery permits for Atlantic highly migratory species (HMS) in 2020. EFPs and related permits would authorize collection of a limited number of HMS, including tunas, swordfish, billfishes, and sharks, from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific research, data collection, the investigation of bycatch, and public display, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2020, unless otherwise specified, subject to the terms and conditions of individual permits. This notice also schedules a public webinar/conference call for applicants, during which NMFS will provide a general overview of the EFP program and hold a question and answer session.

**DATES:** Written comments received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before *December 23, 2019.*

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0132,* click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Craig Cockrell, phone: (301) 427–8503.

**SUPPLEMENTARY INFORMATION:** Issuance of EFPs and related permits are necessary because HMS regulations (*e.g.,* regarding fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activity that NMFS has an interest in permitting or acknowledging. Pursuant to 50 CFR parts 600 and 635, a NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery

regulations that would otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Permit holders are not exempted from the regulations in their entirety. Collection of HMS under EFPs, SRPs, display, and shark research fishery permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, and exempted public display and educational activities with respect to Atlantic HMS. Because the Magnuson-Stevens Act states that scientific research activity which is conducted on a scientific research vessel is not fishing, NMFS issues LOAs and not EFPs for bona fide research activities (*e.g.,* scientific research being conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (*e.g.,* most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered ''bona fide research vessels'' while engaged only in the specified research. For such activities, NMFS reviews scientific research plans and may issue an LOA acknowledging that the proposed activity is scientific research under the Magnuson-Stevens Act. Examples of research acknowledged by LOAs include tagging and releasing sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is not defined as ''fishing'' subject to the MSA, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs that authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (*e.g.,* tunas, swordfish, and billfish)). One example of research conducted under SRPs consists of scientific surveys of tunas, swordfish, and billfish conducted from NOAA research vessels.

EFPs are issued for activities conducted from commercial or recreational fishing vessels. Examples of activities conducted under EFPs include collection of young-of-year bluefin tuna for genetic research; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure, and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2020. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (*e.g.,* sand tiger sharks), and collection of fish below the regulatory minimum size. Under Amendment 2 to the 2006 Consolidated Atlantic HMS Fishery Management Plan, NMFS determined that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of Atlantic HMS within existing quotas and the impacts of the activities to be conducted usually have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS management. In most such cases, NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745.

On September 13, 2018, NMFS received an application for an EFP requesting an exemption from the regulations that prohibit the retention of bluefin tuna with unauthorized gear onboard. See 50 CFR 635.19(b). This application was submitted by the Cape Cod Commercial Fishermen's Alliance (CCCFA). The applicants suggested that with the use of electronic monitoring (EM) and through issuance of an EFP, there would be sufficient at-sea monitoring to verify the catch of bluefin tuna occurred with authorized gear (*e.g.,* rod and reel and harpoon gear) and not on the unauthorized gear onboard the vessel (*e.g.,* benthic longline, jigging machines, handgear, demersal gillnet, or otter trawl). An EFP was issued to the CCCFA on June 12, 2019 that exempted eight vessels from 50 CFR 635.19(b). Since issuance of the permit, 13 trips have been taken from May through September in New England, four bluefin tuna were retained, and one tuna was lost at the boat. On two of the 13 trips, harpoon gear was used, but no fish were harvested. There were a total of two sharks caught on rod and reel gear both of which were released alive. Comments are invited specifically on these issues related to issuance of a similar permit to the CCCFA this year.

In addition, Amendment 2 to the 2006 Consolidated HMS Fishery Management Plan (FMP) implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: The collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks; and the collection of sharks to update the weight conversion

factor from dressed weight to whole weight. Fishermen who wish to participate must fill out an application for a shark research fishery permit under the exempted fishing program. Shark research fishery participants are subject to 100-percent observer coverage. All non-prohibited shark species brought back to the vessel dead must be retained and will count against the appropriate quotas of the shark research fishery participant. In recent years, all participants of the shark research fishery were limited to a very small number of dusky shark mortalities on a regional basis. Once the designated number of dusky shark mortalities occurs in a specific region certain terms and conditions are applied (*e.g.* soak time limits). If subsequent interactions occur in the region all shark research fishery activities must stop within that region. Participants would continue to be limited in the number of sets allowed on each trip and the number of hooks allowed on each set. All participants are also limited to a maximum of 500 hooks onboard the vessel while on a shark research fishery trip. A **Federal Register** notice describing the specific objectives for the shark research fishery in 2020 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2020 during the comment period of this notice.

The number of specimens that have been authorized thus far under EFPs and other related permits for 2019, as well as the number of specimens collected in 2018, is summarized in Table 1. The total amount of collections in 2018 were within the analyzed quotas for all quota managed Atlantic HMS species. The number of specimens collected in 2019 will be available when all 2019 interim and annual reports are submitted to NMFS.

In all cases, mortalities associated with EFPs, SRPs, or display permits (except for larvae) are counted against the appropriate quota. NMFS issued a total of 39 EFPs, SRPs, display permits, and LOAs in 2018 for the collection of HMS and 6 shark research fishery permits. As of October 28, 2019, NMFS has issued a total of 40 EFPs, SRPs, display permits, and LOAs and 5 shark research fishery permits.

TABLE 1—SUMMARY OF HMS EXEMPTED FISHING PERMITS ISSUED IN 2018 AND 2019, OTHER THAN SHARK RESEARCH FISHERY PERMITS

| Permit type | 2018 | | | 2019 | |
|---|---|---|---|---|---|
| | Permits issued ** | Authorized fish (num) ** | Fish kept/ discarded dead (num) | Permits issued ** | Authorized fish (num) ** |
| EFP: | | | | | |
| HMS | 2 | 162 | 6 | 7 | 120 |
| Shark | 4 | 0 | 3 | 4 | 20 |
| Tuna | 2 | 750 | 2 | 2 | 750 |
| SRP: | | | | | |
| HMS | 6 | 2,030 | 1 | 4 | 549 |
| Shark | 1 | 487 | 653 | 1 | 486 |
| Tuna | 1 | 0 | 0 | 0 | 0 |
| Display: | | | | | |
| HMS | 2 | 84 | 1 | 2 | 82 |
| Shark | 6 | 185 | 50 | 5 | 193 |
| Total | 24 | 3,698 | 716 | 25 | 3,698 |
| LOA: * | | | | | |
| Shark | 15 | 185 | 1,109 | 15 | 0 |

* LOAs acknowledge scientific research activity but do not authorize activity. Thus, the number of sharks in the authorized fish column are estimates of harvest under LOAs. Permittees are encouraged to report all fishing activities in a timely manner.

** Some shark EFPs, SRPs, and LOAs were issued for the purposes of tagging and the opportunistic sampling of sharks and were not expected to result in large amounts of mortality, thus no limits on sampling were set. Given this, some mortality may occur throughout 2019 and will be accounted for under the 60 metric ton shark research and display quota.

**Note:** "HMS" refers to multiple species being collected under a given permit type.

Final decisions on the issuance of any EFPs, SRPs, display permits, and shark research fishery permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs, consistent with the assessment of such activities within the environmental impacts analyses in existing HMS actions, including the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, the Environmental Assessment for the 2012 Swordfish Specifications, and the Environmental Assessment for the 2015 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures.

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

Dated: November 18, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–25276 Filed 11–20–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–P–2019–0039]**

### Office Patent Trial Practice Guide, November 2019 Edition

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (''Office'') is issuing a consolidated Office Patent Trial Practice Guide (''Practice Guide'') to incorporate prior updates to the original August 2012 Practice Guide. The Office publishes the Practice Guide to provide practitioners with guidance on typical procedures and timeframes for taking action in post-grant trials implemented following the Leahy-Smith America Invents Act (''AIA''), as well as to bring greater procedural consistency among panels of the Patent Trial and Appeal Board (''Board'').

**FOR FURTHER INFORMATION CONTACT:** Michael Tierney and William Fink, Vice Chief Administrative Patent Judges, by telephone at (571) 272–9797.

**SUPPLEMENTARY INFORMATION:** The Office is issuing a consolidated Practice Guide to incorporate prior updates to the original August 2012 Practice Guide. The Office previously issued updates to the original 2012 Practice Guide in August 2018 and July 2019. The consolidated Practice Guide includes no substantive changes from the prior updates or current Board practices. The topic of such revisions and updates include:

- Institution of trial after *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018);
- use of sur-replies in lieu of observations;
- how parties may contact the Board to request an initial conference call;
- use of word counts;
- updates to the sample scheduling order for derivation proceedings; and
- updates to the default protective order.

The November 2019 edition of the Practice Guide may be viewed or downloaded from the USPTO website at *https://www.uspto.gov/TrialPracticeGuideConsolidated.* The earlier Practice Guide update from July 2019 is available at *https://www.uspto.gov/TrialPracticeGuide3* and the Practice Guide update from August 2018 is available at *https://go.usa.gov/xU7GP.* The full version of the original August 2012 Practice Guide continues to be available for reference on the USPTO website at *https://go.usa.gov/xU7GK.*

Comments regarding the Practice Guide can be sent to *PTABAIATrialSuggestions@uspto.gov.*

Dated: November 14, 2019.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2019–25281 Filed 11–20–19; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Advisory Committee on Arlington National Cemetery Meeting Notice

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open committee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC), the Remember and Explore Subcommittee, and the Honor Subcommittee. These meetings are open to the public. For more information, please visit: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/ACANC-Meetings.*

**DATES:** The Remember and Explore Subcommittee will meet on Tuesday, December 10, 2019 from 9:00 a.m. to 12:00 p.m. The Honor Subcommittee will meet on Tuesday, December 10, 2019 from 1 p.m. to 4 p.m. The full Advisory Committee on Arlington National Cemetery (ACANC) will meet on Wednesday, December 11, 2019 from 12:30 p.m. to 4:00 p.m.

**ADDRESSES:** Arlington National Cemetery Welcome Center, Arlington National Cemetery, Arlington, VA 22211.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matthew Davis; Alternate Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington, VA 22211, or by email at *matthew.r.davis.civ@mail.mil,* or by phone at 1–877–907–8585.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

*Purpose of the Meeting:* The primary purpose of the Remember & Explore Subcommittee is to recommend methods to maintain the Tomb of the Unknown Soldier Monument, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement marble stone for the sarcophagus already gifted to the Army; accomplish an independent assessment of requests to place commemorative monuments within ANC; and identify means to capture and convey ANC's history, including Section 60 gravesite mementos, and improve the quality of visitors' experiences now and for generations to come.

The primary purpose of the Honor Subcommittee is to accomplish an independent assessment of methods to address the long-term future of the Army national cemeteries, including how best to extend the active burials and what ANC should focus on once all available space is used.

The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

*Agenda:* The Remember and Explore Subcommittee will receive briefings on the Tomb of the Unknown Soldier Centennial plan; review the Office of Strategic Services (OSS) Commemorative works proposal; and review the status of the educational outreach program efforts by ANC.

The Honor Subcommittee will receive an update on the design and progress of the security fence project at Joint Base Myer Henderson Hall; a status report on the Southern Expansion project design and funding; an update on the Pentagon Memorial Fund Visitor Center and a briefing on the potential for further expansion into federal areas surrounding ANC.

The Committee will receive an update briefing on the Southern expansion project; receive a state of the cemetery briefing; vote on a recommendation for placement of an OSS commemorative

monument; and review reports from subcommittee meetings.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Matthew Davis, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Subcommittees and/or the Committee in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Matthew Davis, the Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow any member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during these meetings only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the appropriate Chair determine whether the subject matter of each comment is relevant to the missions and/or the topics to be addressed in these public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above, will be invited to speak in the order in which their requests were received by the Designated Federal Officer. The appropriate Chair may allot a specific amount of time for comments.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2019–25251 Filed 11–20–19; 8:45 am]

**BILLING CODE 5001–03–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2019–OS–0130]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of a modified System of Records.

**SUMMARY:** The Office of the Secretary of Defense (OSD) is modifying a System of Records Notice (SORN), titled ''Defense Institute of Security Assistance Management (DISAM) Information System Mission (DISM),'' DSCA 05. This modified system will provide efficient administration of U.S. and international students, Defense Institute of Security Cooperation Studies (DISCS) personnel and guest lecturers. The system also provides personnel the ability to submit requests and make arrangements for travel, and to use a relational database to record, manage and report information about students, personnel, and travel, including reports of annual training for foreign nationals. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

**DATES:** This notice is effective upon publication; however, comments on the Routine Uses will be accepted on or before December 23, 2019. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

**SUPPLEMENTARY INFORMATION:** The OSD is modifying a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. This notice serves to update the SORN for DISM, DSCA 05.

The OSD is modifying this SORN by updating the system name, purpose, routine uses, storage of records, retention and disposal of records, record access procedures, contesting record procedures, and notification procedures sections to better align the SORN with guidelines provided in Office of Management and Budget (OMB) Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

The DoD notices for Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division website at *http://dpcld.defense.gov.*

The proposed systems reports, as required by the Privacy Act, as amended, were submitted on September 20, 2019, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the OMB pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,''

revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: November 15, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**SYSTEM NAME AND NUMBER:**

Defense Institute of Security Assistance Management (DISAM) Information System Mission (DISM), DSCA 05.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Defense Institute of Security Cooperation Studies (DISCS), 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641.

**SYSTEM MANAGER(S):**

DISM System Administrator; Defense Institute of Security Cooperation Studies, 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641; email: *dsca.ncr.lmo.mbx.info@mail.mil.*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 134, Under Secretary of Defense for Policy; Public Law 97–195, Foreign Assistance and Arms Export Act of 1961, as amended; DoD Directive (DoDD) 5105.65, Defense Security Cooperation Agency (DSCA); DSCA Security Assistance Management Manual, Chapter 10, International Training; DoDD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; Army Regulation 12–15, SECNAVINST 4950.4B, AFI 16–105, Joint Security Cooperation Education and Training; and E.O. 9397, (SSN), as amended.

**PURPOSE(S) OF THE SYSTEM:**

The DISCS DISM contains several applications to efficiently manage the administrative activities of U.S. and international students, DISCS personnel and guest lecturers. Also, the system allows personnel to submit requests and make arrangements for travel. Finally, the system uses a relational database to record, manage and report information about students, personnel, and travel, including reports of annual training. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DISCS civilian, military, and contractor personnel, U.S. Federal agency employees, students, and guest speakers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

DISCS Personnel data: Full name, DoD Identification Number (DoD ID), gender, date of birth, home address, personal cell phone and work numbers, work domain name, work email address, arrival and departure dates, duty hours, emergency point of contact information, position title, funding source, directorate and office names, employment status, academic rank and degree, salary, job series, civilian grade, military Joint Manpower Program rank and number, date of rank, service branch, occupational specialty code and description, military evaluation dates, tour completion date, recall order, DoD billet manning document number, height and weight, security clearance type, issue and expiration dates, investigation type and date, IT level, supervisor name, list of DoD annual training requirements, training completion dates and year required, faculty member, function and program type;

DISCS Personnel Travel data: Traveler's name, government point of contact information, request number, agency directorate, priority and requirement types, purpose of travel, group and class type, order and voucher numbers, voucher check and Military Interdepartmental Purchase Request (MIPR) dates, funding source, source organization, departure and arrival information, travel location cost information, DoD status of travel request, administrative notes and comments.

Student data: Full name, student and DoD ID, gender, date of birth, nationality, organization and mailing addresses, work number, position title, hotel confirmation number, country name, combatant command, student type, area of expertise and duty type, civilian grade, service branch, military rank, diploma, test scores, supervisor name, personal and work email addresses, and work number, course type, registration date, level and status, certificates, student and registrar comments, administrative notes and emergency point of contact information.

Guest Speaker data: Full name, position title, gender, Social Security Number (SSN) (for non-DoD guest speakers only), DoD ID, home, cell phone, and work numbers, fax number, email and mailing address, employment status, security clearance type, military rank, civilian grade, course information, honorarium, DISCS host name, and funding information.

**RECORD SOURCE CATEGORIES:**

Information contained in this system is obtained from the DISCS personnel, individuals via DISCS student registration and guest speaker forms, and travel request forms, including by administrators with access to DoD personnel and security related databases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3):

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the DoD when necessary to accomplish an agency function related to this system of records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its

information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

The records are stored in electronic format on secure servers with access restricted by the use of Common Access Cards (CACs), pin numbers, and/or card swipe protocols. Physical access is limited through the use of locks, guards, card swipe, and other administrative procedures.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

These records may be retrieved by name of individual, DoD ID, student ID, or SSN.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

These records are cut off on closure of study or event and destroyed 25 years after cut off.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, and is accessible only to authorized personnel. Access to records is also limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to electronic data is restricted by centralized access control to include the use of CAC, pin numbers (which are changed periodically), file permissions, and audit logs.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should include the full name, current address and telephone number, and the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**CONTESTING RECORD PROCEDURES:**

The DoD rule for accessing records, contesting contents, and appealing initial agency determinations are published in 32 CFR part 310 or may be obtained from the system manager.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Institute of Security Cooperation Studies, ATTN: Director of Organizational Support, 2475 K Street, Wright-Patterson AFB, OH 45433–7641. Signed, written requests should include the full name, current address and telephone number, and the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

June 7, 2016, 81 FR 36526.

[FR Doc. 2019–25203 Filed 11–20–19; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2019–OS–0128]**

### Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project in the Joint Warfare Analysis Center (JWAC) of the United States Strategic Command (USSTRATCOM)

**AGENCY:** Under Secretary of Defense for Research and Engineering (USD (R&E)), Department of Defense (DoD).

**ACTION:** Notice of proposal to adopt and modify an existing personnel management demonstration project.

**SUMMARY:** This **Federal Register** Notice (FRN) serves as notice of the proposed adoption of an existing STRL Personnel Demonstration Project by the Joint Warfare Analysis Center (JWAC), United States Strategic Command (USSTRATCOM). JWAC proposes to adopt, with some modifications, the STRL Personnel Demonstration Project implemented at the Air Force Research Laboratory (AFRL).

**DATES:** The JWAC demonstration project (JWAC–DP) proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final FRN published. To be considered, written comments must be submitted on or before December 23, 2019.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337; as amended, authorizes the Secretary of Defense (SECDEF), through the USD (R&E), to conduct personnel demonstration projects at DoD laboratories designated as STRLs.

**1. Background**

Many studies conducted since 1966 on the quality of the laboratories and personnel have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Pub. L. 103–337, as amended, a number of DoD STRL personnel demonstration projects have been approved. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology, ''generally similar in nature,'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

**2. Overview**

JWAC will adopt, with some modifications, the STRL personnel demonstration project published in 75 FR 53076, August 30, 2010, and implemented in the AFRL. Section 1105(b) of the FY 2010 NDAA, as amended by section 1104 of the FY 2018 NDAA, Pub. L. 115–91 authorizes JWAC in the USSTRACOM to implement an STRL personnel demonstration project.

Adoption of the AFRL's personnel demonstration project, with modifications, will enable JWAC to achieve the best workforce for its mission, adjust the workforce for change, improve workforce quality, and allow JWAC to acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientific and engineering professionals. Implementation of the JWAC–DP is essential for competitive hiring and retention of a highly qualified workforce.

**3. Access to Flexibilities of Other STRLs**

Flexibilities published in this FRN will be available for use by the STRLs enumerated in section 1105 of the NDAA for FY 2010, Pub. L. 111–84 as amended, if they wish to adopt them in accordance with DoD Instruction 1400.37 (and its successor instructions) and after the fulfillment of any collective bargaining obligations.

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**I. Executive Summary**

JWAC is a global warfighting organization and a subordinate organization of the USSTRATCOM. JWAC provides targeting analysis to combatant commands, Joint Staff, and other customers including effects-based, precision targeting options for selected networks and nodes in order to carry out the national security and military strategies of the U.S. during peace, crisis, and war. In order to enable military forces to rapidly achieve U.S. national security objectives, JWAC relies on the analysis of a variety of engineering, scientific, intelligence, and social science disciplines. The analytical and research teams apply social and physical science techniques and engineering expertise to provide quick-turn-around solutions to support the warfighter. Further, JWAC conducts research and development of new methodologies and technologies to advance technical analysis of critical networks and provide more targeting options against emerging threats.

JWAC must be able to acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientists and engineers, and must have in place a system that fosters their development, enhances their contribution and experience, and provides a strong retention incentive.

**II. Introduction**

*A. Purpose*

The purpose of JWAC–DP is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. JWAC–DP will provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products.

*B. Problems With the Present System*

1. JWAC has a proven history of providing the warfighter with targeting recommendations that break free from attrition warfare and focus on striking the enemy at the point that produces the greatest advantage for friendly forces. It has the ability to provide recommendations that can prevent war and, if necessary, help our nation win in time of conflict. To achieve its mission, JWAC must acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientific and engineering professionals.

2. The Civil Service General Schedule (GS) personnel system has several major inefficiencies that hinder management's ability to recruit and retain the best-qualified personnel. Line managers have only limited authority to manage personnel resources, and existing personnel regulations are often in conflict with management's ability to support JWAC's mission. Current personnel action processes and procedures cause delays in recruiting, reassigning, promoting, and removing employees.

3. The GS classification system rigidly defines types of work by occupational series and grade, with very precise qualifications for each job which are then classified by complex classification standards, causing lengthy hiring delays, and limiting the manager's ability to offer competitive compensation. This system does not easily or quickly respond to changes in the work based on mission requirements. One of the JWAC–DP's goals is to support simplified classification processes that can be

accomplished quickly and efficiently at the lowest level of management.

4. JWAC must be able to compete with the private sector and other government agencies for the best talent and be able to make job offers in a timely manner with the appropriate monetary compensation and incentives to attract high quality employees. JWAC must successfully compete for high quality scientists and engineers locally with Naval Surface Warfare Center (NSWC) Dahlgren Division, an established STRL, and the public and private sector across the National Capital Region. Today, other STRLs can make an employment offer, at a much higher salary, to a promising candidate before JWAC can prepare the paperwork necessary to begin the recruitment process.

*C. Expected Benefits*

1. This project is expected to demonstrate that a human resources system tailored to the mission and needs of JWAC will result in:

a. Increased quality in the total workforce and the products they produce;

b. increased timeliness of key personnel processes;

c. increased retention of high contributing employees;

d. increased employee satisfaction with the laboratory; and

e. improved procedures for effectively and efficiently dealing with poor contributors.

2. The JWAC–DP builds on the successful features of existing demonstration projects, including the AFRL's. For the JWAC–DP to achieve the same results it must enable and enhance:

a. The ability to attract highly qualified scientific, technical, business, and support employees in today's competitive environment;

b. the ability to select personnel and make job offers in a timely and efficient manner, with the competitive compensation that attracts high-quality, in-demand employees;

c. employee satisfaction with pay setting and adjustment, recognition, and career advancement opportunities;

d. human resources (HR) flexibilities needed to staff, shape, and adjust to evolving requirements associated with sustaining a quality workforce for the future; and

e. retention of high-level contributors.

3. To effectively meet the above expectations, the JWAC–DP has identified and established in this notice those features and flexibilities that provide the mechanisms to achieve its objectives. Those features and flexibilities alone, however, will not ensure success. The nature of the JWAC–DP and its ambitious workforce goals will require HR support at an enhanced level. A traditional process-oriented and reactive construct will serve neither the mission nor the management needs of the organization. The JWAC–DP's emphases include its streamlined hiring, a sophisticated contribution-based compensation system, talent acquisition/retention, and professional human capital planning and execution. Accordingly, successful execution of that vision includes an HR service delivery model that is highly proactive, expertly skilled in analytical tools, and fully capable of engaging as a strategic partner and trusted agent of a modern multi-faceted organization.

*D. Participating Employees*

1. The JWAC–DP will cover civilian appropriated fund employees in the competitive and excepted service, unless otherwise excluded. Personnel added to the laboratory after implementation either through appointment, conversion, promotion, reassignment, change to a lower grade, or where their functions and positions have been transferred into the laboratory will be converted to the demonstration project.

2. Senior Executive Service (SES) members, Defense Civilian Intelligence Personnel System (DCIPS, pay plan GG) positons, and Department of Air Force (DAF) centrally funded interns and recent graduates appointed under the Pathways Program are not covered in the demonstration project.

3. DAF centrally funded interns and recent graduates will convert to the JWAC–DP once they have successfully completed a formal development program and converted to a competitive position in JWAC. Performance appraisals will be conducted using the Defense Performance Management and Appraisal (DPMAP) until they are converted to the JWAC–DP.

*E. Project Design*

The JWAC–DP was designed and led by a cross-functional team comprised of the Director or Deputy Director and other senior leaders representing each JWAC directorate. The design team was augmented and supported by volunteers from across JWAC to support the iterative development, assessment and evaluation of all of the elements of the JWAC–DP design. The team composition represented all career fields and utilized their vast experience in the current systems and authorities as well as previous DoD personnel management systems. The design team reviewed and considered all existing STRL designs through detailed reviews of the published FRNs, exchanges with other STRL program managers, and organizational site visits to leverage the experience and lessons-learned of existing, mature STRL designs. The JWAC design team relied heavily on subject-matter-expertise that has been supporting the AFRL demonstration project's design and revisions, as well as demonstration projects that have been utilized at other STRLs, some for over 20 years. The JWAC–DP design is grounded in the AFRL demonstration project's design, and takes advantage of authorities and design elements from other DoD laboratories and personnel systems applicable to JWAC. The JWAC–DP design team utilized an iterative approach of reviews and a series of mock activities to develop, test, and exercise the JWAC–DP design proposal, including a JWAC-wide workforce critique of the draft FRN. The design is focused on recruiting and hiring authorities and flexibility as well as a contribution-based compensation system. This FRN adopts hiring authorities currently utilized by other DoD STRL Personnel Demonstration Projects.

*F. Personnel Policy Board*

JWAC has created a Personnel Policy Board (PPB) to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishing internal controls and accountability. The PPB Chairperson and members of the board are senior JWAC managers appointed by the JWAC Commander and documented in internal operating procedures (IOPs). The PPB Chairperson serves as the pay pool manager and must report directly to the JWAC Commander. Ad hoc members can be assigned at the discretion of the JWAC Commander to provide subject matter expertise or to advise the PPB. The establishment of this Board shall not affect the authority of any management official in the exercise of their management rights set forth in 5 U.S.C. 7106(b)(1). The PPB is tasked with the following:

1. Formulating and managing the civilian pay pool budget;

2. Determining the composition of the pay pool in accordance with the guidelines of this proposal and internal procedures;

3. Reviewing operation of JWAC's pay pool process;

4. Providing guidance to the pay pool process;

5. Reviewing seamless broadband level movements;

6. Reviewing Accelerated Compensation for Developmental Position (ACDP) increases;

7. Monitoring award pool distribution by organization or any other special categorization;

8. Assessing the need for and making changes to the JWAC–DP policies when needed to further define specific flexibilities to ensure standard application across the organizational units;

9. Ensuring all budget decisions are in alignment with funding sponsor's fiscal guidelines and boundaries; and

10. Ensuring that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project.

**III. Personnel System Changes**

*A. Hiring and Appointment Authorities*

1. Description of Hiring Process:

JWAC is implementing a streamlined examining process as demonstrated in other STRLs. This applies to all covered positions in JWAC, with the exception of Senior Executive Service (SES) and DAF centrally funded interns and students. This process includes coordination of recruitment and public notices, the administration of the examining process, the certification of candidates, and selection and appointment consistent with merit system principles, to include existing authorities under 5 U.S.C. and 5 CFR. The ''rule of three'' is eliminated, similar to the authorities granted to AFRL in 75 FR 53076, August 30, 2010. When there are no more than 15 qualified applicants and no preference eligible applicants, all qualified applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking are required only when the number of qualified candidates exceeds 15 or there is a mix of preference eligible and non-preference eligible applicants. Statutes and regulations covering veterans' preference are observed in the selection process and when rating and ranking are required.

The JWAC Commander is delegated authority, with respect to a JWAC employee, to administer the oath of office required by 5 U.S.C. 3331, incident to entrance into the executive branch or any other oath required by law in connection with employment in the executive branch.

2. Direct Hiring Authorities:

The JWAC–DP will use the direct-hire authorities authorized by section 1108 of the NDAA for FY 2009 as amended by section 1103 of the NDAA FY 2012 and in 10 U.S.C. 2358a to non-competitively appoint the following:

a. Candidates with advanced degrees to scientific and engineering positions;

b. Candidates with bachelor's degrees to scientific and engineering positions;

c. Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technicians; and

d. Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline.

3. Distinguished Scholastic Achievement Authority (DSAA): The JWAC–DP will use the Distinguished Scholastic Achievement Authority (DSAA) to non-competitively appoint candidates possessing a bachelor's degree or higher to Science and Engineering positions, Business Management and Professional positions or Technician positions, up to the equivalent of GS–12 (DR–II or DO–II). Candidates may be appointed using this authority provided all of the following conditions are met: the candidate meets the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualifications Standards for the occupational series.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligible candidates who meet the above criteria will be considered ahead of non-preference eligible candidates. In making selections, to pass over any preference eligible candidate(s) to select a non-preference eligible candidate requires approval under applicable DA pass-over or objection procedures. Distinguished Scholastic Achievement Appointments will enable JWAC to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements.

4. Flexible Length and Renewable Term Technical Appointments (Flexible Term Appointment): Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements may be competitively filled using the Flexible Length and Renewable Term Technical Appointment Authority, authorized in section 1109 of NDAA FY16, Section 1109, as amended by section 1112 of NDAA FY19 and described 82 FR 43339, 43340, or the Contingent Employee Appointment Authority authorized in 62 FR 34876, 34899.

Employees hired for more than one year, under the Contingent Employee Appointment Authority (CEAA), are given modified term appointments in the competitive service for up to five years. The JWAC Commander is authorized to extend a contingent appointment for up to one additional year.

Using the Flexible Length and Renewable Term Technical Appointment Authority (FLRTTA), a modified term scientific or technical position may be filled for any period of more than one year but not more than six years, and may be extended in up to six year increments at any time.

Employees hired under these appointment authorities may be eligible for conversion to career appointments. To be converted from CEAA or FLRTTA, the employee must (a) have been selected for the term position under an announcement or public notice specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date without further competition; (b) served two years of substantially continuous service in a term position; and (c) have a current rating of acceptable or better.

Employees serving under term appointments at the time of conversion to the STRL Demonstration Project will be converted to new term contingent employee appointments. Time served in term positions prior to conversion to the contingent employee appointment is creditable to the requirement for two years of continuous service stated above, provided the service was continuous.

5. Reemployed Annuitants and Voluntary Early Retirement Authority and Voluntary Separation Incentive Payment: The JWAC Commander may appoint reemployed annuitants and/or offer Voluntary Early Retirement Authority (VERA)/Voluntary Separation Incentive Payment (VSIP) packages as described in 82 FR 43339, September 15, 2017, to shape the mix of technical skills and expertise in the workforce.

6. Probationary Period. The probationary period will be three years for all newly hired employees, including individuals entering the JWAC–DP after a break in service of 30 calendar days or more. Employees who enter the JWAC–DP with a break in service of less than 30 calendar days are not required to complete an extended probationary period if their previous service was in the same line of work as

determined by the employee's actual duties and responsibilities upon reappointment. Current permanent Federal employees hired into the JWAC–DP are not required to serve a new probationary period. Any employee appointed prior to the date of this FRN will not be affected.

Employees on non-status appointments (appointments that are time-limited or nonpermanent and from which employees do not acquire competitive status) will be subject to the probationary period required by their appointing authority. Upon conversion from a non-status appointment to a competitive service appointment, employees will be required to serve a three-year probationary period. However, employees serving on a Flexible Length and Renewable Term Technical Appointment will serve a three-year trial period (in accordance with (IAW) 5 CFR 316.304 except that rather than a one-year trial period, it is a three-year trial period). Upon conversion to competitive service, any periods of employment served during a non-status appointment or a flexible term appointment will be counted toward the completion of the extended probationary period.

All other features of the current probationary period are retained, including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Probationary employees will be terminated if an employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the JWAC Commander or designee decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate fitness or qualifications for continued employment, the employee will be provided written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated will, as a minimum, consist of the manager's conclusions as to the inadequacies of their performance or conduct.

Supervisory probationary periods will be made consistent with 5 CFR 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one year probationary period for the initial appointment to a supervisory position. If, during the supervisory probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower payband and pay than the position from which promoted.

7. Qualification Determinations: A candidate's basic eligibility will be determined using OPM's ''Qualification Standards Handbook for General Schedule Positions.'' Selective placement factors may be established in accordance with OPM's Qualification Handbook when determined to be critical to successful position contribution. These factors are communicated to all candidates for particular position vacancies and must be met for basic eligibility.

a. Science and Engineering (S&E) (Pay Plan DR) Career Path: This career path includes technical professional positions, such as engineers, physicists, chemists, metallurgists, mathematicians, operations research analysts, and computer scientists. Additional occupational series may be added in the future. Employees in these positions require specific course work or educational degrees. Five broadband levels have been established for the S&E career path:

- Band level I minimum eligibility requirements are consistent with the GS–07 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–12 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–14 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–15 qualifications.
- Band level V minimum eligibility requirements are above the GS–15 qualifications. This band is limited to senior scientific technical manager (SSTM) positions, the primary functions of which are to engage in research and development in the physical, biological, medical or engineering sciences or another field closely related to the mission of the JWAC; and to carry out technical supervisory responsibilities. The number of such positions shall not exceed two percent of the number of scientists and engineers employed at JWAC.

b. Business Management and Professional (Pay Plan DO) Career Path: This career path supports the S&E mission, and includes specialized positions such as finance, acquisition, human resources, IT services, and administrative specialists. Employees may or may not be required to have specific course work or degrees to qualify for these positions. Four broadband levels have been established for the Business Management and Professional career path:

- Band level I minimum eligibility requirements are consistent with the GS–07 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–12 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–14 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–15 qualifications.

c. Technician (Pay Plan DX) Career Path: This career path is associated with and supportive of a professional field and may involve substantial elements of the work of the professional field, but requires less than full knowledge of the field involved. It includes positions such as Engineering Technician and Electronics Technician. Employees in these positions may or may not require specific course work or educational degrees. Four broadband levels have been established for the Technician career path:

- Band level I minimum eligibility requirements are consistent with the GS–01 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–05 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–08 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–11 qualifications.

d. Mission Support (Pay Plan DU) Career Path: This career path includes positions for which specific course work or educational degrees are not required. This career path includes clerical work, that usually involves the processing and maintaining of records, as well as assistant work, that requires knowledge of methods and procedures within a specific administrative area. Examples of positions within this career path include secretaries, office automation clerks, and budget/program/computer assistants.

- Band level I minimum eligibility requirements are consistent with the GS–01 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–05 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–07 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–09 qualifications.

8. Temporary Promotions and Details: JWAC may detail its employees to higher broadband level positions and

temporarily promote employees for up to one year within a 24-month period, with or without competition, and may extend such detail or promotion by one additional year, similar to the authority adopted by the AFRL in 75 FR 53076, August 30, 2010.

*B. Pay Setting*

1. Management has authority to establish appropriate basic pay for employees converting into or hired by the JWAC–DP. The basic pay of newly hired personnel will be at a level consistent with the expected contribution of the position. The expected contribution is based on the employee's academic qualifications, competencies, and experience, as well as the position's scope and level of difficulty. Except for Senior Scientific Technical Manager (SSTM) positions, basic pay is limited to an amount equal to GS–15, step 10 pay. A demo bonus (a lump sum payment made to an employee) may be provided to employees converting into or hired by the JWAC–DP. An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay paid in level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

2. The JWAC Commander is authorized to approve retention, recruitment, and relocation incentives. Unless specifically amended by this notice, the eligibility and documentation requirements in 5 CFR part 575 remain in effect.

3. The JWAC Commander may offer a retention counteroffer to retain high performing employees with critical scientific or technical skills who present evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased base pay (up to the ceiling of the pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Retention counteroffers, either in the form of a base pay increase or a bonus, count toward the aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

4. Student recruitment is currently limited to the local commuting area because college students often cannot afford to temporarily relocate to the Dahlgren area while enrolled at schools outside of the local commuting area. To expand recruitment to top universities, the authority in 5 CFR part 575 is expanded to allow management to pay a relocation incentive/bonus each time a student returns to duty to JWAC.

5. Accelerated Compensation for Developmental Positions (ACDP): The JWAC Commander may authorize an increase to basic pay for employees participating in training programs, internships, or other development capacities. ACDP will be used to recognize development of job related competencies as evidenced by successful contribution to the JWAC.

The use of ACDP is limited to employees in pay bands I and II in the Business Management and Professional and S&E career paths. Additional guidance will be published in an IOP.

6. Maintained Pay: The JWAC–DP will eliminate retained grade and retained pay and will adopt ''maintained pay'' provisions similar to those utilized in AFRL (75 FR 53076). An employee may be entitled to maintain the employee's current rate of basic pay if, as a result of personnel actions that would entitle the employee to grade or pay retention under Title 5, the employee is placed in a payband where the employee's current rate of basic pay exceeds the maximum rate of basic pay for the pay band. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the assigned permanent position of record, not the retained grade. An employee's adjusted pay will not be reduced upon conversion. Implementing instructions will be documented in IOPs.

*C. Broadbanding*

JWAC–DP will use a broadbanding approach to compensation and classification. A broadbanding structure will simplify the classification system, reduce the number of distinctions between levels of work, and facilitate delegation of classification authority and responsibility to line managers.

The broadbanding structure replaces the GS structure. Table 1 shows the four broadband levels in each career path, labeled I, II, III, IV, and the additional broadband level, labeled V, for SSTM positions in the S&E career path. The broadband levels are designed to enhance pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate broadband level(s). Competitive promotions will be less frequent and movement through the broadband levels will be a more seamless process. Like the broadbanding system used at AFRL, advancement within each band is based upon contribution.

The four distinct career paths within JWAC–DP are: S&E, Business Management and Professional, Technician, and Mission Support.

1. *S&E (Pay Plan DR):*

- Band I includes the current GS–7 through GS–11;
- Band II includes the current GS–12 through GS–13;
- Band III includes the current GS–14;
- Band IV includes the current GS–15;
- Band V SSTM positions above GS–15.

2. *Business Management and Professional (Pay Plan DO):*

- Band I includes the current GS–7 through GS–11;
- Band II includes the current GS–12 through GS–13;
- Band III includes the current GS–14;
- Band IV includes the current GS–15.

3. *Technician (Pay Plan DX):*

- Band I includes the current GS–1 through GS–4;
- Band II includes the current GS–5 through GS–7;
- Band III includes the current GS–8 through GS–10;
- Band IV includes the current GS–11 through GS–12.

4. *Mission Support (Pay Plan DU):*

- Band I includes the current GS–1 through GS–4;
- Band II includes the current GS–5 through GS–6;
- Band III includes the current GS–7 through GS–8;
- Band IV includes the current GS–9 through GS–10.

Comparison to the GS grades was useful in setting the upper and lower dollar limits of the broadband system; however, once employees are converted or hired into the JWAC—DP, GS grades and steps no longer apply.

TABLE 1. BROADBANDING SYSTEM

| Career Paths | Corresponding GS Grades | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | Above 15 |
| | Band Structure | | | | | | | | | | | | | | | |
| Scientists & Engineers | | | | | | | DR-I | | | | | DR-II | | DR-III | DR-IV | DR-V |
| Business Mgt/Professional | | | | | | | DO-I | | | | | DO-II | | DO-III | DO-IV | |
| Technician | DX-I | | | | DX-II | | | DX-III | | | DX-IV | | | | | |
| Mission Support | DU-I | | | | DU-II | | DU-III | | DU-IV | | | | | | | |

The JWAC–DP will use the authority in title 10 U.S.C. 2358a to expand the S&E career path to include a broadband level V. This broadband level is designed for SSTM positions, the primary functions of which are: (1) To engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the JWAC mission; and (2) to carry out technical supervisory responsibilities. The SSTM positions will be similar to those described in 79 FR 43722. Panels will be created to assist in filling SSTM positions. Panel makeup will be included in the IOPs. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level. Vacant SSTM positions will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

Upon the implementation of the JWAC–DP, and periodically thereafter, the JWAC Commander will review organizational and mission requirements, and where appropriate, may modify the duties of existing SSTM positions and/or the total number of SSTM positions. Consistent with 10 U.S.C. 2358a, the total number of SSTM positions may not exceed two percent of the number of scientists and engineers employed at the JWAC as of the close of the last fiscal year before the fiscal year in which any additional appointments are made. The minimum basic pay for SSTM positions is 120 percent of the minimum rate of basic pay for GS–15. Maximum SSTM basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. The contribution management system used to evaluate an SSTM employee will be documented in the JWAC IOPs.

*D. Classification*

1. Statement of Duties and Experience (SDE)

Under the JWAC–DP's simplified classification system, the SDE replaces the DAF Form 1003 Air Force Core Personnel Document (CPD). The SDE includes a description of position-specific information; identifies the career path, occupational series and broadband level; includes the factors and descriptors for the assigned career path and broadband level; and provides data element information pertinent to the position.

2. Occupational Series

The present system of OPM classification standards is used for the identification of proper series and occupational titles of positions within the JWAC–DP. The OPM occupational series scheme, which frequently provides well-recognized disciplines with which employees are to be identified, is maintained and facilitates movement of personnel into and out of the JWAC–DP. Other series may be added as the need for new competencies emerges within the JWAC environment.

3. Classification Factors and Descriptors

Current OPM Position Classification Standards will not be used to grade positions in the JWAC–DP. JWAC's factors and descriptors will describe the level of work expected for each broadband level in each career path. The AFRL classification factors and descriptors published in 75 FR 5076, August 30, 2010, and OPM classification guidance will be used as a framework to develop JWAC specific factors and descriptors (see Appendix B). The JWAC–DP factors and descriptors will also be used for the annual Compensation-based Contribution System (CCS) employee assessments (Section III., E. 3). Factors and descriptors will be documented in JWAC IOPs.

4. Classification Authority

The JWAC Commander will have classification authority and may, in-turn, re-delegate this authority to appropriate levels. HR Specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. The final classification decision will be documented on the SDE.

5. Classification Process

The SDE is developed using the following process:

a. The supervisor identifies the organizational location, SDE number, and the employee's name. The supervisor selects the appropriate occupational series, pay plan, broadband level, and title; the level factor descriptors corresponding to the broadband level that is most commensurate with the level of contribution necessary to accomplish the duties and responsibilities of the position; and the Defense Civilian Personnel Data System (DCPDS) supervisory level. The classification system is not hierarchical, meaning that a supervisor's broadband level is based on the contributions he/she has made to the organization, and not based on the broadband level of subordinate employees, as is typical under other personnel systems. Therefore, supervisors may be at the same, lower, or higher broadband level than the employees they supervise.

b. The supervisor selects a brief description of the primary purpose of the position making sure the description is consistent with the series and title chosen for the position. The supervisor chooses statements pertaining to physical requirements; competencies required to perform the work; and special licenses or certifications needed. Based on the supervisory level of the position, the system produces mandatory statements pertaining to affirmative employment, safety, and security programs.

c. The supervisor selects other position data, such as position sensitivity and drug testing requirements. The supervisor also selects the Fair Labor Standards Act (FLSA) status. The FLSA status

selection must be in accordance with OPM guidance and HR Specialists may advise management as necessary. The data elements are maintained as a separate page of the SDE (*i.e.,* an addendum) and may be changed as needed, without creating and classifying a new SDE.

d. The supervisor makes a recommended classification, then signs and dates the document. The supervisor sends the SDE to the classification authority for classification. The classification is finalized when the classification official signs and dates the SDE. The SDE development process incorporates definitions for the CCS supervisory levels, and occupational series as appropriate.

*E. Contribution-Based Compensation System (CCS)*

1. Overview

The CCS is a contribution-based assessment system that goes beyond a performance-based rating system. The CCS measures the employee's contribution to the organization's mission, the contribution level, and how well the employee performed a job. Contribution is defined as the measure of the demonstrated value of what an employee did in terms of accomplishing or advancing the organizational objectives and mission impact. The purpose of the CCS is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the JWAC workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. The CCS allows for more employee involvement in the assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution, facilitates employee career progression, provides an understandable basis for basic pay changes, and delinks awards from the annual assessment process. The CCS process described herein applies to broadband levels I through IV. The assessment process for broadband level V positions will be documented in the JWAC IOPs.

2. Factors and Descriptors

Each factor (*e.g.,* Communication, Technology/Business Management, Problem Solving, and Teamwork/Leadership) has descriptors that describe increasing levels of contribution corresponding to each broadband level. The same factors and descriptors will be used for classification and for the annual CCS employee assessments. The factors and descriptors for the appropriate career path will be used by the rating official to determine the employee's overall contribution score (OCS). Employees can score within, above, or below the range for their broadband level. For example, a broadband level II employee could score in the broadband level I, II, III, or IV range. Therefore, supervisors utilize all factors and descriptors to determine each employee's contribution assessment.

3. CCS Assessment Scoring

The annual CCS assessment scoring process begins with employee input, which provides employees with an opportunity to communicate their perceived accomplishments and level of contribution to their supervisors. An employee's basic pay determines an expected score when plotted on the appropriate career path Standard Pay Line (SPL) (discussed in section III.E.4).

Each career path has its own SPL based on the salary range established for that career path. Scores have a direct relationship with basic pay; therefore, the significance of an employee's actual score is not known until it is compared to his/her expected score. For instance, an employee in the Mission Support career path with a basic pay rate of $33,091 in 2018 would have an expected score of 2.25, while an employee in the Business Management and Professional career path with a basic pay rate of $74,705 would have the same expected score. The comparison between expected score and OCS provides an indication of equitable compensation, under-compensation, or overcompensation. (Typically, employees who are overcompensated are not meeting contribution expectations and may be placed on a Contribution Improvement Plan, described in further detail in section III.F.) Broadband levels in each career path have the same expected score range, as depicted in Table 2 below, which also includes the 2018 basic pay ranges for each broadband level. As the general basic pay rates increase annually, the minimum and maximum basic pay rates of each broadband level for each career path are adjusted accordingly. Individual employees receive basic pay increases and/or bonuses based on the annual assessments under the CCS. There are no changes to title 5, U.S.C., regarding locality pay under the JWAC–DP.

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TABLE 2. 2018 BASIC PAY AND CCS SCORE RANGES

| Science and Engineering (DR) Broadband Score and 2018 Pay Ranges | | | | |
|---|---|---|---|---|
| Broadband Level | CCS Score Lower | CCS Score Higher | Min Basic Pay | Max Basic Pay |
| I | 0.75 | 2.25 | $38,909 | $74,705 |
| II | 1.75 | 3.25 | $62,773 | $98,569 |
| III | 2.75 | 4.25 | $86,637 | $122,433 |
| IV | 3.75 | 5.25 | $110,501 | $136,659 |

*Basic salary is limited to GS-15, step 10

| Business Management and Professional (DO) Broadband Score and 2018 Pay Ranges | | | | |
|---|---|---|---|---|
| Broadband Level | CCS Score Lower | CCS Score Higher | Min Basic Pay | Max Basic Pay |
| I | 0.75 | 2.25 | $38,909 | $74,705 |
| II | 1.75 | 3.25 | $62,773 | $98,569 |
| III | 2.75 | 4.25 | $86,637 | $122,433 |
| IV | 3.75 | 5.25 | $110,501 | $136,659 |

*Basic salary is limited to GS-15, step 10

| Technical (DX) Broadband Score and 2018 Pay Ranges | | | | |
|---|---|---|---|---|
| Broadband Level | CCS Score Lower | CCS Score Higher | Min Basic Pay | Max Basic Pay |
| I | 0.75 | 2.25 | $14,641 | $39,558 |
| II | 1.75 | 3.25 | $31,252 | $56,169 |
| III | 2.75 | 4.25 | $47,863 | $72,780 |
| IV | 3.75 | 5.25 | $64,474 | $89,391 |

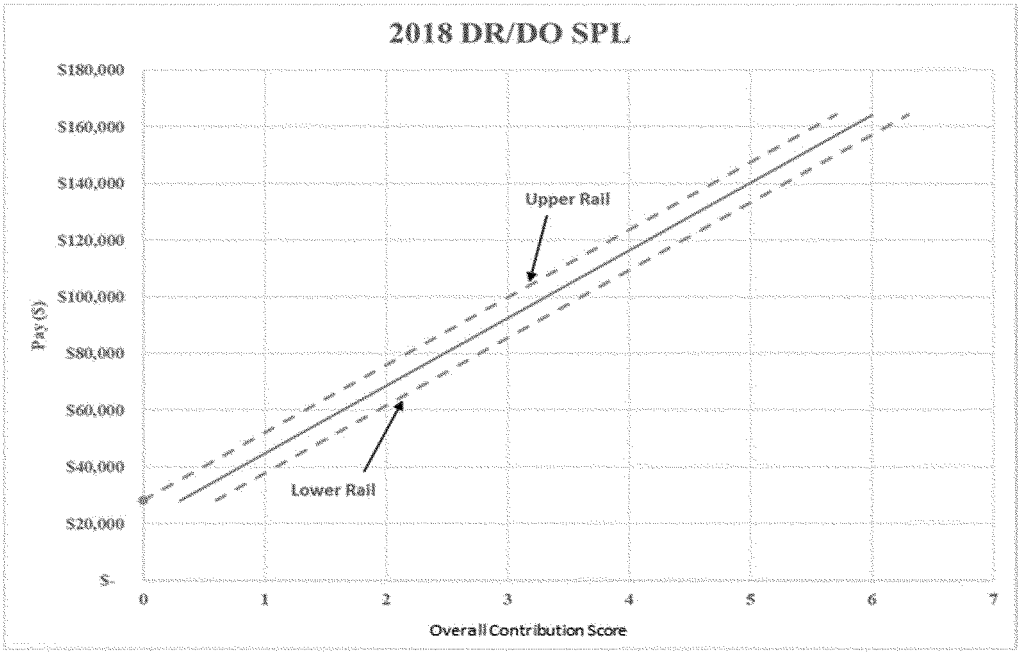
| Mission Support (DU) Broadband Score and 2018 Pay Ranges | | | | |
|---|---|---|---|---|
| Broadband Level | CCS Score Lower | CCS Score Higher | Min Basic Pay | Max Basic Pay |
| I | 0.75 | 2.25 | $15,932 | $33,091 |
| II | 1.75 | 3.25 | $27,371 | $44,530 |
| III | 2.75 | 4.25 | $38,810 | $55,969 |
| IV | 3.75 | 5.25 | $50,249 | $67,408 |

4. Standard Pay Line (SPL)

A mathematical relationship between assessed contribution and basic pay will be used to create the SPLs for each career path used in the CCS, similar to the formulas adopted by AFRL in 75 FR 53076, dated August 30, 2010. The SPL is a straight line which yields a reasonable correlation between basic pay rates in the broadband levels and those of the corresponding GS grade(s); provides a single relationship (equation) for the entire range of pay and OCS; and demonstrates equitable *(i.e., consistent*) growth at each CCS score.

The JWAC equation for the 2018 S&E (DR) and the Business Management and Professional (DO) SPL is BASIC PAY = $21,011 + ($23,864 × CCS SCORE). Figure 1 provides a pictorial representation of the 2018 DR & DO SPL.

FIGURE 1. CCS RELATIONSHIP – S&E (DR) AND BUSINESS MANAGEMENT AND PROFESSIONAL (DO) CAREER PATHS




The JWAC equation for the 2018 Mission Support (DU) SPL is BASIC PAY = $7,353 + ($11,439 × CCS SCORE), and JWAC equation for the 2018 Technician (DX) SPL is BASIC PAY = $2,183 + ($16,611 × CCS SCORE); as shown in Figures 2 and 3. The equations for future JWAC SPLs may be modified consistent with this notice and the IOP.

FIGURE 2. CCS RELATIONSHIP – MISSION SUPPORT (DU) CAREER PATH

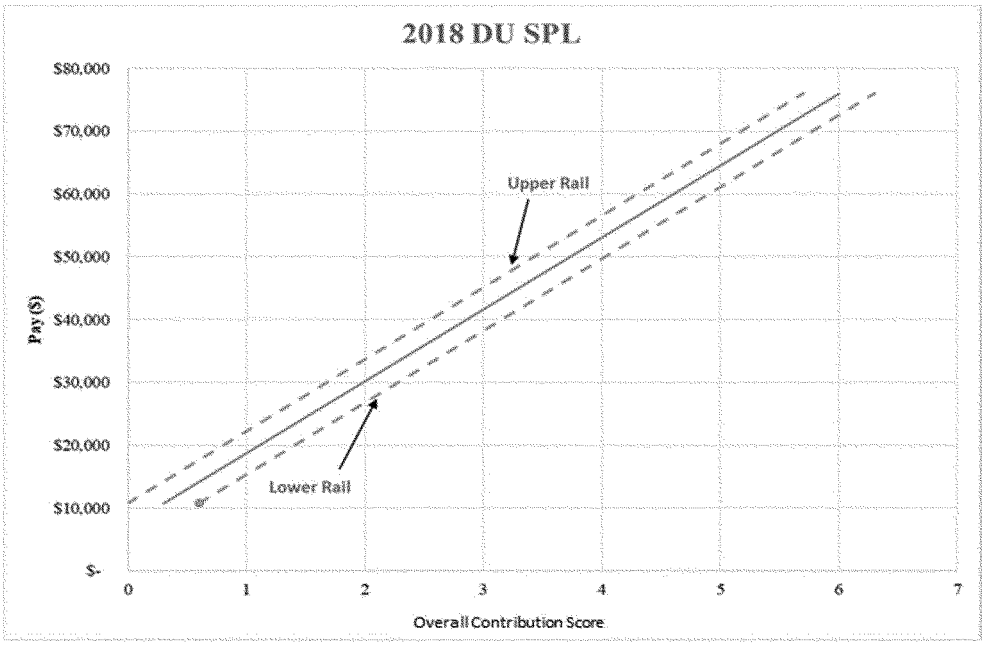
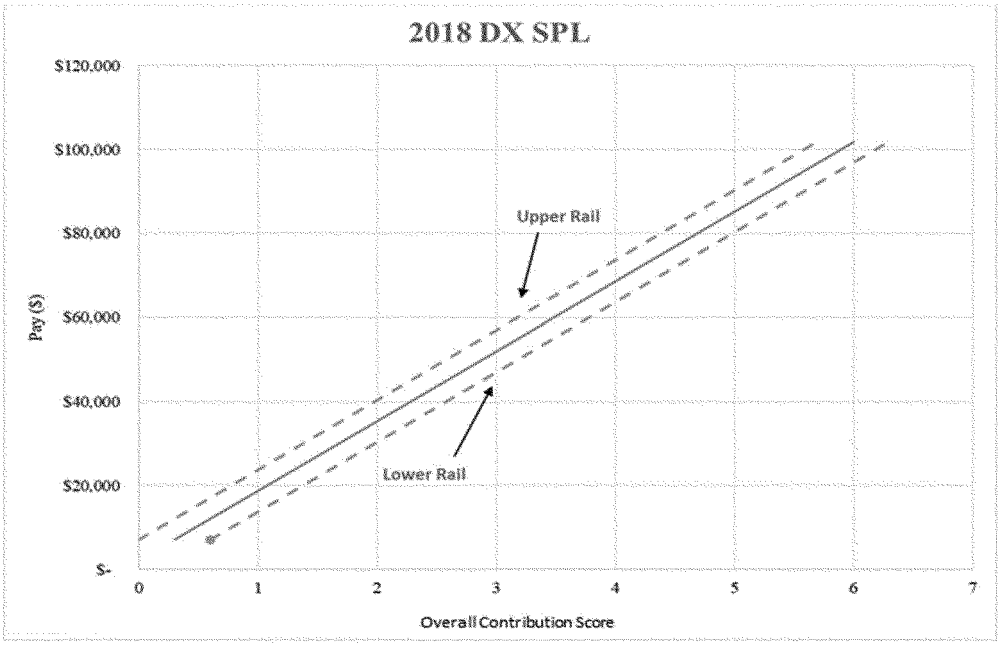


FIGURE 3. CCS RELATIONSHIP – TECHNICIAN (DX) CAREER PATH

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5. The CCS Assessment Process

The rating official is the first-level supervisor of record for at least 90 days during the rating cycle. If the current immediate supervisor has been in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain who has been in place for more than 90 days during the rating cycle conducts the assessment.

The annual assessment cycle begins on September 1 and ends on August 31 of the following year. At the beginning of the annual assessment period, the broadband level factors and descriptors are provided to employees setting forth the basis on which their contribution is assessed.

A midyear review, in the February to March timeframe, is conducted for employees. During this review the employee's professional qualities, competence, developmental needs, and mission contribution are discussed, as well as future development and career opportunities. Additionally, employees provide feedback to supervisors on their supervisory qualities and skills. To highlight its importance, all feedback sessions are certified as completed by the rating official conducting the feedback session. While one documented formal midyear feedback session is required, supervisors are encouraged to conduct informal feedback sessions throughout the rating period. The preferable method for all feedback sessions is face-to-face.

At the end of the annual assessment period, employees summarize their contributions in each factor for their rating official. Employees are highly encouraged to submit written self-assessments identified to management, to ensure that all of the employee's contributions accomplished during the rating cycle are taken into consideration. The rating official first determines preliminary CCS scores using the employee's input and the rating official's assessment of the employee's overall contribution to the laboratory mission, based on the appropriate broadband level factor descriptor. The preliminary score is determined by comparing an employee's contribution results to the descriptors for a particular factor and selecting the most appropriate general range (*e.g.,* high, medium, or low).

The rating officials (*e.g.,* branch chiefs) and the next level supervisors (*e.g.,* the respective division chief) then meet as a group (*e.g.,* first-level Meeting of Managers (MoM)) to review and discuss all proposed employee assessments and preliminary CCS factor scores. Giving authority to the group of managers to determine CCS factor scores ensures that contributions are assessed and measured similarly for all employees. During the MoMs, the preliminary factor scores are further refined into decimal scores. For example, if the employee's contribution level for a factor is at the lowest level of broadband level I, a factor score of 1.0 is assigned. Higher levels of contribution are assigned factor scores increasing in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee does not demonstrate a minimum broadband level I contribution. Likewise, a factor score of 5.9 can be assigned if an employee demonstrates a contribution that exceeds the broadband level IV descriptor. Rating officials must document justification for each proposed factor score.

Factor scores are then averaged to give an overall CCS score (OCS). Each broadband level is defined for OCS from 0.75 to 5.25 as shown in Table 2. The maximum OCS for broadband level IV is set at 5.25, to be consistent with the maximum overall CCS scores for other broadband levels (4.25 for broadband level III, 3.25 for broadband level II, and 2.25 for broadband level I). Therefore, when the average of CCS factor scores exceeds 5.25, the overall CCS score is set to 5.25, and the employee who was scored above 5.25 will be identified to upper management as having exceeded the maximum contribution defined by the broadband. The maximum basic pay for each broadband is the basic pay corresponding with an X.25 OCS (*i.e.,* 2.25, 3.25, 4.25, and 5.25). Once the scores have been finalized, the pay pool manager approves the scores for the entire pay pool. The pay pool manager has the ability to look across the entire pay pool and may address anomalies

through the appropriate management chain.

If, on September 1, an employee has been covered by the CCS for less than 90 days, the rating official waits for the subsequent annual cycle to assess the employee. Such an employee is considered ''presumptive due to time'' and is assigned a score at the intersection of their basic pay and the SPL. Periods of approved, paid leave are counted toward this 90-day time period. When an employee cannot be evaluated readily by the normal CCS assessment process due to special circumstances that take the employee away from normal duties or duty station (*e.g.,* long-term full-time training, extended sick leave, leave without pay, etc.), the rating official documents the rating as ''presumptive due to circumstance'' in the CCS software. The rating official then assesses the employee using one of the following options:

- Recertify the employee's last OCS; or
- Assign a score at the intersection of the employee's basic pay and the SPL.

Basic pay adjustments, *i.e.,* decisions to give or withhold basic pay increases or bonuses, are based on the relationship between the employee's actual CCS score and the employee's current basic pay (as discussed in section III.E.5). Decisions for seamless broadband movement (discussed in section III.E.6.) are also based on this relationship. Final pay determinations and broadband level changes are made by the pay pool manager.

6. Pay Pools

The pay pool structure is under the authority of the JWAC Commander who, in-turn, may delegate this authority. The following guidelines apply to pay pools: (a) A pay pool is based on the JWAC organizational structure and should include a range of basic pay rates and broadband levels; (b) a pay pool must be large enough to constitute a reasonable statistical sample, *i.e.,* 35 or more employees; (c) a pay pool must be large enough to encompass a second level of supervision since the CCS process uses a group of supervisors in the pay pool to determine assessments and recommend basic pay adjustments; (d) the pay pool manager holds annual pay adjustment authority; and (e) neither the pay pool manager nor the supervisors within the pay pool recommend or set their own individual pay.

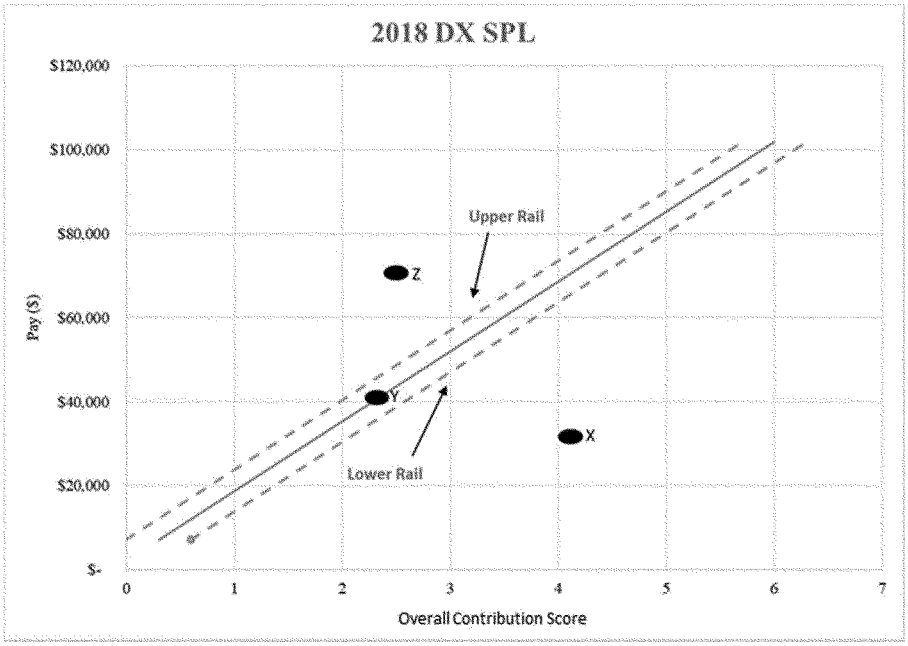
The amount of money available for basic pay increases within a pay pool is determined by the amount of the general increase (''G'') authorized by law or the President for the GS under 5 U.S.C. 5303, and an incentive amount (''I'') drawn from money that, under the GS system, would be available for step increases and career ladder promotions. The incentive amount is set by the PPB each year and is adjustable to ensure cost discipline over the life of the JWAC–DP. The dollars derived from ''G'' and ''I'' percentages included in the pay pool are computed based on the basic pay of eligible employees in the pay pool as of August 31 of each year. The Under Secretary of Defense (Personnel & Readiness) may, at his/her discretion, adjust the minimum funding levels to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

7. Basic Pay Adjustment Guidelines

The maximum basic pay for any employee is limited to GS–15, step 10, except for employees in SSTM positions. Any employee whose basic pay would exceed GS–15, step 10, based on his or her OCS, will be identified to upper management as having exceeded the maximum allowable basic pay and will be paid a bonus to cover any difference between the GS–15, step 10, basic pay and the basic pay associated with his or her OCS. There are no changes to 5 U.S.C., regarding locality pay under the JWAC–DP.

Employees' OCSs are determined by the CCS assessment process described in Section III.E.3. Employees' OCSs are plotted on the appropriate SPL graph based on their current basic pay as shown in Figure 5. The position of those points in relation to the SPL provides a relative measure (Delta Y) of the degree of over-compensation or under-compensation for each employee. This process permits all employees within a pay pool to be rank-ordered by Delta Y, from the most undercompensated employee to the most overcompensated.

Figure 5. EMPLOYEE POSITIONING




In general, those employees who fall below the SPL (indicating under-compensation; for example, employee X in Figure 5) should expect to receive greater basic pay increases than those who fall above the line (indicating overcompensation; for example, employee Z in Figure 5). An OCS that falls on either rail is considered to be within the rails. Over time, employees will migrate closer to the SPL. The following provides more specific guidelines: (a) Employees who fall above the upper rail (for example, employee Z in Figure 5) are given an increase ranging from zero to a maximum of the dollar amount determined by the ''G'' percentage increase; (b) those who fall within the rails (for example, employee Y in Figure 5) are given a minimum of the dollar amount determined by the ''G'' percentage increase; and (c) those who fall below the lower rail (for example, employee X in Figure 5) are given at least their basic pay multiplied by ''G'' and ''I'' percentages. The pay pool manager may give a CCS bonus (a lump sum payment made to an employee in lieu of a basic pay increase as part of the CCS assessment process) to an employee as compensation, in whole or part. This may be appropriate in a situation when the employee's continued contribution at this level is uncertain. The CCS Bonus criteria will be documented in JWAC IOPs.

The pay pool manager sets the necessary guidelines for pay adjustments in the pay pool based on guidance from the PPB. Decisions will be consistent in the pay pool within these general rules: Final decisions are standard and consistent within the pay pool; are fair and equitable across the organization; and maintain cost discipline.

8. Broadband Level Movements

A key concept of the JWAC–DP is that career growth may be accomplished by seamless broadband movement, *i.e.,* movement through the broadband levels within a particular career path by significantly increasing levels of employee contribution toward the JWAC mission. Seamless broadband level movement may occur once a year during the CCS process, if certain conditions are met. An employee's contribution is a reflection of his/her OCS, which is derived from a comparison of the employee's contribution to each of the factors and descriptors. Because the descriptors are written at progressively higher levels of work and are the same descriptors used in the classification process, higher scores reflect that an employee's contribution is equivalent to the level associated with the score they are awarded. An employee's broadband level may be increased when an employee consistently contributes at a level consistent with the expectations for a higher broadband level than the one to which the employee is currently assigned, such as through increased expertise and by performing expanded duties and responsibilities commensurate with the higher broadband level factor and descriptors. If an employee's contributions impact and broaden the scope, nature, intent, and expectations of the position and are reflective of higher level factors and descriptors, the classification of the position is updated accordingly. This form of movement through broadband levels is referred to as a seamless broadband movement and can only happen within the same career path; employees cannot cross over career paths through this process. The criteria is similar to that used in an accretion of duties scenario and must be met for an employee to move seamlessly to a higher broadband level. For seamless broadband movement to occur: (1) The employee's current position must be absorbed into a reclassified position, while the employee continues to perform the same basic duties and responsibilities (although at the higher level); and (2) the employee's current position must be reclassified to a higher broadband level as a result of additional, higher-level duties and responsibilities. It may take a number of years for contribution levels to increase to the extent a seamless broadband movement is warranted, and not all employees achieve the increased contribution levels required for such moves.

This simplified classification and broadbanding structure allows management to assign duties consistent with the broadband level of a position without the necessity to process a

personnel action and provides managers authority to move employees between positions within their current broadband level, at any time during the year. However, management also has the option to fill vacancies throughout the year using various staffing alternatives, to include details, reassignments, or competitive selection procedures (as applicable and/or required) for competitive promotions or temporary promotions (typically used for filling supervisory positions). Employees may be considered for vacancies at higher broadband level positions consistent with the JWAC–DP competitive selection procedures.

Any resulting changes in broadband levels that occur through the CCS process are not accompanied by pay increases normally associated with formal promotion actions, but, rather, are processed and documented with a pay adjustment action to include appropriate changes/remarks (*e.g.,* change in title (if appropriate), change in broadband level, and classification of a new SDE). The terms ''promotion'' and ''demotion'' are not used in connection with the CCS process.

The broadbanding structure creates an overlap between adjacent broadband levels that facilitates broadband movement. For instance, the minimum basic pay for a broadband level I is that basic pay from the SPL corresponding to a CCS score of 0.75. And the maximum basic pay for broadband level I is that basic pay from the SPL corresponding to a CCS score of 2.25. The minimum basic pay for broadband level II is that basic pay from the SPL corresponding to a CCS score of 1.75. And the maximum basic pay for broadband level II is that basic pay from the SPL corresponding to a CCS score of 3.25. Likewise, the minimum basic pay for broadband level III is that basic pay from the SPL corresponding to a CCS score of 2.75, and so on for the different broadband levels. This structure provides a basic pay overlap between broadband levels that is consistent with, and similar to, basic pay overlaps in the GS schedule.

9. Voluntary Pay Reduction and Pay Raise Declination

Under CCS, an employee may voluntarily request a pay reduction or a voluntary declination of a pay raise which would effectively place an overcompensated employee's pay closer to the SPL. Since an objective of the CCS is to properly compensate employees for their contribution to the JWAC, granting such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than being undercompensated at a fixed level of contribution.

To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout and document the reasons for the request. The pay pool manager may consider voluntary pay reductions at other times throughout the year, as documented in internal operating procedures. Management must properly document all decisions to approve or disapprove such requests. This type of basic pay change is not considered to be an adverse personnel action.

*F. Dealing With Inadequate Contributions*

The CCS is a contribution-based assessment system that goes beyond a performance-based rating system. Contribution is measured against factors, with each factor having descriptors that describe increasing levels of contribution corresponding to the broadband level. Employees are plotted against the SPL based on their score and current basic pay, which determines the amount of over-compensation or under compensation the employees are receiving. When an employee's contribution plots in the area above the upper rail of the SPL (Section III.E.3.), the employee is overcompensated for his/her level of contribution and is considered to be in the Automatic Attention Zone (AAZ).

This section addresses reduction in pay or removal of JWAC–DP employees based solely on inadequate contribution, as determined by the amount an employee is overcompensated. The following procedures are similar to and replace those established in 5 CFR part 432 pertaining to performance-based reduction in grade and removal actions. Adverse action procedures under 5 CFR part 752 remain unchanged. The immediate supervisor has two options when an employee's contribution plots in the AAZ. The first option is document the employee's inadequate contributions in a memorandum for record. In this memorandum, the supervisor should state, in writing, the specifics regarding where the employee failed to contribute at an adequate level and provide a rationale for not taking a formal action. Examples where this might be used are when an employee's contribution plots just above the upper rail of the SPL, or extenuating circumstances exist that may have decreased the employee's overall CCS score during the rating period and are expected to be temporary in nature. A copy of this memorandum is provided to the employee and to higher levels of management.

The second option is to take a formal action by placing the employee on a Contribution Improvement Plan (CIP), providing the employee an opportunity to improve. The CIP must inform the employee, in writing, that unless the employee's contribution increases and is sustained at the expected contribution level, the employee may be reduced in pay or removed. The supervisor will afford the employee a reasonable improvement opportunity period, generally 30 days, to demonstrate increased contribution commensurate with the duties and responsibilities of the employee's position. As part of an employee's opportunity to demonstrate increased contribution, management will offer appropriate assistance to the employee.

If an employee has been placed on a CIP and afforded a reasonable opportunity to demonstrate increased contribution, yet fails to do so, management has sole and exclusive discretion to initiate reduction in pay or removal for that employee. If the employee's contribution increases to a higher level during the opportunity period and is again determined to deteriorate in any area within two years from the beginning of the improvement opportunity period, management has sole and exclusive discretion to initiate a reduction in pay or removal with no additional opportunity to improve. If an employee has contributed appropriately for two years (or longer) from the beginning of an improvement opportunity period and the employee's overall contribution once again declines, management will afford the employee an additional improvement opportunity period to demonstrate increased contribution before determining whether or not to propose a reduction in pay or removal.

An employee is entitled to at least a 30-day advance notice of a proposed reduction in pay or removal action. This advanced notice will identify specific instances of the employee's inadequate contribution. The employee will be afforded a reasonable time (as stated in 5 U.S.C. 7513(b)(2)), but not less than seven days, to answer the notice of proposed action, which may be done orally and/or in writing, at the employee's discretion.

A decision to reduce pay or remove an employee for inadequate contribution may only be based on those instances of inadequate contribution that occurred during the two-year period immediately preceding the date

of the notice of proposed action is issued. Management will issue a written notice of its decision on reduction in pay or removal to the employee at or before the time the action will be effective. This notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights as specified in 5 CFR 432.106.

Management will preserve all relevant documentation concerning a reduction in pay or removal based on inadequate contribution and make the relevant documentation available for review by the affected employee and/or the employee's designated representative. At a minimum, the documentation will consist of a copy of the notice of proposed action; the employee's written answer or a written summary of the employee's oral reply; and the written notice of decision to take the action, including the reasons therefore, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate increased contribution.

*G. Voluntary Emeritus Corps*

The JWAC Commander has the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments at JWAC. Voluntary Emeritus Corps assignments are not considered ''employment'' by the Federal government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Volunteer Emeritus Corps will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. This authority will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The Volunteer Emeritus Corps may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the JWAC's mission.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by a JWAC manager to the JWAC Commander. Everyone who applies is not entitled to a volunteer assignment. The JWAC Commander will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the JWAC Commander, and the JWAC/J1. The agreement will be reviewed by the USSTRATCOM Legal Office. The agreement must be finalized before the assumption of duties and will include:

a. A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer;

b. A statement that the volunteer will be considered a federal employee for the purpose of:

(1) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(2) 31 U.S.C. 1343, 1344, and 1349(b);

(3) 5 U.S.C. chapters 73 and 81;

(4) The Ethics in Government Act of 1978;

(5) 41 U.S.C. chapter 21;

(6) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(7) 5 U.S.C. 552a (records maintained on individuals); and

c. The Volunteer Emeritus/Corps participant's work schedule;

d. The length of agreement (defined by length of project or time defined by weeks, months, or years);

e. The support to be provided by the JWAC (travel, administrative, office space, supplies);

f. The Volunteer Emeritus Corps participant's duties,

g. A provision that states no additional time will be added to a participant's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the Volunteer Emeritus Corps,

h. A provision allowing either party to void the agreement with 10 working days written notice;

i. The level of security access required (any security clearance required by the assignment will be managed by the JWAC while the participant is a member of the Volunteer Emeritus Corps);

j. A provision that any written products prepared for publication that are related to Volunteer Emeritus Corps participation will be submitted to the JWAC Commander for review and must be approved prior to publication;

k. A statement that the Volunteer Emeritus Corps participant accepts accountability for loss or damage to Government property occasioned by the Volunteer Emeritus Corps participant's negligence or willful action;

1. A statement that the activities of the Volunteer Emeritus Corps participant on the premises will conform to the JWAC's regulations and requirements;

m. A statement that the Volunteer Emeritus Corps participant will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Emeritus Corps participant or any non-Federal entities. Volunteer Emeritus Corps participants will handle all non-public information in a manner that reduces the possibility of improper disclosure;

n. A statement that the Volunteer Emeritus Corps participant agrees to disclose any inventions made in the course of work performed at the JWAC. The JWAC Commander will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the JWAC Commander elect not to take title, the JWAC will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government;

o. A statement that the Volunteer Emeritus Corps participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement; and

p. A statement that the Volunteer Emeritus Corps participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteer Emeritus Program participants are deemed Federal employees for purposes of post-government employment restrictions.

*H. Employee Development*

1. Training for Degrees: Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is currently not permitted for non-shortage occupations involving critical skills.

Under the JWAC–DP, JWAC will expand the authority to provide degree training for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. It is expected that the degree payment authority will be used primarily for attainment of advanced degrees.

2. Sabbaticals: JWAC will have the authority to grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. Each sabbatical should benefit JWAC as well as increase the employee's individual effectiveness. Examples are as follows: Advanced academic teaching, study, or research; self-directed (independent) or guided study; and on-the-job work experience with a public, private, or nonprofit organization. Each recipient of a sabbatical must sign a continued service agreement and agree to serve a period equal to at least three times the length of the sabbatical.

**IV. JWAC–DP Training**

The key to the success or failure of the JWAC–DP will be the training provided for all involved. This training will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also lead to program commitment on the part of participants.

Training before the beginning of implementation, and throughout the JWAC–DP, will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operating the new system. As a start the following subjects will be covered:

- An overview of the JWAC–DP personnel system.
- How employees are converted into and out of the system.
- Broadbanding.
- The Contribution-based Compensation System.

**V. Conversion**

*A. Conversion to the Demonstration Project*

Initial entry into the JWAC–DP for covered employees is accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate broadband level without loss of pay. Employees are converted into the career path and broadband level which corresponds to their permanent GS grade and occupational series of their current appointment (temporary promotions are not retained), unless there are extenuating circumstances which require individual attention, such as special pay rates or pay retention. Adverse action provisions do not apply to the conversion process as there is no change in total adjusted pay.

Under the GS pay structure, successful employees automatically progress, from step 1 to 10, within grade, in periodic increments. In the JWAC–DP, basic pay progression within and through the broadband levels depends on contribution to the mission, and there are no automatic within-grade increases (WGIs). Rules governing WGIs under the current DAF performance plan will continue in effect until the implementation date. Adjustments to the employees' basic pay for WGI equity will be computed effective the date of conversion to the JWAC–DP. WGI equity is acknowledged by increasing basic pay rates by a prorated share based upon the number of days the employee has performed at a successful level for purposes of eligibility for the next higher step under the GS system. Employees at step 10 on the date of conversion are not eligible for WGI equity adjustments since they are already at the top step of the corresponding GS pay grade.

All employees are eligible for future locality pay increases for the geographical areas of their official duty station. Special salary rates are not applicable to JWAC–DP employees. Employees on special salary rates at the time of conversion receive a new basic pay rate which is computed by dividing their highest adjusted basic pay (*i.e.,* special pay rate or, if higher, the locality rate) by one plus the locality pay percentage for their area. The new basic pay rate is then multiplied by the locality pay percentage and the result is added to the new basic pay rate to obtain the adjusted basic pay, which is equal to the adjusted basic pay prior to conversion.

Grade and pay retention entitlements are eliminated. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the employee's assigned position, not the retained grade. The employee's basic pay and adjusted basic pay while on grade retention status will be used in setting appropriate pay upon conversion to the JWAC–DP and in determining the amount of any WGI equity adjustment. An employee's adjusted basic pay will not be reduced upon conversion.

*B. Conversion to Another Personnel System*

1. Demonstration Project Termination

a. In the event the JWAC–DP ends, a conversion back to the former (or another applicable) Federal Civil Service system may be required. The grade of employees' positions in the new system will be based upon the position classification criteria of the gaining system. Employees, when converted to positions classified under the new system, may be eligible for pay retention under 5 CFR part 536, if applicable.

b. However, an employee will not be provided a lower grade than the grade held by the employee immediately preceding conversion, lateral reassignment, or lateral transfer into the JWAC–DP, unless since that time the employee has undergone either a reduction in broadband level or a reduction in basic pay within the same broadband due to unacceptable contribution.

2. Conversion or Movement from a Project Position to a General Schedule Position:

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and all project employees must be converted back to the GS system, the following procedures will be used to convert the employee's broadband level to a GS-equivalent grade and the employee's JWAC–DP basic pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement or conversion out of

the JWAC–DP and any accompanying geographic movement, promotion, or other simultaneous action.

An employee in a broadband level corresponding to a single GS grade is placed into that grade as the GS-equivalent grade. An employee in a broadband corresponding to two or more grades is determined to have a GS equivalent grade corresponding to one of those grades according to the following rules:

The employee's adjusted basic pay under the JWAC–DP (including any locality payment) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. The GS base schedule;

ii. the locality rate schedule for the locality pay area in which the position is located; or

iii. the appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

3. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the JWAC–DP (before any other action).

For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the JWAC–DP (*e.g.,* promotion rules, highest previous rate rules, and/or pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the JWAC–DP.

**VI. Project Duration and Changes**

Pub. L. 103–337 removed the mandatory expiration date for STRL Demonstration Projects, such as the JWAC–DP. The JWAC–DP evaluation plan adequately addresses how each flexibility is comprehensively evaluated.

Many aspects of a Demonstration Project are experimental. Minor modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working.

**VII. Evaluation Plan**

*A. Overview*

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire STRL demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction). That plan, while useful, is dated and does not fully afford the laboratories the ability to evaluate all aspects of the demonstration project in a way that fully facilitates assessment and effective modification based on actionable data. Therefore, in conducting the evaluation JWAC will ensure USD(R&E) evaluation requirements are met in addition to applying knowledge gained from other DoD laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

*B. Evaluation Model*

An evaluation model for the JWAC–DP will identify elements critical to an evaluation of the effectiveness of the flexibilities. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and JWAC customer satisfaction.

*C. Method of Data Collection*

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual survey data from employees will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the JWAC–DP is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of qualitative and/or quantitative data may be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and/or, (5) core measures of laboratory effectiveness.

**VII. Demonstration Project Costs**

Costs associated with the development of the JWAC–DP system include software automation, training, and project evaluation. All funding will be provided through JWAC's budget. The timing of the expenditures depends on the implementation schedule. The projected annual expenses for each area is summarized in Table 2.

Table 2. PROJECTED DEVELOMENTAL COSTS

| | FY19 | FY20 | FY21 | FY22 | FY23 |
|---|---|---|---|---|---|
| Training | 25K | 25K | 25K | 0K | 0K |
| Automation | 275K | 175K | 100K | 100K | 100K |
| Project Evaluation | 0K | 25K | 50K | 50K | 50K |
| **TOTALS** | 300K | 225K | 175K | 150K | 150K |

**IX. Required Waivers to Law and Regulation**

Pub. L. 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the JWAC–DP. In due course, additional laws and regulations may be identified for waiver requests.

The following waivers and adaptations of certain 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the JWAC–DP from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

*A. Title 5, United States Code*

1. Chapter 5, section 522a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus Corps are considered employees of the Federal government for purposes of this section.

2. Chapter 29, section 2903: Oath; authority to administer. Waived insofar as the JWAC Commander may administer the oath of office.

3. Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTM authority as described in this FRN and 79 FR 43722.

4. Chapter 31, section 3132: The Senior Executive Service; Definitions and exclusions. Waived to allow SSTM authority as described in this FRN and 79 FR 43722.

5. Chapter 33, Subchapter 1, Examination, Certification, and Appointment. Waived to the extent necessary to utilize the authorities authorized in 82 FR 43339.

6. Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. This section is waived with respect to the scholastic achievement appointment authority.

7. Chapter 33, section 3317(a), Competitive Service; certification from registers. Waived insofar as ''rule of three'' is eliminated.

8. Chapter 33, section 3318(a), Competitive Service; selection from certificates. Waived insofar as ''rule of three'' is eliminated under the JWAC–DP.

9. Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived only to the extent necessary to replace ''grade'' with ''broadband level.''

10. Chapter 33, section 3324 and section 3325: Appointments to Positions Classified Above GS–15. Waived in entirety to allow SSTM authority as described in this FRN and 79 FR 43722.

11. Chapter 33, section 3327: Civil service employment information. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Achievement Authority described in this FRN.

12. Chapter 33, section 3330: Government-wide list of vacant positions. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Achievement Authority described in this FRN.

13. Chapter 33, section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

14. Chapter 35, section 3522: Agency VSIP Plans approval. Waived to remove the requirement to submit a plan to OPM prior to obligating any resources for voluntary separation incentive payments.

15. Chapter 35, section 3523(b)(3): Related to voluntary separation incentive payments. Waived to the extent necessary to utilize the authorities authorized in 82 FR 43339.

16. Chapter 41, section 4107: Pay for Degrees. Waived to the extent necessary to allow degree training under the Developmental Opportunities described in this FRN.

17. Chapter 41, section 4108. Employee Agreements; Service after Training. Waived to the extent necessary to (1) provide that the employee's service obligation is to JWAC for the period of the required service; (2) permit the JWAC Commander to waive in whole or in part a right of recovery; and (3) require an employee in the student educational employment program who has received tuition assistance to sign a service agreement up to three times the length of the training.

18. Chapter 43, sections 4301–4305: Related to performance appraisal. These sections are waived to the extent necessary to allow provisions of the Contribution-based Compensation System as described in this FRN.

19. Chapter 51, sections 5101–5112: Related to classification standards and grading. Waived to the extent that white collar employees will be covered by the broadbanding system and to the extent necessary to allow classification provisions described in this FRN.

20. Chapter 53, sections 5301–5307: Related to pay comparability system and GS pay rates. Waived to the extent necessary to allow JWAC–DP employees, including SSTM employees, to be treated as GS employees, and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

21. Chapter 53, sections 5331–5336: General Schedule pay rates. These waivers apply to the extent necessary to: (1) Allow JWAC–DP employees to be treated as GS employees; (2) allow the provisions of this FRN pertaining to setting rates of pay; and (3) waive sections 5335 and 5336 in their entirety.

22. Chapter 53, sections 5361–5366: Grade and pay retention. Waived to the extent necessary to allow for the elimination of pay and grade retention provisions as described in this FRN.

23. Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

24. Chapter 55, section 5545(d): Hazardous duty differential. This waiver applies only to the extent necessary to allow JWAC–DP employees to be treated as GS employees.

25. Chapter 57, section 5753: Recruitment and Relocation Bonuses. Waived to the extent necessary to allow JWAC–DP employees, including SSTM employees, to be treated as GS employees.

26. Chapter 57, section 5754: Relocation Bonuses. Waived to the extent necessary to allow provisions of the retention counteroffer and incentives as described in this FRN.

27. Chapter 57, section 5755: Supervisory Differentials. Waived to the extent necessary to allow SSTM supervisory pay differential provisions as described in 79 FR 43722.

28. Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to: (1) Allow for up to a three-year probationary period, (2) remove the reference to one year of current continuous service, and (3) permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

29. Chapter 75, section 7512(3): Adverse actions. This waiver applies only to the extent necessary to replace ''grade'' with ''broadband level'' and to exclude reductions in broadband level not accompanied by a reduction in pay.

30. Chapter 75, section 7512(4): Adverse actions. This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to conversions from GS special rates to JWAC–DP pay, as long as total pay is not reduced.

31. Chapter 99, section 9902(f): Related to voluntary separation incentive payments. Waived to the extent necessary to utilize the authorities authorized in 82 FR 43339.

*B. Title 5, Code of Federal Regulations*

1. Part 300–330, Employment (General) other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

2. Part 300.601–300.605: Time-in-Grade requirements. Waived to eliminate time-in-grade restrictions.

3. Part 315.801–315.802: Probationary Period. Waived to allow the extended probationary period.

4. Part 315.803(b): Agency Action during probationary period (general). Waived to allow for termination during an extended probationary period without using adverse action procedures under subpart D of part 752, 5 U.S.C.

5. Part 315, section 315.901 and 315.907: Statutory requirements. This waiver applies only to the extent necessary to replace ''grade'' with ''broadband level.''

6. Part 316, sections 316.301, 316.303, and 316.304: Term Employment. Waived to the extent necessary to allow Flexible Length and Renewable Term Technical Appointments as described in this FRN and in 82 FR 43339.

7. Part 330.103–330.105: Related to filling vacancies. Waived to the extent necessary to allow the STRL to publish competitive announcements outside of USAJobs.

8. Part 332 and 335: Related to competitive examination and agency promotion programs. Waived to the extent necessary to (1) allow employees appointed on a Flexible Length and Renewable Term Technical Appointment to apply for federal positions as status candidates; (2) allow no rating and ranking when there are 15 or fewer qualified applicants and no preference eligible candidates; (3) allow the hiring and appointment authorities as described in this FRN; (4) eliminate the ''rule of three'' requirement; and (5) to extend the length of details and temporary promotions without requiring competitive procedures as described in this FRN.

9. Part 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligible candidates.

10. Part 338.301: Competitive service appointment. Waived to allow for Distinguished Scholastic Achievement Authority grade point average requirements as described in this FRN.

11. Part 359.705: Removal from the Executive Service, Pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES employee placed in an SSTM or broadband level IV position.

12. Part 410, section 410.308(a–f): Training to obtain an academic degree. Waived to the extent necessary to allow provisions described in this FRN.

13. Part 410, section 309: Agreements to continue in Service. This waiver applies to that portion that pertains to the authority of the head of the agency to determine continued service requirements, to waive repayment of such requirements, and to the extent that the service obligation is to JWAC.

14. Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees. Waived to the extent necessary to apply the Contribution-based Compensation System described in this FRN.

15. Part 432.102—432.105: Related to performance based actions. (1) Modified to the extent that an employee may be removed, reduced in broadband level with a reduction in pay, reduced in pay without a reduction in broadband level and reduced in broadband level without a reduction in pay based on unacceptable performance; (2) modified to delete reference to critical element; (3) waived to the extent necessary to replace ''grade'' with ''broadband''; (4) waived to exclude reductions in broadband level not accompanied by a reduction in pay; (5) allow provisions of CCS and addressing inadequate contribution as described in this FRN; and (6) waive ''If an employee has performed acceptably for 1 year'' to allow for ''within two years'' from the beginning of an opportunity period.

16. Part 511 Subpart A, B, and F: Classification Under the General Schedule. Waived to the extent necessary to allow classification provisions outlined in this FRN, to include the list of issues that are neither appealable nor reviewable, the assignment of series under the JWAC–DP plan to appropriate career paths; and to allow informal appeals to be decided by the JWAC Commander.

17. Part 530, Subpart C: Special salary rates. Waived in its entirety.

18. Part 531, Subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases. Waived in its entirety.

19. Part 531, Subpart F: Locality pay. This waiver applies only to the extent necessary to allow JWAC–DP employees, including SSTMs, to be treated as GS employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

20. Part 536: Grade and pay retention. Waived to the extent necessary to allow the maintained pay provisions described in this FRN and to allow personnel in SSTM positions to receive maintained pay as described in this FRN.

21. Part 550.703: Severance Pay. This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grades or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level.''

22. Part 575, subparts A, B, and C: Recruitment Incentives, Relocation Incentives, and Retention Incentives. Waived to the extent necessary to allow employees and positions under the JWAC–DP covered by the broadbanding system to be treated as employees and positions under the GS system.

23. Part 752, sections 752.201 and 752.401: Principal statutory requirements and coverage. Waived to the extent necessary to: (1) Allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment; (2) replace ''grade'' with ''broadband level''; and (3) provide that adverse action provisions do not apply to conversions from GS special rates to JWAC–DP pay, so long as total pay is not reduced.

BILLING CODE 5001–06–P

APPENDIX A. CAREER PATH OCCUPATIONAL SERIES

| Occupational Series in S&E Career Path (DR) | | Occupational Series in Business Management and Professionals Career Path (DO) | |
|---|---|---|---|
| Series | Occupation | Series | Occupation |
| 0110 | Economist | 0080 | Security Administration |
| 0130 | Foreign Affairs Specialist | 0201 | Human Resources Management |
| 0131 | International Relations | 0260 | Equal Opportunity |
| 0150 | Geographer | 0301 | Misc. Admin and Program |
| 0401 | Biologist | 0341 | Administrative Officer |
| 0801 | General Engineering | 0343 | Management and Program Analysis |
| 0810 | Civil Engineering | 0501 | Financial Administration & Program |
| 0830 | Mechanical Engineering | 0560 | Budget Analysis |
| 0840 | Nuclear Engineering | 1035 | Public Affairs |
| 0850 | Electrical Engineering | 1071 | Audio-Visual Production |
| 0854 | Computer Engineering | 1083 | Technical Writing & Editing |
| 0855 | Electronics Engineering | 1084 | Visual Information |
| 0861 | Aerospace Engineering | 1101 | Business & Industry |
| 0893 | Chemical Engineering | 1410 | Librarian |
| 0896 | Industrial Engineering | 1412 | Technical Information Services |
| 1301 | General Physical Science | 2010 | Inventory Management |
| 1310 | Physics | 2210 | Information Technology Specialist |
| 1370 | Cartography | **Student Trainee Series** | |
| 1515 | Operations Research | 0399 | Administrative Support |
| 1520 | Mathematics | 0599 | Financial Management Student |
| 1529 | Mathematical Statistics | 1099 | Information & Arts |
| 1550 | Computer Scientist | 2299 | Information Technology |
| 2210 | Information Technology Specialist | | |

| Occupational Series in Mission Support (DU) | | Occupational Series in Technician (DX) | |
|---|---|---|---|
| Series | Occupation | Series | Occupation |
| 0086 | Security Clerical | 0802 | Engineering Technician |
| 0318 | Secretary | 0856 | Electronics Technician |
| 0335 | Computer Assistant | | |
| 0342 | Support Services Administration | | |

## APPENDIX B. EXAMPLE OF FACTORS AND DESCRIPTORS

## SCIENTISTS AND ENGINEERS CAREER PATH, PAY PLAN DR

| KEY ELEMENTS | DR PROBLEM SOLVING FACTOR | | | |
|---|---|---|---|---|
| | DR-I | DR-II | DR-III | DR-IV |
| **Scope/Impact** | Applies knowledge of science, technology, or processes to assigned tasks. Efforts are within the technology area or own organization. | Develops new or modifies existing methods, approaches, or scientific knowledge to solve challenges. Shares new methods across discipline to further analytical capabilities. Efforts involve appropriate technology areas and if needed, other organizations. | Defines, leads and manages an area which incorporates multidisciplinary science/engineering/technology applications. Makes critical decisions which significantly impact science/engineering/technology. | Defines, leads, and manages an overall technology area which includes multidisciplinary science/engineering/technology and/or non- science/engineering/technology aspects. Makes critical decisions which significantly impact mission goals. |
| **Complexity** | Analyzes and resolves routine to moderately-difficult problems within assigned area, using established methodologies and processes, often under the guidance of senior personnel. Develops limited variations to established methods and/or techniques. | Applies knowledge of science/' engineering/technology to analyze and resolve multifaceted issues/problems with minimal guidance. Develops comprehensive modifications to established methods and/or techniques and communicates them throughout own organization. | Applies and expands knowledge of science/engineering/technology applications to resolve critical, multifaceted problems and/or develops new theories or methods. Adapts to tasks involving changes or competing requirements. Solves complex problems involving strategic implications across multiple disciplines | Applies considerable judgment to resolve critical, multifaceted problems spanning multiple disciplines with command-level impacts. Expertly accomplishes tasks or resolves issues involving significant uncertainties, changes, or competing requirements. |
| **Relevance and Recognition** | Efficiently provides solutions that resolve assigned problems with some oversight/assistance from senior personnel. Completed work is reviewed for soundness, appropriateness, and conformity. Ability is recognized within own organization. | Consults appropriately to develop objectives, priorities, and deadlines. Plans and carries out work that is well aligned with organizational goals. Completed work is generally accepted upon review. Contributes expertise internally or externally with academia, industry, think tanks, government peers, and/or national laboratories. | Actively engages organizational planning activities. Defines and leads work efforts that are focused on organizational priorities. Results of work are considered authoritative. Contributes expertise at the national/external level with academia, industry, think tanks, government peers, and/or national laboratories | Sets objectives and plans, designs, and directs work at a strategic level to meet evolving organizational goals, given only broadly defined mission and functions. Leadership/expertise is recognized at the national and/or international level across other laboratories, services, governments/DoD, industry think tanks and/or academia. |
| **Creativity** | Uses critical thinking in selecting, interpreting, and adapting known scientific principles. Considers existing approaches and researches novel alternatives. | Uses critical thinking and originality in developing innovative approaches to define and resolve complex situations. Approaches to solving problems require initiative and resourcefulness in interpreting and applying scientific/ engineering/technology principles that are applicable but not clearly developed. | Uses critical thinking and ingenuity in making decisions/developing technologies for areas with substantial uncertainty in methodology, interpretation, and/or evaluation. Approaches to solving problems require interpretation, deviation from existing methods, or research of trends and patterns in order to develop new methods/scientific knowledge that are applied to organizational practices. | Using broadly stated organizational goals fosters a culture which rewards ingenuity and generates/implements innovative ideas for developing new technologies. Develops innovative approaches which significantly expand the scientific/engineering/technology knowledge base and/or the overall effectiveness of the organization. |

| KEY ELEMENTS | DR COMMUNICATION FACTOR | | | |
|---|---|---|---|---|
| | DR-I | DR-II | DR-III | DR-IV |
| **Level/ Breadth** | Prepares information to use within own organization and technical area. Exchanges information with other functional areas or external contacts. Coordinates with others in order to understand/adapt to the team concept. | Provides information to peers, senior technical leaders, and/or managers within and beyond own organization to influence decisions or recommend solutions. Exchanges information with established internal/external networks. Effectively partners, negotiates and enhances team effectiveness. | Communicates complex technical, programmatic, and/or management information across multiple organizational levels and external networks to drive decisions by senior leaders. Establishes and facilitates effective, collaborative interfaces with broad functional and technical areas. | Communicates with a wide range of peers/organizations across multiple levels inside and outside the laboratory to influence major technical, programmatic, and/or management activities. Builds collaborative relationships across broad functional and technical areas and engages with leaders at the national and/or international level. |
| **Written** | Documents routine information in a clear and timely manner. Effectively utilizes communications tools to contribute to reports, documents, presentations, etc. Written communication typically requires minimal revision. | Documents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Effectively authors reports, documents, and presentations pertaining to area(s) of expertise. Written communication typically requires minimal revision. | Leads documentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports, documents, and presentations pertaining to multiple areas of expertise, with minimal oversight or guidance required. | Promotes a culture of excellence in synthesizing and documenting diverse and highly complex information, concepts, and ideas. Authors and directs authoritative reports, documents, and presentations integrating multiple disciplines. Written communication is suitable for senior executive level. |
| **Oral** | Presents routine information in a clear and timely manner. Actively listens and responds appropriately. Develops speaking skills for basic briefings and effectively adjusts to the audience with guidance. | Presents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Actively listens to others' questions, ideas, and concerns and considers diverse viewpoints. Demonstrates effective speaking skills for advanced briefings, tailoring presentations to facilitate understanding. | Leads presentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Seeks opinions and ideas from others and carefully considers and incorporates diverse viewpoints. Demonstrates expert speaking skills and adaptability for critical briefings. | Develops strategies to improve presentations of diverse and highly complex information, concepts, and ideas. Fosters an atmosphere of respect for others at all levels and promotes expression of alternative viewpoints. Displays mastery of speaking skills and delivers compelling, authoritative briefings. |
| **Review/ Oversight** | Provides reports, documents, and presentations to senior personnel for review. Makes necessary revisions per guidance from senior personnel. Adapts to changes in policies, processes, programs, and/or projects with supervision. | Reviews own communication products prior to submittal to peers, senior technical leaders, managers, and/or external contacts, resulting in minimal revision. May assist with the communications of others. Adapts to changes in policies, processes, programs, and/or projects with minimal supervision. | Produces required forms of communication with minimal guidance from others. Reviews communications of others for appropriate and accurate content. Leads changes in policies, processes, programs, and/or projects at the organizational level. | Establishes guidance and oversight requirements for communication in the organization. Responsible and accountable for overall development of reports, documents, and presentations of self and others within area of responsibility. Leads and communicates change at the command and external level. |

| KEY ELEMENTS | DR TECHNOLOGY MANAGEMENT FACTOR | | | |
|---|---|---|---|---|
| | DR-I | DR-II | DR-III | DR-IV |
| **Level/Scope/ Complexity** | Interacts within technical area on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of technical goals within own organization. | Collaborates with technical partners to develop strategies and lead project teams for operations or R&D. Lead development and execution of projects within division or branch to execute or advance organization mission within required quality standards and assigned timelines. | Leads technical areas, coordinating and working across the command to develop strategies for research and development programs and mission-support tasking. Leads development and execution at the organizational level. Works jointly with stakeholders to identify highly complex, sensitive, or controversial problems and develop strategies for effective resolution. | Integrates wide-ranging activities across the command and with external partners involving multiple technical areas, to develop strategic direction for the command. Directs program/process formulation and implementation to achieve the mission goals at the command-wide level that achieve the broader mission of HHQ and DoD. |
| **Technical & Customer Relations** | Carries out tasking in accordance with best practices defined by own organization. Participates in professional growth and training. Participates in technology area planning within own organization. | Recognizes opportunities to develop technical expertise and formulates plans within own organization. Generates key ideas and contributes technically to advance technical capability of command. | Leads/contributes significantly to technical advancement of technology or discipline, including strategic planning, execution and coalition building. Pursues near term opportunities by leveraging collaborations across the command and/or with external partners. | Leads command level change management through requirements generation, strategic planning, and prioritization. Creates opportunities by identifying/proposing diverse and timely HHQ and DoD mission relevant solutions while leveraging command-wide and external collaborations. |
| **Technical Effectiveness** | Contributes within own organization to the development/integration of technology solutions. Seeks out and uses relevant technologies to support own technical and functional activities. | Implements the development/integration and transition/transfer of technology solutions, within or beyond own organization, based upon awareness of customer requirements. Evaluates and incorporates appropriate outside technology to support mission requirements. | Leads development/integration activities based upon extensive customer interactions and appropriate partnerships. Develops/integrates technology solutions by exploiting external technology to meet mission requirements | Leads world class technical programs based upon anticipating customer requirements and leveraging external partners and capabilities. Develops/integrates innovative solutions that exploit emerging technology and fosters an environment of technology exploitation. |
| **Resource Stewardship** | Efficiently performs tasks utilizing available resources, including one's own time, to successfully accomplish assigned work. Provides inputs to risk management and process improvements. | Demonstrates knowledge of corporate processes by effective application of resources. Actively manages cost, schedule, and resource risks, seeking timely remedies. Collaborates with others in using resources more efficiently and suggests innovative ideas to optimize available resources. | Manages evolution of cost, schedule, and resource risk. Anticipates changes in resource requirements and develops and advocates solutions in advance. Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources. | Identifies, acquires and manages and defends the resources needed to achieve organizational goals and expertly guides the implementation of these resources in a dynamic environment. Leads, promotes, and enables process improvements to maximize resource utilization. |

| KEY ELEMENTS | DR TEAMWORK AND LEADERSHIP FACTOR | | | |
|---|---|---|---|---|
| | DR-I | DR-II | DR-III | DR-IV |
| **Teaming and Collaboration (Cooperation)** | Actively participates, works flexibly, and makes positive contributions in assigned areas in order to meet team goals/responsibilities. May participate as a member of cross functional teams. Communicates and shares knowledge and information with others. Develops positive working relationships with peers and superiors, treating others fairly and professionally. | Contributes as lead or key member of the team performing substantive analytical duties in support of the organizational mission. Demonstrates the ability to focus on team efforts toward goal/ responsibility accomplishment. Recognizes when others need assistance and provides support. Resolves conflicts in a positive and constructive manner. Works collaboratively with others in a dynamic environment, demonstrating respect for other people and alternative viewpoints. | Effectively seeks out and capitalizes on opportunities for the organization to achieve significant results that support organizational goals. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross- functional/integrated teams. Initiates and leads strategic change initiatives. Leads and provides oversight to effectively manage specific areas of responsibility. | Formulates short- and long-term teaming/collaboration strategies across organization to achieve significant results in support of the organization's goals and long-term vision. Aligns team goals with broader organizational goals and strategies. Provides expert, accurate, and timely information to organization and partners. Builds coalitions to establish integrated approaches that meet overall organizational mission requirements. Sets and maintains a tone of cooperation, cohesion, teamwork, and respect/value for others. Sought out for consultation and leadership. |
| **Level / Breadth of Influence** | Performs moderately complex assignments within a team environment. Performs work that affects the effectiveness of broader projects and programs. Coordinates actions and gains understanding of other areas sufficiently to make appropriate recommendations. | Performs complex assignments within a team environment as the lead or key team member to improve capability of a technology area or address command initiatives. Integrates efforts or works across disciplines. Leads/mentors/ provides oversight to analysts same or lower level. Provides authoritative advice to management. | Leads the critical aspects of analytical efforts of individuals and/or teams with focus on accountability, quality, and effectiveness. Has impact on analytical recommendations that affect both internal and external relationships. Integrates efforts across disciplines/organization. Sought out for consultation on complex issues that affect internal/external organizations and/or relationships. | Leads/manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Has broad and substantial impact on organizational decisions affecting internal/external organizations and relationships. |
| **Mentoring and Development** | Actively pursues guidance and opportunities for professional growth and to improve/expand skills. Actively supports the development of others through teaching, mentoring, sharing knowledge and incorporating feedback. Maintains currency in area of expertise. | Demonstrates the ability to mentor new employees and actively seeks the development and training of subordinates or peers (as appropriate), directly linked to organizational goals. Assists in the development and training of internal/external team members. Works to develop/improve self in order to more effectively accomplish directorate goals. | Identifies and addresses skill deficiencies within organization. Initiates and leads the development and training of subordinates and/or team members. Participates in mentoring and motivation, actively seeking out mentoring opportunities. Proactively develops/improves self in order to more effectively accomplish organizational goals. | Initiates development and training of subordinates; demonstrates the ability to provide developmental opportunities that maximize employee's capabilities and contribute to the achievement of organizational goals. Mentors and develops future organizational leaders and personnel through evaluations/feedback. Supports and fosters a culture that encourages and rewards mentoring and development. Proactively develops/improves self in order to more effectively accomplish agency DoD goals. |
| **Supervision and Oversight Required** | Receives close guidance from others. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures. | Requires minimal guidance in terms of established policies, objectives, and decisions from others. Selects or recommends selection of staff or team members. Participates in mentoring opportunities to grow personal and peer skillsets. Contributes to position/ performance management, as required. Provides constructive feedback. Recommends novel concepts and significant departures from previous practices with supervisor or team leader. | Receives only broad policy/guidance. Provides guidance/direction to others. Selects or recommends selection of staff, team members, and/or subordinate supervisors. Participates in coaching, instruction, and position/performance management. Assigns tasks that provide opportunities to demonstrate proficiency in acquired skills; provides sincere and constructive feedback. | Establishes policy and/or provides guidance/direction to others. Works within the framework of agency policies, mission objectives, and time and funding limitations leading change as required. Effectively manages an organization involving subordinate supervisors. Selects staff, team members, and subordinate supervisors. Directs and is responsible for position/ performance management execution. |

Dated: November 15, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–25199 Filed 11–20–19; 8:45 am]

**BILLING CODE 5001–06–C**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Table Rock Lake Oversight Committee Meetings Notice

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of open committee meetings and request for comments.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meetings of the Table Rock Lake Oversight Committee (TRLOC). The meetings are open to the public. Public comments are requested.

**DATES:** The meetings will be held on:

*Meeting 1:* Thursday, December 12, 2019, 8 a.m. to 12 p.m.

*Meeting 2:* Thursday, January 23, 2020, 8 a.m. to 5 p.m.

*Meeting 3:* Thursday, March 5, 2020, 8 a.m. to 5 p.m.

*Meeting 4:* Wednesday, May 6, 2020, 8 a.m. to 12 p.m.

**ADDRESSES:** The meetings are being held at Dewey Short Visitor Center, Table Rock Lake, 4500 MO–165, Branson, MO 65616.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin McDaniels, Designated Federal Officer (DFO) for the Committee, in writing at U.S. Army Corps of Engineers, Little Rock District, Operations Division, P.O. Box 867, Little Rock, Arkansas 72203–0867, or by email at *CESWL–TRLOC–DFO@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** These meetings are being held pursuant to the implementation of Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680) and under the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 86 Stat. 770.), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

*Purpose of the Meetings:* The TRLOC is an independent Federal advisory committee established as directed by Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680). The committee is advisory in nature only with duties to include providing information and recommendations to the U.S. Army Corps of Engineers, Little Rock District Engineer on revisions to the Table Rock Lake Master Plan and Shoreline Management Plan. The TRLOC may also, at the discretion of the District Engineer, review any permit to be issued under the provisions of the existing master plan and shoreline management plan until any approved revisions are finalized and become part of the formal governing documents.

**Proposed Agendas**

*Agenda—Meeting 1*

I. Call to Order, DFO and TRLOC Chairperson
II. Corps Presentation on Draft Master and Shoreline Management Plans
III. Committee Discussion/Questions on Master Plan
IV. Committee Discussion/Questions on Shoreline Management Plan
V. Adjournment

*Agenda—Meeting 2*

I. Call to Order, DFO and TRLOC Chairperson
II. Public Comment Session
III. Committee Discussion/Questions/Recommendations on Master Plan
IV. Committee Discussion/Questions/Recommendations on Shoreline Management Plan
V. Adjournment

*Agenda—Meeting 3*

I. Call to Order, DFO and TRLOC Chairperson
II. Corps Presentation on Draft Master and Shoreline Management Plans
III. Public Comment Session
IV. Committee Discussion/Questions/Recommendations on Master Plan
V. Committee Discussion/Questions/Recommendations on Shoreline Management Plan
VI. Adjournment

*Agenda—Meeting 4*

I. Call to Order, DFO and TRLOC Chairperson
II. Corps Presents Final Master Plan and Shoreline Management Plan
III. Committee Questions/Comments on Final Plans
IV. Adjournment

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, each meeting is open to the public. Seating is on a first-come, first-served basis. The Dewey Short Visitor Center is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Kevin McDaniels, the Committee's Designated Federal Officer, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted via email to *CESWL-TableRockSMP_FAC@usace.army.mil* or by mail to the US Army Corps of Engineers, Table Rock Lake Oversight Committee, P.O. Box 867, Little Rock, Arkansas 72203–0867. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the third meeting to be considered by the Committee. The Designated Federal Officer and the Committee Chair will review all timely submitted written comments or statements and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date will not be provided to the Committee, as their final recommendations will be submitted to the District Engineer for consideration during the third meeting. Please note that because the TRLOC operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. A three (3) hour period will be provided near the beginning of Meeting 2 and Meeting 3 for verbal comments. In the interest of time and for allowing everyone to be heard, individuals will be given a maximum of 2 minutes to address their comments to the TRLOC. Individuals will not be allowed to transfer time to other individuals. A

court reporter will be in attendance to record the TRLOC meetings.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2019–25252 Filed 11–20–19; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the U.S. Naval Academy Board of Visitors

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board deems necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

**DATES:** The open session of the meeting will be held on December 2, 2019, from 9 a.m. to 11 a.m. The executive session held from 11 a.m. to noon (12 p.m.) will be the closed portion of the meeting.

**ADDRESSES:** The meeting will be held at the United States Naval Academy in Annapolis, MD. The meeting will be handicap accessible.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Lawrence Heyworth IV, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on December 2, 2019, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to noon (12 p.m.) will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the U.S. Naval Academy Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on December 2, 2019 of the U.S. Naval Academy Board of Visitors. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

**Authority:** 5 U.S.C. 552b.

Dated: November 18, 2019.

**D.J. Antenucci,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2019–25219 Filed 11–20–19; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Meetings

**TIME AND DATE:** 11:00 a.m., November 21, 2019.

**PLACE:** Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

**STATUS:** Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

**MATTERS TO BE CONSIDERED:** The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

**CONTACT PERSON FOR MORE INFORMATION:** Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 19, 2019.

**Bruce Hamilton,**

*Chairman.*

[FR Doc. 2019–25395 Filed 11–19–19; 4:15 pm]

**BILLING CODE 3670–01–P**

## DEPARTMENT OF EDUCATION

**[Docket ID ED–2019–FSA–0082]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Department of Education.

**ACTION:** Notice of a new matching program.

**SUMMARY:** This provides notice of the re-establishment of a matching program between the Department of Education (Department or ED) and the Selective Service System (SSS). Under the Solomon Amendment to the Military Selective Service Act Section 12(f), young men who are required under Section 3 of the Military Selective Service Act to be registered with SSS must fulfill the registration requirement in order to be eligible for any form of assistance or benefits provided under title IV of the Higher Education Act of 1965, as amended (HEA). This matching program enables ED to prevent improper payments to those applicants who are not eligible under the Military Selective Service Act to receive any form of assistance or benefit provided under title IV of the HEA.

**DATES:** Submit your comments on the proposed matching program on or before December 23, 2019.

The matching program will be effective whichever date is the latest of the following two dates: (1) January 2, 2020, or (2) 30 days after the publication of this notice, on November 21, 2019, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the effective date and may be extended for up to an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal

or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this proposed matching program, address them to Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20002–5345.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20002–5345. Telephone: (202) 377–3385.

**SUPPLEMENTARY INFORMATION:** We provide this notice in accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular No. A–108.

*Participating Agencies:* ED and SSS.

*Authority for Conducting the Matching Program:* The information contained in the SSS database is referred to as the Registration, Compliance and Verification System (RCV), which contains the Selective Service System Registrants Registration Records (SSS 9). ED seeks access to the RCV for the purpose of confirming the registration status of applicants for assistance under title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et seq.*). Section 12(f) of the Military Selective Service Act (MSSA), as amended (50 U.S.C. 3811(f)), denies eligibility of any form of assistance or benefit provided under title IV of the HEA to any person required to present himself for, and submit to, registration under Section 3 of the MSSA (50 U.S.C. 3802) but who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, Section 12(f)(2) of the MSSA specifies that any person required to present himself for, and submit to, registration under Section 3 of the MSSA must file a statement with the institution of higher education where the person intends to attend or is attending that he is in compliance with the MSSA. Furthermore, Section 12(f)(3) of the MSSA authorizes the Secretary of Education, in agreement with the Director of the Selective Service System, to prescribe methods for verifying the statements of compliance filed by students.

*Purpose(s):* The matching program, which has been in effect since December 6, 1985, will permit ED to confirm the registration status of applicants for, or recipients of, financial assistance under title IV of the HEA, as authorized by section 484(n) of the HEA (20 U.S.C. 1091(n)).

*Categories of Individuals:* The individuals included in this matching program are FAFSA applicants who answer ''Male'' or ''Blank'' to the question ''Are you Male or Female.'' Of this group, FAFSA applicants are included who were born after December 31, 1959, and indicate that they are registered with the Selective Service and, applicants who request to be registered for the Selective Service on the FAFSA and are at least 17-years-old on the date they file the FAFSA for the applicable award year.

*Categories of Records:* The data elements sent in the record include: Name, Social Security number, Date of Birth, Address, FAFSA signature date (date used to determine the student's age), and the applicant's Signature Flag (to confirm authorization).

*System(s) of Records:* SSS system of Records: Selective Service Registration Records (SSS 9), (76 FR 58321, September 20, 2011) and the Department of Education Federal Student Aid Application File (18–11–01), (76 FR 46774, August 3, 2011).

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (such as, braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Mark A. Brown,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 2019–25290 Filed 11–20–19; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Investigation and Record Requests

**AGENCY:** Office of the General Counsel, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department publishes letters, dated September 26, 2019, notifying the University of Maryland and the Massachusetts Institute of Technology of investigations related to the universities' reports of defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source.

**FOR FURTHER INFORMATION CONTACT:** Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Ave. SW, Room 6E300, Washington, DC 20202. Telephone: (202) 453–6339. Email: *Patrick.Shaheen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Department publishes letters, dated September 26, 2019, notifying the University of Maryland and the Massachusetts Institute of Technology of investigations related to the universities' reports of defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source. The letter to the University of Maryland is in Appendix A of this notice. The letter to the Massachusetts

Institute of Technology is in Appendix B of this notice.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*Program Authority:* 20 U.S.C. 1011f.

**Reed D. Rubinstein,**

*Acting General Counsel.*

## *Appendix A—Letter to University of Maryland*

September 26, 2019

Wallace D. Loh, President
University of Maryland
1101 Main Administration Building
7901 Regents Dr.
College Park, MD 20742-6105

Re: Notice of 20 U.S.C. § 1011f Investigation and Record Request/ University of Maryland

Dear President Loh:

Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, requires the University of Maryland to report statutorily defined gifts from and contracts with a foreign source to the U.S. Department of Education. These reports are posted at https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts.

The Department is concerned that your reporting may not fully capture all gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources to the University of Maryland and/or its affiliated entities operating substantially under the auspices of your institution or for its benefit (*e.g.*, laboratories, schools, centers, foundations, and non-profit organizations such as the ''University of Maryland Foundation'', the ''Maryland Catalyst Fund'', or the ''Maryland International Incubator'', and their employees, faculty, lecturers, researchers, and fellows) (collectively ''UMD'') as required by law. *See, e.g.,* https://president.umd.edu/communications/statements/umds-commitment-international-collaborations-and-international-community.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative investigation and now requests UMD produce the following records within thirty days:

1. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

2. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with (i) the government of the People's Republic of China, the Central Committee of the Communist Party of China, Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., ZTE Corp, Peking University, China University of Petroleum, Beijing Kaiwen Educational Technology Co. and their agents; (ii) the government of Qatar (including those persons known as the Qatar Foundation for Education, Science and Community Development *aka* the Qatar Foundation *aka* the Qatar National Research Fund), and its agents; and (iii) the government of Russia, the Skolkovo Foundation, Kaspersky Lab and Kaspersky Lab US, and their agents to your Institution. The time frame for this request is January 1, 2012, to the present.

3. All records of, regarding, or referencing ''Hanban'' or the Office of Chinese Language Council International and its agents to your Institution. The time frame for this request is January 1, 2014, to the present.

4. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with the Confucius Institute and its agents to your Institution. The time frame for this request is January 1, 2010, to the present.

5. All records of, regarding, or referencing the audit and accounting practices and/or other institutional controls used to capture, track, report, and verify gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

6. A list of all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution that were not properly reported to the Department of Education. For each such gift, contract, and/or restricted or conditional gift or contract from or with a foreign source to your Institution, please explain your Institution's failure to report. The time frame for this request is January 1, 2014, to the present.

7. All records of, regarding, or referencing solicitation by your Institution of gifts, contracts, and/or restricted or conditional gifts or contracts with or from a foreign source. The time frame for this request is January 1, 2014, to the present.

8. All records of, regarding, or referencing compliance by your Institution with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.

9. All communications between your Institution and a foreign source listed as or a resident of a country requiring cooperation with an international boycott pursuant to 26 U.S.C. § 999(a)(3). The time frame for this request is January 1, 2014, to the present.

10. All records of, regarding, or referencing actions taken and institutional controls created by your Institution to confirm (a) each foreign source has not violated 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b) each gift, contract, and/or restricted or conditional gift or contract from or with a foreign source complies with Executive Order 13224. The time frame for this request is January 1, 2014, to the present.

11. Your Institution's IRS Form 990s and schedules, including Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018.

12. A list of all persons at your Institution supported by a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source (e.g., a research scientist working on a project developing artificial intelligence or engineering systems funded in whole or in part by a foreign source, a foreign graduate student studying physics under a scholarship or other contractual

arrangement with a foreign government, a fellow in a cultural studies program created by endowment or other gift from a foreign source). The relevant foreign source should be specified for each such person. The time frame for this request is January 1, 2014, to the present.

13. A list of all persons responsible for 20 U.S.C. § 1011f compliance. The time frame for this request is January 1, 2014, to the present.

14. All certifications and related documentation required under the International Traffic in Arms Regulations (ITAR), 22 CFR Subchapter M, the Arms Export Control Act of 1976 (Title II of Pub.L. 94–329), 90 Stat. 729, 22 U.S.C. Chapter 39, the Export Administration Regulations (EAR), 15 CFR § 730 et seq., or any other related authority with respect to programs and activities sponsored by your Institution. The time frame for this request is January 1, 2014, to the present.

As used in this Notice of Investigation and Information Request:

''Agent'' means any person who acts for or on behalf of a foreign source and includes a subsidiary or affiliate of a foreign legal entity.

''Contract'' has the meaning given at 20 U.S.C. § 1011f(h)(1).

''Foreign source'' has the meaning given at 20 U.S.C. § 1011f(h)(2).

''Gift'' has the meaning given at 20 U.S.C. § 1011f(h)(3).

''Institution'' has the meaning given at 20 U.S.C. § 1011f(h)(4) and for purposes of this investigation and record request includes UMD and all affiliated entities (*e.g.*, centers, schools, boards, foundations, laboratories, research facilities, branches, and/or non-profit organizations, their employees, faculty, lecturers, researchers, and fellows) operating substantially under UMD's auspices or for its benefit.

''Record'' means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint ™trade; and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term ''recorded information'' also includes all traditional forms of records, regardless of physical form or characteristics.

''Restricted or conditional gift or contract'' has the meaning given at 20 U.S.C. § 1011f(h)(5).

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the validity of your claim. Please note no other privileges apply here.

Your record and data preservation obligations are outlined at Exhibit A.

This investigation will be directed by the Department's Office of the General Counsel with support from Federal Student Aid. Please contact Mr. Patrick Shaheen at Patrick.Shaheen@ed.gov regarding production of the requested information.

Sincerely yours,

Reed D. Rubinstein
Principal Deputy General Counsel
delegated the authority and duties of the
General Counsel

### *Appendix B—Letter to Massachusetts Institute of Technology*

September 26, 2019

L. Rafael Reif, President
Massachusetts Institute of Technology
77 Massachusetts Avenue
Room 3-208
Cambridge, MA 02139-4307

Re: Notice of 20 U.S.C. § 1011f Investigation and Record Request/ Massachusetts Institute of Technology

Dear President Reif:

Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, requires the Massachusetts Institute of Technology to report statutorily defined gifts from and contracts with a foreign source to the U.S. Department of Education. These reports are posted at https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts.

The Department is concerned that your reporting may not fully capture all gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources to the Massachusetts Institute of Technology and/or its affiliated entities operating substantially under the auspices of your institution or for its benefit (*e.g.*, laboratories, schools, centers, foundations, global ''collaborations'' and/or non-profit organizations such as the ''Industrial Liaison Program'', ''Masdar Institute'', the ''Skolkovo Institute of Science and Technology'', or the ''MIT Campus, China'', their employees, faculty, lecturers, researchers, and fellows) (collectively ''MIT'') as required by law. *See, e.g.* http://news.mit.edu/2019/remarks-president-reif-institute-faculty-meeting-0918 (reporting flaws in donor and gift agreement ''process and practices''); https://www.pogo.org/investigation/2019/02/universities-on-the-foreign-payroll/ (''Lester's report stated that, 'over the last three years, sponsored research projects funded by Saudi organizations accounted for 52% of all Saudi-funded expenditures at MIT.' *Yet most of the research sponsors listed in the report are not included as sources of monetary gifts or contracts in the federal data reviewed by POGO*'') (emphasis added).

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative investigation of MIT and now requests that you produce the following records within thirty days:

1. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

2. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with (i) the government of Saudi Arabia, Mohammed Abdul Latif Jameel, Saudi Aramco, the King Abdulaziz City for Science and Technology, SABIC, the King Fahd University of Petroleum and Minerals, the MiSK Foundation, the Olayan Financing Group, other Saudi nationals, and their agents; (ii) the government of People's Republic of China, the Central Committee of the Communist Party of China, Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., ZTE Corp, Peking University, China University of

Petroleum, Beijing Kaiwen Educational Technology Co. and their agents; (iii) the government of Qatar (including those persons known as the Qatar Foundation for Education, Science and Community Development *aka* the Qatar Foundation *aka* the Qatar National Research Fund), and its agents; and (iv) the government of Russia, the Skolkovo Foundation, Kaspersky Lab and Kaspersky Lab US, and their agents, to your Institution. The time frame for this request is January 1, 2012, to the present.

3. All records of, regarding, or referencing ''Hanban'' or the Office of Chinese Language Council International and its agents to your Institution. The time frame for this request is January 1, 2014, to the present.

4. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with the Confucius Institute and its agents to your Institution. The time frame for this request is January 1, 2010, to the present.

5. All records of, regarding, or referencing the audit and accounting practices and/or other institutional controls used to capture, track, report, and verify gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

6. A list of all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution that were not properly reported to the Department of Education. For each such gift, contract, and/or restricted or conditional gift or contract from or with a foreign source to your Institution, please explain your Institution's failure to report. The time frame for this request is January 1, 2014, to the present.

7. All records of, regarding, or referencing solicitation by your Institution of gifts, contracts, and/or restricted or conditional gifts or contracts with or from a foreign source. The time frame for this request is January 1, 2014, to the present.

8. All records of, regarding, or referencing compliance by your Institution with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.

9. All communications between your Institution and a foreign source listed as or a resident of a country requiring cooperation with an international boycott pursuant to 26 U.S.C. § 999(a)(3). The time frame for this request is January 1, 2014, to the present.

10. All records of, regarding, or referencing actions taken and institutional controls created by your Institution to confirm (a) each foreign source has not violated 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b) each gift, contract, and/or restricted or conditional gift or contract from or with a foreign source complies with Executive Order 13224. The time frame for this request is January 1, 2014, to the present.

11. Your Institution's IRS Form 990s and schedules, including Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018.

12. A list of all persons at your Institution supported by a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source (e.g., a research scientist working on a project testing artificial intelligence or other engineering systems funded in whole or in part by a foreign source, a foreign graduate student studying physics under a scholarship or other contractual arrangement with a foreign government, a fellow in a cultural studies program created by endowment or other gift from a foreign source). The relevant foreign source should be specified for each such person. The time frame for this request is January 1, 2014, to the present.

13. A list of the persons responsible for 20 U.S.C. § 1011f compliance for your Institution. The time frame for this request is January 1, 2014, to the present.

14. All certifications and related documentation required under the International Traffic in Arms Regulations (ITAR), 22 CFR Subchapter M, the Arms Export Control Act of 1976 (Title II of Pub. L. 94–329), 90 Stat. 729, 22 U.S.C. Chapter 39, the Export Administration Regulations (EAR), 15 CFR 730 et seq., or any other related authority with respect to programs and activities sponsored by your Institution. The time frame for this request is January 1, 2014, to the present.

As used in this Notice of Investigation and Information Request:

''Agent'' means any person who acts for or on behalf of a foreign source and includes a subsidiary or affiliate of a foreign legal entity.

''Contract'' has the meaning given at 20 U.S.C. § 1011f(h)(1).

''Foreign source'' has the meaning given at 20 U.S.C. § 1011f(h)(2).

''Gift'' has the meaning given at 20 U.S.C. § 1011f(h)(3).

''Institution'' has the meaning given at 20 U.S.C. § 1011f(h)(4) and for the purposes of this investigation and record request includes MIT and all affiliated entities (e.g., centers, schools, boards, foundations, laboratories, research facilities, branches, and/or non-profit organizations, their employees, faculty, lecturers, researchers, and fellows) operating substantially under MIT's auspices or for its benefit.

''Record'' means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term ''recorded information'' also includes all traditional forms of records, regardless of physical form or characteristics.

''Restricted or conditional gift or contract'' has the meaning given at 20 U.S.C. § 1011f(h)(5).

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the validity of your claim. Please note no other privileges apply here.

Your record and data preservation obligations are outlined at Exhibit A.

This investigation will be directed by the Department's Office of the General Counsel with support from Federal Student Aid. Please contact Patrick Shaheen at Patrick.Shaheen@ed.gov with any questions you might have regarding production of the requested information.

Sincerely yours,

Reed D. Rubinstein
Principal Deputy General Counsel

delegated the authority and duties of the General Counsel

[FR Doc. 2019–25231 Filed 11–20–19; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 3102–026]**

### Jason and Carol Victoria Presley; Notice of Application for Surrender of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of minor license.

b. *Project No:* 3102–026.

c. *Date Filed:* November 7, 2019.

d. *Applicant:* Jason and Carol Victoria Presley.

e. *Name of Project:* High Shoals Hydroelectric Project.

f. *Location:* The 1,027-kilowatt project is located on the Apalachee River in Walton, Morgan and Oconee Counties, Georgia. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David M. Moore, Earth and Water Law, LLC, Suite 1900, 1230 Peachtree Street NE, Atlanta, GA 30309; *David.moore@earthandwatergroup.com,* or 404–245–5421.

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 16, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3102–026. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to surrender its license for the project. The project has not operated since 2018 and Walton County Water and Sewerage Authority's proposed water intake to be located just upstream of the project would affect continued project operation. No ground disturbance is proposed and project features would remain in place. The applicant would retain ownership of the dam. To decommission project facilities, the applicant proposes to close the canal intake gates and disconnect the project generators, leaving the generating equipment in place. The powerhouse would remain secured with the existing fencing and security system. The current license expires on August 30, 2021.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 15, 2019.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2019–25268 Filed 11–20–19; 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:* EG20–28–000.

*Applicants:* Maverick Wind Project, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Maverick Wind Project, LLC.

*Filed Date:* 11/15/19.

*Accession Number:* 20191115–5084.

*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* EG20–29–000.

*Applicants:* Maverick Wind Project Holdings LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale

Generator Status of Maverick Wind Project Holdings LLC.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5085.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* EG20–30–000.
*Applicants:* Sundance Wind Project, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Sundance Wind Project, LLC.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5089.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* EG20–31–000.
*Applicants:* Sundance Wind Project Holdings LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Sundance Wind Project Holdings LLC.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5101.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* EG20–32–000.
*Applicants:* Traverse Wind Energy LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Traverse Wind Energy LLC.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5102.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* EG20–33–000.
*Applicants:* Traverse Wind Energy Holdings LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Traverse Wind Energy Holdings LLC.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5103.
*Comments Due:* 5 p.m. ET 12/6/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–2731–002.
*Applicants:* DTE Stoney Corners Wind Farm, LLC.
*Description:* Compliance filing: Supplement Change in Status Filing to be effective 10/12/2019.
*Filed Date:* 11/14/19.
*Accession Number:* 20191114–5119.
*Comments Due:* 5 p.m. ET 12/5/19.

*Docket Numbers:* ER12–421–002.
*Applicants:* DTE Garden Wind Farm, LLC.
*Description:* Supplement to October 11, 2019 DTE Garden Wind Farm, LLC tariff filing.
*Filed Date:* 11/14/19.
*Accession Number:* 20191114–5163.
*Comments Due:* 5 p.m. ET 12/5/19.

*Docket Numbers:* ER20–359–001.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Tariff Amendment: 2019–11–14_Amendment to Attachment X Pro Forma Facilities Services Agreement to be effective 1/12/2020.
*Filed Date:* 11/14/19.
*Accession Number:* 20191114–5146.
*Comments Due:* 5 p.m. ET 12/5/19.

*Docket Numbers:* ER20–381–000.
*Applicants:* Dominion Energy South Carolina, Inc.
*Description:* Late-Filed Contribution in Aid of Construction Agreements and Refund Analyses of Dominion Energy South Carolina, Inc.
*Filed Date:* 11/14/19.
*Accession Number:* 20191114–5174.
*Comments Due:* 5 p.m. ET 12/5/19.

*Docket Numbers:* ER20–382–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2019–11–15_SA 3371 Orion Renewable-SIGE GIA (J856) to be effective 10/31/2019.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5038.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–383–000.
*Applicants:* Maverick Wind Project, LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5049.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–383–001.
*Applicants:* Maverick Wind Project, LLC.
*Description:* Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5106.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–384–000.
*Applicants:* Maverick Wind Project Holdings LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5050.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–384–001.
*Applicants:* Maverick Wind Project Holdings LLC.
*Description:* Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5107.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–385–000.
*Applicants:* Sundance Wind Project, LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5051.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–385–001.
*Applicants:* Sundance Wind Project, LLC.
*Description:* Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5108.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–386–000.
*Applicants:* Sundance Wind Project Holdings LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5057.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–386–001.
*Applicants:* Sundance Wind Project Holdings LLC.
*Description:* Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5109.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–387–000.
*Applicants:* Traverse Wind Energy LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5058.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–387–001.
*Applicants:* Traverse Wind Energy LLC.
*Description:* Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5110.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–388–000.
*Applicants:* Traverse Wind Energy Holdings LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5059.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–388–001.

*Applicants:* Traverse Wind Energy Holdings LLC.
*Description:* Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5111.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–389–000.
*Applicants:* Sierra Pacific Power Company.
*Description:* Tariff Cancellation: Notice of Termination of Rate Schedule No. 72 to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5081.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–390–000.
*Applicants:* Nevada Power Company.
*Description:* Tariff Cancellation: Notice of Termination of Rate Schedule No. 152 to be effective 1/15/2020.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5083.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–391–000.
*Applicants:* J. Aron & Company LLC.
*Description:* Compliance filing: New eTariff Baseline Filing to be effective 10/16/2019.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5122.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–392–000.
*Applicants:* DTE Stoney Corners Wind Farm, LLC.
*Description:* § 205(d) Rate Filing: Notice of Name Change Filing to be effective 10/17/2019.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5148.
*Comments Due:* 5 p.m. ET 12/6/19.

*Docket Numbers:* ER20–393–000.
*Applicants:* DTE Garden Wind Farm, LLC.
*Description:* § 205(d) Rate Filing: Notice of Name Change Filing to be effective 10/17/2019.
*Filed Date:* 11/15/19.
*Accession Number:* 20191115–5152.
*Comments Due:* 5 p.m. ET 12/6/19.

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: November 15, 2019.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2019–25270 Filed 11–20–19; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP17–494–000;CP17–495–000]**

### Jordan Cove Energy Project LP; Pacific Connector Gas Pipeline L.P.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Jordan Cove Energy Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission), with the participation of the cooperating agencies listed below, has prepared a final environmental impact statement (EIS) for the Jordan Cove Liquefied Natural Gas Project proposed by Jordan Cove Energy Project L.P. (Jordan Cove) and the Pacific Connector Gas Pipeline Project proposed by Pacific Connector Gas Pipeline, LP (Pacific Connector) (collectively referred to as the Jordan Cove Energy Project or Project). Under Section 3 of the Natural Gas Act (NGA), Jordan Cove requests authorization to construct and operate a liquified natural gas terminal in Coos Bay, Oregon, capable of liquefying up to 1.04 billion cubic feet of natural gas per day for export to overseas markets. Pacific Connector seeks a Certificate of Public Convenience and Necessity under Section 7 of the NGA to construct and operate a natural gas transmission pipeline providing about 1.2 billion cubic feet per day of natural gas from the Malin hub to the Jordan Cove terminal, crossing portions of Klamath, Jackson, Douglas, and Coos Counties, Oregon.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). As described in the final EIS, the FERC staff concludes that approval of the Project would result in a number of significant environmental impacts; however, the majority of impacts would be less than significant because of the impact avoidance, minimization, and mitigation measures proposed by Jordan Cove and Pacific Connector and those recommended by staff in the EIS.

The United States (U.S.) Department of the Interior Bureau of Land Management, (BLM), Bureau of Reclamation (Reclamation), and Fish and Wildlife Service; U.S. Department of Agriculture Forest Service (Forest Service); U.S. Department of Energy; U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; U.S. Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service; U.S. Department of Homeland Security Coast Guard; the Coquille Indian Tribe; and the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration participated as cooperating agencies in preparation of this EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The cooperating agencies provided input into the analyses, conclusions, and recommendations presented in the EIS. Following issuance of the final EIS, the cooperating agencies will issue subsequent decisions, determinations, permits, or authorizations for the Project in accordance with each individual agency's regulatory requirements.

The BLM, with the concurrence of the Forest Service and Reclamation, would adopt and use the EIS to consider issuing a right-of-way Grant for the portion of the Project on federal lands. Other cooperating agencies would use this EIS in their regulatory process, and to satisfy compliance with NEPA and other related federal environmental laws (*e.g.,* the National Historic Preservation Act).

The BLM and the Forest Service would also use this EIS to evaluate proposed amendments to their District or National Forest land management plans that would make provision for the Pacific Connector pipeline. In order to consider the Pacific Connector right-of-way grant, the BLM must amend the affected Resource Management Plans (RMPs). The BLM therefore proposes to amend the RMPs to re-allocate all lands within the proposed temporary use area and right-of-way to a District-Designated Reserve, with management direction to manage the lands for the purposes of the Pacific Connector right-of-way. Approximately 885 acres would be re-allocated. District-Designated Reserve allocations establish specific management for a specific use or to

protect specific values and resources. In accordance with Code of Federal Regulations (CFR) part 36 § 219—Planning, the Forest Service is considering amendments of Land and Resource Management Plans (LRMP) for the Umpqua, Rogue River, and Winema National Forests. Proposed amendments of LRMPs include reallocation of matrix lands to Late Successional Reserves and site-specific exemptions from 15 standards to allow construction of the Pacific Connector pipeline. Exemptions from standards include requirements to protect known sites of Survey and Manage species, changes in visual quality objectives at specific locations, limitations on detrimental soil conditions, removal of effective shade at perennial stream crossings and the construction of utility corridors in riparian areas.

The Commission mailed a copy of the Notice of Availability of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is available in hard copy at libraries in the area of the Project and in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP17–494 or CP17–495). Be sure you have selected an appropriate date range. 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.

## Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.as*

Dated: November 15, 2019.

**Kimberly D. Bose,**

*Secretary.*

## Supplemental Information Regarding Procedures of the BLM and the Forest Service

### Forest Service's Proposed Action

The Forest Service's purpose and need for the proposed action is to consider and disclose the environmental consequences of construction and operation of the Pacific Connector pipeline on NFS lands and to evaluate proposed LRMP amendments. The Forest Service has determined that the linear nature of the Pacific Connector Pipeline Project would not be consistent with certain requirements of the LRMPs of the Umpqua, Rogue River, and Winema National Forests. To address these inconsistencies, the Forest Service proposes to amend the LRMPs of the respective National Forests to make provision for the Project. The Forest Service will use this EIS to assess substantive requirements of the planning rule that are likely to be directly related to the amendment. The Forest Service is also using this EIS process to identify specific stipulations (including project design features and mitigation measures) related to resources within their jurisdiction for inclusion in the right-of-way Grant when considering issuing its concurrence, pursuant to the Mineral Leasing Act.

### Forest Service's Draft Record of Decision and Objection Procedures

The Pacific Connector pipeline may be implemented across National Forest System (NFS) land if the BLM grants the right-of-way for the Pacific Connector pipeline to cross the Umpqua, Rogue River, and Winema National Forests and the Forest Service amends the respective National Forest LRMPs (Forest Plans). The Forest Supervisor of the Umpqua National Forest, as responsible official for the LRMP amendments, adopts the environmental analysis conducted by FERC (in accordance with 40 CFR 1506.3(a) and (c)) to support the decision to amend the Umpqua, Rogue River, and Winema National Forests LRMPs. She has determined that three parts of the Forest Plans, where 15 standards and two plan-level land allocation adjustments would be modified by a Forest Plan amendment (section 4.7 of the final EIS), meet the substantive requirements of the Forest Service planning regulations (36 CFR part 219); and can be implemented without impairing the long-term productivity of NFS lands. With the amended LRMPs, the Pacific Connector pipeline would be consistent with the Forest Plans. The draft decision is based on a review of the environmental analysis disclosed in the final EIS, the project record, Pacific Connector's proposed Plan of Development, comments from the public, partners, and other agencies, and a consideration of the 36 CFR part 219 requirements for amending a Forest Plan.

Decisions by the Forest Service to approve ''plan level'' amendments to Land Management Plans (proposed amendments UNF–4 and RRNF–7) are subject to the Pre-Decisional Administrative Review Process Regulations at 36 CFR 219 Subpart B. The term ''plan level'' refers to plan amendments that would apply to future management actions. Refer to the applicable administrative review regulations for eligibility requirements. Objections to the Forest Service decision must be filed within 60 calendar days from the publication date of the legal notice of the opportunity to object in the newspapers of record for the Umpqua, Rogue River, and Umpqua National Forests (News-Review, Mail Tribune, Herald and News, respectively).

Decisions by the Forest Service to approve ''project-specific'' plan amendments (proposed amendments FS–1, UNF–1, UNF–3, RRNF–2 thru RRNF–6, and WNF–1 thru WNF–5) are subject to the Administrative Review Process of 36 CFR 218 Subpart A and B, in accordance with 36 CFR 219.59 (b). The term ''project specific'' refers to amendments that would only apply to the proposed project and would not apply to any future management actions. Refer to the applicable administrative review regulations for eligibility requirements. Refer to the applicable administrative review regulations for eligibility requirements. Objections to the Forest Service decision must be filed within 45 calendar days from the publication date of the legal notice of the opportunity to object in the in the newspapers of record for the Umpqua, Rogue River, and Umpqua National Forests (News-Review, Mail Tribune, Herald and News, respectively).

The legal notices contain the details of the objection process. The Forest Service must respond to all objections received before it makes a final decision on the proposed Forest Plan amendments. The final decision on the Forest Plan amendments and the final EIS analysis will inform the Forest Service concurrence to the BLM for its Right-of-Way Grant.

A copy of the Forest Service draft Record of Decision (ROD) and of the legal notice for objections can be obtained by any of the following methods:

- FERC's eLibrary;
- *Internet website: https://www.fs.usda.gov/project/?project=28132;*
- *email: david.krantz@usda.gov;*
- *or regular mail:* David Krantz, Project Manager, Rogue River-Siskiyou National Forest, 3040 Biddle Rd., Medford, OR 97504; telephone 541–618–2082.

### BLM Proposed Resource Management Plan Amendments and Protest Procedures

BLM planning regulations state that any person who participated in the planning process and has an interest which is or may be adversely affected may protest the BLM's Proposed Resource Management Plan Amendments. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

In accordance with the National Environmental Policy Act of 1969, as

amended, the BLM has actively participated as a Cooperating Agency in the preparation of the Jordan Cove Energy Project Final EIS. This final EIS includes the BLM Proposed Plan Amendments to the Northwest and Coastal Oregon Record of Decision and Resource Management Plan (2016) and the Southwestern Oregon Record of Decision and Resource Management Plan (2016) and Proposed right-of-way Actions, in response to an Application for right-of-way submitted by Pacific Connector Gas Pipeline, LP.

In accordance with the Federal Land Policy and Management Act of 1976, as amended, the BLM Proposed Plan Amendments are subject to administrative protest. The Proposed Plan Amendments are described in section 2.1.1.1 of the final EIS and incorporate several specific FERC-recommended conditions and one route variation. BLM planning regulations at 43 CFR 1610.5–2, describe the protest procedures and state that any person who meets the conditions may protest the BLM's Proposed RMP Amendments. All protests must be filed within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability of the final EIS in the **Federal Register**.

The FERC-prepared final EIS is available on the FERC docket and on BLM's ePlanning project website at *https://go.usa.gov/xEt7B.* Click the Documents link on the left side of the screen to find the electronic version of these materials.

All protests must be in writing and filed with the BLM Director, either as a hard copy or electronically via the BLM's ePlanning project website listed previously. To submit a protest electronically, go to the ePlanning project website and follow the protest instructions highlighted at the top of the home page. If submitting a protest in hard copy, it must be mailed to one of the following addresses:

| Regular mail: | Overnight delivery: |
|---|---|
| BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383. | BLM Director (210), Attention: Protest Coordinator, 20 M Street SE, Room 2134LM, Washington, DC 20003. |

Instructions for filing a protest with the Director of the BLM regarding the Proposed Plan Amendments may be found online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website as described above. Protests submitted electronically by any means other than the ePlanning project website protest section will be invalid unless a protest is also submitted in hard copy. Protests submitted by fax will also be invalid unless also submitted either through ePlanning project website protest section or in hard copy.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

[FR Doc. 2019–25269 Filed 11–20–19; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R08–OAR–2012–0479; FRL–10000–11–OMS]**

## Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Federal Implementation Plan for Oil and Natural Gas Well Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Federal Implementation Plan for Oil and Natural Gas Well Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota (EPA ICR Number 2478.03, OMB Control Number 2008–0001) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2020. Public comments were previously requested via the **Federal Register** on June 5, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before December 23, 2019.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–R08–OAR–2012–0479, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *R8AirPermitting@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Gail Fallon, U.S. Environmental Protection Agency, Region 8, Air and Radiation Division, (Mail Code 8ARD–PM), 1595 Wynkoop Street, Denver, Colorado 80202–1129; telephone number: (303) 312–6281; fax number: (303) 312–6064; email address: *fallon.gail@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

*Abstract:* This ICR covers information collection requirements in the final Federal Implementation Plan (FIP) for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota (40 CFR part 49, subpart K, §§ 49.4161 through 49.4168), herein referred to as the FBIR FIP. In general, owners or operators are required to: (1) Conduct certain monitoring; (2) keep specific records to be made available at the EPA's request; and (3) to prepare and submit an annual report (40 CFR part 49, subpart K, §§ 49.4166 through 49.4168). These records and reports are necessary for the EPA Administrator (or the tribal agency if delegated), for example, to: (1) confirm compliance status of stationary sources; (2) identify any stationary sources not subject to the requirements and identify stationary sources subject to the regulations; and (3) ensure that the stationary source control requirements are being achieved. All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the agency policies set forth in 40 CFR part 2, subpart B.

*Form Numbers:* None.

*Respondents/affected entities:* Owners or operators of oil and natural gas facilities.

*Respondent's obligation to respond:* Mandatory (42 U.S.C. 7414).

*Estimated number of respondents:* 7,326 (total).

*Frequency of response:* On occasion, annually.

*Total estimated burden:* 112,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $24,900,000 (per year), includes $20,850,000 annualized capital and operation & maintenance costs.

*Changes in the Estimates:* There is an increase of 67,539 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The increase in total estimated respondent burden hours is due to the anticipated industry growth projected to occur over the next three-year period of this ICR.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2019–25230 Filed 11–20–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:46 p.m. on Tuesday, November 19, 2019, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

**PLACE:** The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

**STATUS:** The meeting was closed to the public.

**MATTERS CONSIDERED:** In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Kathleen L. Kraninger (Director, Consumer Financial Protection Bureau), and concurred in by Director Joseph M. Otting (Comptroller of the Currency) and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

**CONTACT PERSON FOR MORE INFORMATION:** Requests for further information concerning the meeting may be directed to Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated at Washington, DC, on November 19, 2019.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2019–25384 Filed 11–19–19; 4:15 pm]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

*Agreement No.:* 201324.

*Agreement Name:* Seaboard/BBC Cooperative Working Agreement.

*Parties:* BBC Chartering Carriers GmbH & Co. KG; BBC Project Chartering GmbH Co KG; and Seaboard Marine Ltd.

*Filing Party:* Wayne Rohde; Cozen O'Connor.

*Synopsis:* The Agreement authorizes the parties to cooperate in a shared service string in the trade between the U.S. Gulf Coast on the one hand and ports in Panama, Colombia, Ecuador, Peru, and Chile on the other hand.

*Proposed Effective Date:* 11/12/2019.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/24445.*

Dated: November 15, 2019.

**Rachel Dickon,**

*Secretary.*

[FR Doc. 2019–25182 Filed 11–20–19; 8:45 am]

**BILLING CODE 6731–AA–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 20, 2019.

*A. Federal Reserve Bank of Atlanta* (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *BCI Financial Group, Inc., Miami, Florida;* to merge with Executive Banking Corporation, and thereby indirectly acquire Executive National Bank, both of Miami, Florida. In connection with this proposal, Bci Financial Group, Inc.'s parent companies, Empresas Juan Yarur SpA and Banco de Credito e Inversiones S.A., both of Santiago, Chile, to indirectly acquire Executive Banking Corporation and Executive National Bank.

Board of Governors of the Federal Reserve System, November 18, 2019.

**Yao-Chin Chao**

*Assistant Secretary of the Board.*

[FR Doc. 2019–25249 Filed 11–20–19; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 5, 2019.

*A. Federal Reserve Bank of San Francisco* (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *John G. Sorensen, Jr., president of JGS, Jr. Family Holding Corporation, individually, and together with Sondra S. Swindle, president of SSS Family Holding Corporation, all of Salt Lake City, Utah;* to be approved as members of a group acting in concert to retain voting shares of Home Credit Corporation, and thereby indirectly retain voting shares of Home Savings Bank, both of Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, November 18, 2019.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2019–25250 Filed 11–20–19; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–10718]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of notice.

**SUMMARY:** This document corrects the information provided for [Document Identifier: CMS–10718] titled ''Model Medicare Advantage and Medicare Prescription Drug Plan Individual Enrollment Request Form.''

**FOR FURTHER INFORMATION CONTACT:** William N. Parham, III, (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the November 18, 2019, issue of the **Federal Register** (84 FR 63655), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the information collection request identified under CMS–10718, OMB control number 0938–New, and titled ''Model Medicare Advantage and Medicare Prescription Drug Plan Individual Enrollment Request Form.''

#### II. Explanation of Error

In the November 18, 2019, notice, the information provided in the first column of the first paragraph, on page 63657, was published with incorrect information in the ''*Total Annual Hours*'' section. This notice corrects the language found in the ''*Total Annual Hours*'' section in the first column of the first paragraph, on page 63657 the November 18th notice. All of the other information contained in the November 18, 2019, notice is correct. The related public comment period remains in effect and ends January 17, 2020.

#### III. Correction of Error

In FR Doc. 2019–24930 of November 18, 2019 (84 FR 63655), page 63657, the language in the first column, first paragraph of the notice that begins with ''*Total Annual Hours:* 10,324,481'' and ends with ''(For policy questions regarding this collection contact Deme Umo at (410) 786–8854.),'' is corrected to read as follows:

*Total Annual Hours:* 7,861,354. (For policy questions regarding this collection contact Deme Umo at (410) 786–8854.)

Dated: November 18, 2019.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2019–25283 Filed 11–20–19; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–D–4447]**

### Transdermal and Topical Delivery Systems—Product Development and Quality Considerations; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Transdermal and Topical Delivery Systems—Product Development and Quality Considerations.'' This guidance provides recommendations to applicants and manufacturers of transdermal and topical delivery systems (TDS) regarding the pharmaceutical development and quality information to include in new drug applications (NDAs) and abbreviated new drug applications (ANDAs). Specifically, the guidance discusses FDA's current thinking on product design and pharmaceutical development, manufacturing process and control, and finished product control. It also addresses special considerations for areas where quality is closely tied to product performance and potential safety issues, such as adhesion failure and the impact of applied heat on drug delivery.

**DATES:** Submit either electronic or written comments on the draft guidance by February 19, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your

comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–D–4447 for ''Transdermal and Topical Delivery Systems—Product Development and Quality Considerations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Mohamed Ghorab, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3141, Silver Spring, MD 20993, 240–402–8940.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Transdermal and Topical Delivery Systems—Product Development and Quality Considerations.'' Transdermal delivery systems and topical delivery systems, collectively identified as TDS, are used in a variety of therapeutic areas and treatment populations. Transdermal delivery systems are designed to deliver an active ingredient (drug substance) across the skin and into systemic circulation, while topical delivery systems are designed to deliver the active ingredient to local tissue. Both transdermal delivery systems and topical delivery systems present similar manufacturing and quality control concerns and similar risks to patients.

The draft guidance in its entirety may not be applicable to all TDS, and some TDS (for example, microneedles, active transport TDS, reservoir TDS, and TDS applied to broken skin) have other considerations that are not addressed in this guidance. Because of the inherent failure modes and safety risks associated with the reservoir TDS, FDA recommends TDS manufacturers and applicants focus development efforts on matrix type TDS.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on transdermal and topical delivery systems product development and quality considerations. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 314 for the submission of NDAs and ANDAs, including the submission of labeling under 21 CFR 314.50(e)(2)(ii) and 314.50(l)(1)(i) and advertisements and promotional labeling under 21 CFR 314.81(b)(3)(i), have been approved under OMB control number 0910–0001. The submission of prescription drug labeling under 21 CFR 201.56 and 201.57 has been approved under OMB control number 0910–0572.

In accordance with the PRA, prior to publication of any final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to those previously approved collections of information found in FDA regulations or guidances.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/*

*GuidanceComplianceRegulatory Information/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: November 15, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–25246 Filed 11–20–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–4963]**

### Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Dermatologic and Ophthalmic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on December 13, 2019, from 8 a.m. to 4 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2019–N–4963. The docket will close on December 12, 2019. Submit either electronic or written comments on this public meeting by December 12, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 12, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 12, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before December 4, 2019, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–N–4963 for ''Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 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 the 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:** Jay R. Fajiculay, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *DODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the

Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The committee will discuss biologics license application (BLA) 761143, teprotumumab solution for intravenous use, submitted by Horizon Pharma Ireland, Ltd., proposed for the treatment of active thyroid eye disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before December 4, 2019, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 26, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 27, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jay Fajiculay (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–25247 Filed 11–20–19; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–3442]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Web-Based Pilot Survey To Assess Allergy to Cosmetics in the United States

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Fax written comments on the collection of information by December 23, 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–NEW and title ''Web-Based Pilot Survey to Assess Allergy to Cosmetics in the United States.'' Also include the FDA docket number in brackets in the heading of this document.

**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.*

**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.

### Web-Based Pilot Survey To Assess Allergy to Cosmetics in the United States

*OMB Control Number 0910–NEW*

### I. Background

In the past 40 years, the cosmetics industry, as well as consumer behaviors and expectations related to cosmetics, have evolved. Technological and scientific advances have been made in cosmetics production, manufacturing, marketing, and usage, while consumer access to information about cosmetic products and ingredients has expanded, because of the internet and social media influences. Most notably, multiple cosmetic products such as lotions, perfume, body wash, hand wash, shampoo, deodorant, hair spray, baby wipes, nail polish, etc. are used daily by nearly everyone in the United States, including infants, children, adults, geriatric populations, healthy people, and individuals with medical conditions.

Evidence indicates that the prevalence of allergies in the U.S. population is increasing (Ref. 1). However, no publicly available data has been collected on the prevalence of adverse reactions to cosmetic products since 1975 (Ref. 2). FDA proposes a pilot study to collect the data needed for a current and detailed understanding of the impact of allergens on consumer use of cosmetics. In addition to updating our knowledge about cosmetics, this new information collection is consistent with FDA's efforts to improve public awareness of adverse events associated with FDA-regulated products. In December 2016, FDA decided to make public the adverse event data in the Center for Food Safety and Applied

Nutrition (CFSAN) Adverse Events Reporting System (CAERS). CAERS (and its imminent successor the CFSAN Adverse Events Management System or CAEMS) provides the public with transparent access to all food and cosmetic related adverse events reported to FDA. However, the information that we have collected and that which will be collected through CAERS is an underestimate of adverse events to cosmetics in the United States, as not every adverse event is reported by consumers through CAERS because some consumers are not aware of CAERS or some choose not to report.

To obtain additional relevant data, FDA proposes to conduct a pilot study, ''Web-based Pilot Survey to Assess Allergy to Cosmetics in the United States.'' The objective of the current effort is to collect information needed for a more current understanding of the prevalence of adverse reactions to cosmetics. FDA proposes to conduct an exploratory consumer web-based survey to collect data on consumer use of cosmetic products, the frequency of adverse events believed to be caused by allergens in cosmetics, consumer awareness of the problem, and actions (if any) taken to avoid the allergens.

The proposed survey will use a 20-minute web-based questionnaire to collect information from 1,000 English-speaking adult members of a probability-based web-enabled research panel maintained by a contractor. Selected panel members will be sent an email invitation to participate in the survey. After clicking on the link in the email invitation, panelists will be directed to the online instrument. On the first screen, panelists will provide disclosure information which includes informed consent and be asked if they would like to proceed with the survey. Consenting respondents will be prompted to complete the survey. After OMB approval of this collection and prior to the full-scale survey, a pretest will be conducted with 100 respondents randomly selected from the panel.

The web-based panel is designed to be representative of the U.S. adult population. This representation is achieved through address-based sampling where every U.S. adult with an address (including those who do not have a landline phone number) has an equal probability of being selected for participation.

This pilot study is part of the Agency's continuing effort to understand the impact of allergens on cosmetics.

In the **Federal Register** of November 8, 2018 (83 FR 55896), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received 82 comments. Several addressed issues not related to the PRA, while others were PRA related. Of the comments received, several described the commenter's reactions to cosmetics, and while important, these comments do not address the PRA and will not be discussed here.

Several comments discussed the necessity and practical utility of the collection. This survey represents an ongoing effort by FDA to better understand cosmetic ingredients that may be potential allergens, and this survey constitutes the third contract over the last few years to address allergens in cosmetics. A few comments thought the proposed information collected by the survey does not appear to be necessary for proper performance of FDA's functions because of the small size of the number of respondents but several comments described how the collection was important and needed to be conducted so that we can better understand consumer's perception of skincare and beauty products. Several comments supported the survey because they agreed with the intention and methods being proposed and because of the topic's growing interest and concern to consumers. We appreciate these comments supporting our undertaking this survey of reactions to allergens in cosmetics.

This survey is part of an ongoing effort by FDA to better understand cosmetic ingredients that may be potential allergens, and this constitutes the third contract over the last few years to address allergens in cosmetics. The first contract in 2015–2016 conducted a comprehensive literature review of 26 fragrances that the European Union has identified as allergens. The second contract in 2016–2017 expanded the inquiry to other cosmetic ingredients, and it tested the criteria that were developed from the earlier contract on the 26 fragrance allergens. We appreciate comments of support for undertaking this survey of reactions to allergens in cosmetics.

A few comments had concerns about the study population of the survey and its size. With respect to the statistical power of the study, FDA notes that the relevant questions are binary (*e.g.,* do you have an allergy or not, has it been medically confirmed or not, etc.), which allows precise estimates for the fraction of adults reporting an allergy and the fraction having had the allergy medically confirmed with a relatively smaller sample. Based on the power calculations performed for this study, 1,000 completed surveys will allow detection of differences of 6.6 percentage points in the estimates of allergy or not with 95% confidence, 80% power, and a Design Effect of 1.1. With respect to the study group composition, the sampling frame for the survey is the GfK Custom Research, Inc. (GfK) online consumer panel, KnowledgePanel (KP), which is a probability-based consumer panel that is designed to be representative of the U.S. adult population. Because the purpose of this survey is limited to obtaining nationally representative estimates of the U.S. population that have a medically diagnosed allergy and to obtain descriptive statistics on cosmetics use by U.S. citizens and other questions, suggested oversampling of specific groups (*e.g.* women, new cosmetics users and so on) would result in unequal weighting effects that would reduce our precision for the national estimates.

Several comments noted that the survey might be improved by including additional questions, rephrasing existing questions to improve accuracy, avoid potential confusion, improve the flow of the survey, and ultimately reduce time to complete the survey. Thanks to these comments, FDA has modified the survey in the following manner:

- In the introduction to the survey, we have added text that describes how the collection of this data will benefit the participant, and that data will only be presented in aggregate form to maintain confidentiality. We also added a definition of allergy and text that describes how the collection will benefit the participant, and only be presented in aggregate format to maintain confidentiality.
- After Question (Q) 7, we added the question, ''How often do you buy cosmetic products labeled as 'Fragrance-free?' ''.
- In Q14 we added additional reactions that people might suffer, such as burning eyes or eyelid rash.
- In Qs 1, 11, 14 and 15, to products numbers 39–41 and 45,''excluding sunscreens'' has been added to prevent reporting of allergies to over the counter drug regulated products.
- In Q18, we added clarifying definitions for mobility, self-care, etc.
- In Q27, ''fragrance mix ingredients'' was changed to ''fragrance mix allergens''.
- Qs 23–27 were moved to immediately follow Q13 for a more logical flow.

In addition to these changes, we have carefully considered and decided not to make revisions based on the following suggestions:

• *Suggestion to add feminine products to product list:* We recognize that the product list given in the survey is fairly aggregated. However, adding more products (or splitting existing products) may make the survey longer and more difficult to complete. A primary limitation to the length of the survey is that the survey should be short-enough so that it can be completed in 20 minutes or less. The desired sample size would be more difficult to achieve by lengthening the survey.

• *Suggestion to omit questions regarding expiration dates:* Although cosmetic products are not required to have an expiration date printed on them (as pointed out by commenters), we have determined that some products do include expiration dates. The purpose of these questions is to determine whether this information, when available, is used by the consumer.

• *Suggestions to use another list of allergens (Q26):* Commenters are correct that other lists of allergens are available (such as the American Contact Dermatitis Society (ACDS)), in addition to the one provided in our survey. However, it is important to note that the ACDS is only one of many patch tests that could be used and is not actually the standard patch test in the United States (TRUE test is the only patch test approved for use by FDA). FDA chose the list included in the survey based on an independent review of sensitization data for various cosmetics ingredients and found these ingredients to be of most interest.

• *Suggestion to clarify the terms ''product'', ''cosmetic'', and ''cosmetic product'':* We conducted several cognitive interviews and the use of these terms did not seem to create any problems for the participants.

• *Symptoms and clinical signs of skin allergies:* For question 14, the following reactions were listed: Burning, Blistering, Hair Loss, Itchiness, Scabs or Scales, Skin Rash or Redness, and Swelling. These reactions are in agreement with the American College of Allergy, Asthma, & Immunology list of the symptoms for cosmetic dermatitis: Red, irritated skin, itching, swelling, bumps or blisters, hot or tender skin (*https://acaai.org/allergies/types/skin-allergies/contact-dermatitis*). Further, research suggests that allergic contact dermatitis of the scalp can be a cause of hair loss (*https://jamanetwork.com/journals/jamadermatology/fullarticle/478194*).

• *Linking allergic reaction to a single product or ingredient:* We agree that it may be difficult to isolate an allergic reaction to a single product or causative ingredient. Still, some consumers are able to accurately pinpoint the ingredient. Asking first whether a person has an allergy (Q12) and then following it up with questions about whether it has been medically confirmed (Q23) should allow one to adequately estimate the fraction of adults that believe they have an allergy (based on data from Q12) and the fraction that have actually confirmed this allergy (based on data from Q23). This should provide a more complete picture of the incidence of allergies to cosmetics that is currently lacking.

• *Suggestions to include additional questions:* Allergic reactions to cosmetics worn by other individuals, caused by other products (*e.g.,* laundry detergents), health conditions beyond allergies, and economic costs, are beyond the scope of this survey. A primary limitation is that the survey needs to be short-enough so that it can be completed in 20 minutes or less and making the survey longer would likely make it more difficult to achieve the desired sample size.

Finally, a few comments indicated that the estimated time to complete the survey is too low and that a reduction in survey length could positively improve survey results. These comments also believe the survey will reflect inadequacies and access which will impact respondent input and FDA discovery. As discussed earlier, the survey will be conducted using the GfK online consumer panel, KP. GfK routinely conducts surveys of this length using their panel and we are confident we will achieve 1,000 completes.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Study component | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Pretest invitation | 200 | 1 | 200 | 0.033 (2 minutes) | 7 |
| Pretest | 100 | 1 | 100 | 0.333 (20 minutes) | 33 |
| Survey Invitation | 1,667 | 1 | 1,667 | 0.033 (2 minutes) | 55 |
| Survey | 1,000 | 1 | 1,000 | 0.333 (20 minutes) | 333 |
| Total | | | | | 428 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

## II. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD, 20852 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also 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. Peiser, M., T. Traulau, J. Heidler, et al., ''Allergic Contact Dermatitis: Epidemiology, Molecular Mechanisms, In Vitro Methods and Regulatory Aspects. Current Knowledge Assembled at an International Workshop at BfR, Germany.'' *Cellular and Molecular Life Sciences,* 69:763–781, 2012.

2. * Westat, Inc., ''An Investigation of Consumers' Perceptions of Adverse Reactions to Cosmetic Products.'' Final report submitted to U.S. Department of Health, Education, and Welfare, Food and Drug Administration. June 1975.

Dated: November 12, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–25274 Filed 11–20–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–5035]**

### Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice, establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Anesthetic and Analgesic Drug Products Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on January 16, 2020, from 8 a.m. to 5 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2019–N–5035. The docket will close on January 15, 2020. Submit either electronic or written comments on this public meeting by January 15, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 15, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 15, 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.

Comments received on or before January 2, 2020, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–N–5035 for ''Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 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 the 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:** Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AADPAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the

advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The committee will discuss new drug application (NDA) 204803, bupivacaine extended-release solution for instillation, submitted by DURECT Corp., for the proposed indication of post-surgical analgesia. The committee will discuss whether the Applicant adequately demonstrated the safety and efficacy of bupivacaine extended-release solution for post-surgical analgesia and the appropriateness of the proposed patient populations. The committee will also be asked to discuss the approvability of this product.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before January 2, 2020, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 20, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 23, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Hee V. Choi (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–25278 Filed 11–20–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1973]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before February 19, 2020.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1973, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP

and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Cumberland County, Pennsylvania (All Jurisdictions)** | |
| **Project: 15–03–0142S Preliminary Date: May 14, 2019** | |
| Borough of Camp Hill | Borough Administration Office, 2145 Walnut Street, Camp Hill, PA 17011. |
| Borough of Carlisle | Municipal Building, 53 West South Street, Carlisle, PA 17013. |
| Borough of Lemoyne | Borough Office, 510 Herman Avenue, Lemoyne, PA 17043. |
| Borough of Mechanicsburg | Borough Office, 36 West Allen Street, Mechanicsburg, PA 17055. |
| Borough of Mount Holly Springs | Municipal Building, 200 Harman Street, Mount Holly Springs, PA 17065. |
| Borough of Newburg | Borough Office, 105 West Main Street, Newburg, PA 17240. |
| Borough of New Cumberland | Borough Office, 1120 Market Street, New Cumberland, PA 17070. |
| Borough of Newville | Borough Office, 4 West Street, Newville, PA 17241. |
| Borough of Shippensburg | Borough Office, 111 North Fayette Street, Shippensburg, PA 17257. |
| Borough of Shiremanstown | Borough Office, 1 Park Lane, Shiremanstown, PA 17011. |
| Borough of Wormleysburg | Borough Hall, 20 Market Street, Wormleysburg, PA 17043. |
| Township of Cooke | Cooke Township Office, 1700 Centerville Road, Newville, PA 17241. |
| Township of Dickinson | Dickinson Township Building, 219 Mountain View Road, Mount Holly Springs, PA 17065. |
| Township of East Pennsboro | East Pennsboro Township Community and Municipal Center, 98 South Enola Drive, Enola, PA 17025. |
| Township of Hampden | Hampden Township Municipal Building, 230 South Sporting Hill Road, Mechanicsburg, PA 17050. |
| Township of Hopewell | Hopewell Township Administration Building, 415 Three Square Hollow Road, Newburg, PA 17240. |
| Township of Lower Allen | Lower Allen Township Municipal Services Center, 2233 Gettysburg Road, Camp Hill, PA 17011. |
| Township of Lower Frankford | Lower Frankford Township Municipal Building, 1205 Easy Road, Carlisle, PA 17015. |
| Township of Lower Mifflin | Lower Mifflin Township Office, 529 Shed Road, Newville, PA 17241. |
| Township of Middlesex | Middlesex Township Building, 350 North Middlesex Road, Carlisle, PA 17013. |
| Township of Monroe | Monroe Township Municipal Complex, 1220 Boiling Springs Road, Mechanicsburg, PA 17055. |
| Township of North Middleton | North Middleton Township Municipal Building, 2051 Spring Road, Carlisle, PA 17013. |
| Township of North Newton | North Newton Township Administrative Office, 528 Oakville Road, Shippensburg, PA 17257. |
| Township of Penn | Penn Township Municipal Building, 1301 Centerville Road, Newville, PA 17241. |
| Township of Shippensburg | Township Municipal Office, 81 Walnut Bottom Road, Shippensburg, PA 17257. |
| Township of Silver Spring | Silver Spring Township Building, 8 Flowers Drive, Mechanicsburg, PA 17050. |
| Township of Southampton | Southampton Township Municipal Building, 200 Airport Road, Shippensburg, PA 17257. |
| Township of South Middleton | South Middleton Township Municipal Building, 520 Park Drive, Boiling Springs, PA 17007. |

| Community | Community map repository address |
|---|---|
| Township of South Newton | South Newton Township Municipal Building, 11 High Mountain Road, Walnut Bottom, PA 17266. |
| Township of Upper Allen | Upper Allen Township Building, 100 Gettysburg Pike, Mechanicsburg, PA 17055. |
| Township of Upper Frankford | Upper Frankford Township Building, 660 Mohawk Road, Newville, PA 17241. |
| Township of Upper Mifflin | Upper Mifflin Township Municipal Building, 455 Whiskey Run Road, Newville, PA 17241. |
| Township of West Pennsboro | West Pennsboro Township Municipal Building, 2150 Newville Road, Carlisle, PA 17015. |

[FR Doc. 2019–25245 Filed 11–20–19; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1974]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Colorado: | | | | | | |
| Boulder | City of Boulder (19–08–0629P). | The Honorable Suzanne Jones, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302. | Central Records Department, 1777 Broadway Street, Boulder, CO 80302. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 24, 2020 | 080024 |
| Summit | Town of Breckenridge (19–08–0262P). | The Honorable Eric Mamula, Mayor, Town of Breckenridge, P.O. Box 168, Breckenridge, CO 80424. | Public Works Department, 1095 Airport Road, Breckenridge, CO 80424. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 13, 2020 | 080172 |
| Weld | City of Greeley (19–08–0012P). | The Honorable John Gates, Mayor, City of Greeley, 1000 10th Street, Greeley, CO 80631. | City Hall, 1000 10th Street, Greeley, CO 80631. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 16, 2020 | 080184 |
| Weld | Unincorporated areas of Weld County (19–08–0012P). | The Honorable Barbara Kirkmeyer, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632. | Weld County Department of Planning and Zoning, 1555 North 17th Avenue, Greeley, CO 80631. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 16, 2020 | 080266 |
| Connecticut: Hartford. | Town of West Hartford (19–01–1237P). | The Honorable Matthew Hart, Town of West Hartford Manager, 50 South Main Street, West Hartford, CT 06107. | Town Hall, 50 South Main Street, West Hartford, CT 06107. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 17, 202 | 095082 |
| Delaware: New Castle. | Unincorporated areas of New Castle County. (19–03–0220P) | Mr. Matthew Meyer, New Castle County Executive 87 Reads Way, New Castle, DE 19720. | New Castle County Government Center, 87 Reads Way, New Castle, DE 19720. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 6, 2020 | 105085 |
| Florida: | | | | | | |
| Charlotte | Unincorporated areas of Charlotte County (19–04–5020P). | The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948. | Charlotte County Building Department, 18500 Murdock Circle, Port Charlotte, FL 33948. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 13, 2020 | 120061 |
| Lee | City of Bonita Springs (19–04–5151P). | The Honorable Peter Simmons, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135. | Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 28, 2020 | 120680 |
| Lee | City of Sanibel (19–04–4688P). | The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957. | Development Services, Planning Division, 800 Dunlop Road, Sanibel, FL 33957. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 9, 2020 | 120402 |
| Orange | City of Orlando (19–04–5111P). | The Honorable Buddy W. Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802. | Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 28, 2020 | 120186 |
| Polk | Unincorporated areas of Polk County (19–04–0781P). | The Honorable George Lindsey III, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831. | Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 30, 2020 | 120261 |
| Volusia | City of Daytona Beach (19–04–0945P). | The Honorable Derrick L. Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Room 200, Daytona Beach, FL 32114. | Utilities Department, 125 Basin Street, Suite 131, Daytona Beach, FL 32115. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 10, 2020 | 125099 |
| Volusia | Unincorporated areas of Volusia County (19–04–0945P). | Mr. George Recktendwald, Volusia County Manager, 123 West Indiana Avenue, DeLand, FL 32720. | Volusia County Building and Zoning Department, 123 West Indiana Avenue, DeLand, FL 32720. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 10, 2020 | 125155 |
| Maine: Lincoln | Town of Southport (19–01–0607P). | The Honorable Gerald L. Gamage, Chairman, Town of Southport Board of Selectmen, P.O. Box 149, Southport, ME 04576. | Code Enforcement Department, 361 Hendricks Hill Road, Southport, ME 04576. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 17, 2020 | 230221 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| New York: Montgomery. | City of Amsterdam (19–02–1207P). | The Honorable Michael J. Villa, Mayor, City of Amsterdam, 61 Church Street, Amsterdam, NY 12010. | City Hall, 61 Church Street, Amsterdam, NY 12010. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 20, 2020 .... | 360440 |
| North Carolina: Orange. | Town of Carrboro (19–04–0720P). | The Honorable Lydia Lavelle, Mayor, Town of Carrboro, 301 West Main Street, Carrboro, NC 27510. | Planning Department, 301 West Main Street, Carrboro, NC 27510. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 4, 2020 ..... | 370275 |
| Ohio: Warren ..... | City of Lebanon (19–05–2274P). | The Honorable Amy Brewer, Mayor, City of Lebanon, 50 South Broadway Street, Lebanon, OH 45036. | Engineering Department, 50 South Broadway Street, Lebanon, OH 45036. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 10, 2020 .... | 390557 |
| Oklahoma: | | | | | | |
| Canadian ..... | City of Oklahoma City (19–06–3217P). | The Honorable David Holt, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102. | Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, OK 73102. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 21, 2020 .... | 405378 |
| Tulsa ..... | City of Collinsville (19–06–1337P). | The Honorable Bud York, Mayor, City of Collinsville, P.O. Box 730, Collinsville, OK 74021. | Engineering Department, 106 North 12th Street, Collinsville, OK 74021. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 10, 2020 .... | 400360 |
| Tulsa ..... | Unincorporated areas of Tulsa County (19–06–1337P). | The Honorable Karen Keith, Chair, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103. | Tulsa County Inspections Department, 633 West 3rd Street, Tulsa, OK 74127. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 10, 2020 .... | 400462 |
| Texas: | | | | | | |
| Bexar ..... | City of Converse (18–06–2882P). | The Honorable Al Suarez, Mayor, City of Converse, 406 South Seguin Road, Converse, TX 78109. | City Hall, 406 South Seguin Road, Converse, TX 78109. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 13, 2020 ..... | 480038 |
| Collin ..... | City of Frisco (19–06–1915P). | The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034. | Engineering Services Department, 6101 Frisco Square Boulevard, Frisco, TX 75034. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 3, 2020 ..... | 480134 |
| Denton ..... | City of Highland Village (19–06–0868P). | Mr. Michael Leavitt, City of Highland Village Manager, 1000 Highland Village Road, Highland Village, TX 75077. | City Hall, 1000 Highland Village Road, Highland Village, TX 75077. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 31, 2020 ..... | 481105 |
| Harris ..... | Unincorporated areas of Harris County (19–06–0834P). | The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002. | Harris County Engineering Department, Permits Division, 10555 Northwest Freeway, Suite 120, Houston, TX 77092. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 27, 2020 ..... | 480287 |
| Montgomery ... | Unincorporated areas of Montgomery County (19–06–0834P). | The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301. | Montgomery County Alan B. Sadler Commissioners Court Building, 501 North Thompson Street, Suite 100, Conroe, TX 77301. | *https://msc.fema.gov/portal/advanceSearch.* | Jan. 27, 2020 ..... | 480483 |
| Tarrant ..... | City of Euless (19–06–0184P). | The Honorable Linda Martin, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039. | Planning and Engineering Department, 201 North Ector Drive, Euless, TX 76039. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 6, 2020 ..... | 480593 |
| Tarrant ..... | City of Fort Worth (19–06–0498P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 6, 2020 ..... | 480596 |
| Tarrant ..... | City of Haltom City (19–06–0498P). | The Honorable An Truong, Mayor, City of Haltom City, 5024 Broadway Avenue, Haltom City, TX 76117. | Public Works Services Department, 4200 Hollis Street, Haltom City, TX 76111. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 6, 2020 ..... | 480599 |
| Utah: Salt Lake ..... | City of Riverton (19–08–0446P). | The Honorable Trent Staggs, Mayor, City of Riverton, 12830 South Redwood Road, Riverton, UT 84065. | Public Works Department, 12526 South 4150 West, Riverton, UT 84096. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 13, 2020 .... | 490104 |

[FR Doc. 2019–25244 Filed 11–20–19; 8:45 am]
BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1972]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before February 19, 2020.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1972, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Maricopa County, Arizona and Incorporated Areas Project: 18–09–0019S Preliminary Date: August 14, 2019** | |
| City of Phoenix | Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003. |
| City of Scottsdale | Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251. |
| Unincorporated Areas of Maricopa County | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. |

| Community | Community map repository address |
|---|---|
| **Benzie County, Michigan (All Jurisdictions)**<br>**Project: 14–05–3343S Preliminary Date: May 10, 2019** | |
| City of Frankfort | City Hall, 412 Main Street, Frankfort, MI 49635. |
| Township of Benzonia | Township Hall, 1020 Michigan Avenue, Benzonia, MI 49616. |
| Township of Blaine | Blaine Township Hall, 4760 Herring Grove Road, Arcadia, MI 49613. |
| Township of Crystal Lake | Crystal Lake Township Hall, 1651 Frankfort Highway, Frankfort, MI 49635. |
| Township of Gilmore | Gilmore Township Office, Elberta Community Building, 401 First Street, Elberta, MI 49628. |
| Township of Lake | Lake Township Hall, 5153 Scenic Highway, Honor, MI 49640. |
| Township of Platte | Platte Township Hall, 11935 Fowler Road, Honor, MI 49640. |
| Village of Beulah | Village Hall, 7228 Commercial Avenue, Beulah, MI 49617. |
| Village of Elberta | Village Hall, 151 Pearson Street, Elberta, MI 49628. |
| **Erie County, New York (All Jurisdictions)**<br>**Project: 17–02–0322S Preliminary Date: February 12, 2019** | |
| City of Buffalo | City Hall, 65 Niagara Square, Buffalo, NY 14202. |
| City of Lackawanna | City Hall, 714 Ridge Road, Lackawanna, NY 14218. |
| City of Tonawanda | City Hall, 200 Niagara Street, Tonawanda, NY 14150. |
| Town of Brant | Town Hall, 1294 Brant-North Collins Road, Brant, NY 14027. |
| Town of Evans | Evans Town Hall, 8787 Erie Road, Angola, NY 14006. |
| Town of Grand Island | Town Hall, 2255 Baseline Road, Grand Island, NY 14072. |
| Town of Hamburg | Town Hall, 6100 South Park Avenue, Hamburg, NY 14075. |
| Town of Tonawanda | Tonawanda Town Hall, 2919 Delaware Avenue, Kenmore, NY 14217. |
| **Defiance County, Ohio and Incorporated Areas**<br>**Project: 14–05–4448S Preliminary Date: June 21, 2019** | |
| City of Defiance | City Hall, 631 Perry Street, Defiance, OH 43512. |
| Unincorporated Areas of Defiance County | Defiance County Building, 500 Court Street, Defiance, OH 43512. |

[FR Doc. 2019–25243 Filed 11–20–19; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0111]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for CNMI-Only Nonimmigrant Transition Worker

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until January 21, 2020.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0111 in the body of the letter, the agency name and Docket ID USCIS–2012–0011. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2012–0011;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

**SUPPLEMENTARY INFORMATION:**

#### Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012–0011 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that

is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transition Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129CW; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested immigration benefits. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW–1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility, is provided by the petitioners.

USCIS collects biometrics from aliens present in the CNMI at the time of requesting initial grant of CW–1 status. The information is used to verify the alien's identity, background information and ultimately adjudicate their request for CW–1 status.

The CW–1 classification is unique in that Form I–129CW is a petition for the CW–1 classification as well as a ''grant of status.'' A ''grant of status'' allows beneficiaries lawfully present in the CNMI to change status directly from their CNMI classification or DHS-issued parole to the CW–1 classification. *See* 8 CFR 214.2(w)(1)(v). When a beneficiary is granted CW–1 status, the adjudicating officer is granting admission and status to the beneficiary without requiring the beneficiary to depart the CNMI, obtain a visa abroad, and seek admission with CBP. Because we are granting the CW–1 status to the beneficiary, we use biometrics to make a determination of admissibility prior to adjudicating the Form I–129CW petition. The checks are used to confirm identity and ensure that CW–1 status is not granted to anyone who is inadmissible. As the CW program progresses, the need to take biometrics in most cases has diminished, as the Form I–129CW is increasingly used for extension of status of persons who had already had their biometrics taken at the initial grant stage rather than for initial grants of status in the CNMI, but the authority will continue to be used in those initial grant cases that do arise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–129CW is 3,749 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,247 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $459,253.

Dated: November 18, 2019.

**Jerry L. Rigdon,**

*Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2019–25267 Filed 11–20–19; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R7–ES–2019–N108; FXES11140700000–190–FF07CAAN00]

## Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of the Short-Tailed Albatross (Phoebastria albatrus) and the Southwest Alaska Distinct Population Segment of the Northern Sea Otter (Enhydra lutris kenyoni)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service are initiating 5-year status reviews of the short-tailed albatross and the Southwest Alaska distinct population segment of the northern sea otter under the Endangered Species Act. A 5-year status review is based on the best scientific and commercial data available at the time of the review. We are requesting submission of any new information on these species that has become available since the last reviews of these species.

**DATES:** To ensure consideration of your comments in our preparation of these 5-year status reviews, we must receive your comments and information by January 21, 2020. However, we will accept information about the species at any time.

**ADDRESSES:** For short-tailed albatross, please submit your information by one of the following methods:

- *Email: leah_kenney@fws.gov;* or
- *U.S. mail or hand delivery:* U.S. Fish and Wildlife Service, Attention: Leah Kenney, Anchorage Fish and Wildlife Field Office, 4700 BLM Road, Anchorage, Alaska 99507.

For the Southwest Alaska distinct population segment of the northern sea otter, please submit your information by one of the following methods:

- *Email: Fw7_ak_marine_mammals@fws.gov;* or
- *U.S. mail or hand delivery:* U.S. Fish and Wildlife Service, Attention: Michelle St. Martin, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503.

For more about submitting information, see Request for Information in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For short-tailed albatross: Leah Kenney, by telephone at 907–271–2440. For the Southwest Alaska distinct population segment of the northern sea otter: Michelle St. Martin, by telephone at 1–

800–362–5148. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of the short-tailed albatross (*Phoebastria albatrus*) and the Southwest Alaska distinct population segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on this species that has become available since the last 5-year reviews were conducted in 2014 (short-tailed albatross) and 2013 (Southwest Alaska DPS of the northern sea otter).

**Why do we conduct 5-year reviews?**

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Further, our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

**What information do we consider in our review?**

In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(1) The biology of the species, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(2) Habitat conditions, including but not limited to amount, distribution, and suitability;

(3) Conservation measures that have been implemented that benefit the species;

(4) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(5) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

**Species Under Review**

*Entity listed:* Short-tailed Albatross (*Phoebastria albatrus*).

- *Where listed:* Wherever found.
- *Classification:* Endangered.
- *Date listed (publication date for final listing rule):* July 31, 2000.
- ***Federal Register*** *citation for final listing rule:* 65 FR 46643.

*Entity listed:* Southwest Alaska Distinct Population Segment of the Northern Sea Otter (*Enhydra lutris kenyoni*).

- *Where listed:* Southwest Alaska, from Attu Island to Western Cook Inlet, including Bristol Bay, the Kodiak Archipelago, and the Barren Islands.
- *Classification:* Threatened.
- *Date listed (publication date for final listing rule):* August 9, 2005.
- ***Federal Register*** *citation for final listing rule:* 70 FR 46366.

**Request for Information**

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Completed and Active Reviews**

A list of all completed and currently active 5-year status reviews addressing species for which the Alaska Region of the Service has the lead responsibility is available at *https://www.fws.gov/alaska/pages/endangered-species-program/recovery-endangered-species.*

**Authority**

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Mary Colligan,**

*Assistant Regional Director, Alaska Region.*

[FR Doc. 2019–25227 Filed 11–20–19; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLES962000 L14400000 BJ0000 19X]**

### Notice of Filing of Plats of Surveys; Eastern States

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of official filing.

**SUMMARY:** The plats of surveys of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Eastern States Office, Washington, DC, 30 days from the date of this publication. The surveys, executed at the request of the identified agencies, are required for the management of these lands.

**DATES:** Unless there are protests of this action, the filing of the plat described in this notice will happen on December 23, 2019.

**ADDRESSES:** Written notices protesting any of these surveys must be sent to the State Director, BLM Eastern States, 20 M Street SE, Suite 950, Washington, DC 20003.

**FOR FURTHER INFORMATION CONTACT:** Kenneth D. Roy, Acting Chief Cadastral Surveyor for Eastern States; (202) 912–7756; email: *kroy@blm.gov;* or U.S. Postal Service: BLM–ES, 20 M Street SE, Suite 950, Washington, DC 20003. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The supplemental plats of secs. 3, 10, 15, 22, 27, and 34, of Townships 166 and 167 North, Range 35 West, Fifth Principal Meridian, Minnesota; portrays new lots, along the International Boundary with Canada, excluding a 60 foot strip of land reserved by proclamation. The acreages and descriptions created by the new lots will be utilized for the restoration of

certain lands to the Red Lake Band of Ojibwe. Survey requested by the BLM.

A person or party who wishes to protest a survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A notice of protest is considered filed on the date it is received by the State Director for Eastern States during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a notice of protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the next business day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, please be aware that your entire protest, 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.

A copy of the described plats will be placed in the open files, and available to the public, as a matter of information.

**Authority:** 43 U.S.C. chap. 3.

**Kenneth D. Roy,**

*Acting Chief Cadastral Surveyor.*

[FR Doc. 2019–25190 Filed 11–20–19; 8:45 am]

**BILLING CODE 4310–GJ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD01000 L12100000.MD0000 19XL1109AF (MO#4500136828)]**

### Meeting of the California Desert District Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (Council) will meet as indicated below.

**DATES:** The Council's next meeting will be held December 6–7, 2019. The Council will participate in a field tour of BLM-administered public lands on Friday, December 6, 2019, from 8:00 a.m. to 3:30 p.m. and then will meet in formal session on Saturday, December 7, 2019, from 9:00 a.m. to 4:00 p.m.

**ADDRESSES:** The Friday field trip will leave from the Palm Springs-South Coast Field Office, 1201 Bird Center Dr., Palm Springs, CA 92211. Saturday's formal session will be held at the Renaissance Palm Springs Hotel, 888 E Tahquitz Canyon Way, Palm Springs, California 92262. Final locations and agendas for the field trip and public meeting will be posted on the BLM web page at: *https://www.blm.gov/get-involved/rac/california/california-desert-district.*

Written comments for the Council may be sent in advance of the Saturday meeting c/o BLM, Public Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553.

**FOR FURTHER INFORMATION CONTACT:** Sarah K. Webster, BLM California State Office, telephone: 916–978–4622, email: *swebster@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Webster during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member Council provides recommendations to the Secretary of the Interior concerning the planning and management of the public land resources located within the BLM's California Desert District and offers advice on the implementation of the comprehensive, long-range plan for management, use, development, and protection of the public lands within the California Desert Conservation Area.

All Council meetings and field trips are open to the public, but the public must provide their own transportation, meals, and beverages.

The field trip will include visits to the Eagle Crest Energy Eagle Mountain Pumped Storage Project, NextEra Desert Sunlight Solar Farm, and Terra-Gen San Jacinto II Wind Re-power Project. The Saturday public meeting will include a presentation on and discussion of renewable-energy development.

The Saturday meeting will include an update on implementation of the John D. Dingell, Jr. Conservation, Management, and Recreation Act in the California Desert District, updates from Council members and the BLM California Desert District Manager, and time for public comment at the beginning and end of the meeting as well as during various presentations. Depending on the number of people wishing to comment and the time available, the time for individual comments may be limited.

While the Saturday meeting is scheduled from 9:00 a.m. to 4:00 p.m., the meeting could conclude prior to 4:00 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments will be accepted at the Saturday public meeting. Copies will be provided to the Council and incorporated into the meeting minutes.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

**Andrew S. Archuleta,**

*California Desert District Manager.*

[FR Doc. 2019–25180 Filed 11–20–19; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZP01000.L12200000.EA0000; AZ–SRP–AZA–036683]**

### Notice of Temporary Closure of Public Lands in Maricopa County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** Notice is hereby given that a temporary closure will be in effect on public lands administered by the Bureau of Land Management (BLM), Hassayampa Field Office, during the Vulture Mine Off-Road Challenge officially permitted off-highway vehicle (OHV) race event.

**DATES:** The temporary closure will be in effect from 2 p.m., January 17, 2020,

through 10 p.m., January 19, 2020, Mountain Standard Time.

**ADDRESSES:** This temporary closure or restriction order will be posted in the Phoenix District Office, 21605 North 7th Avenue, Phoenix, AZ 85027. Maps of the affected area and other documents associated with this temporary closure are available at Hassayampa Field Office, which is located at the same address as the Phoenix District Office.

**FOR FURTHER INFORMATION CONTACT:** John (Jake) Szympruch, District Chief Ranger; telephone 623–580–5500; email *jszympru@blm.gov;* or Angie Meece, Acting Hassayampa Field Manager; telephone 623–580–5530; email *ameece@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The temporary closure affects certain public lands within the Vulture Mine Recreation Management Zone in Maricopa County, Arizona. This action is being taken to help ensure public safety during the Vulture Mine Off-Road Challenge official permitted OHV race event.

Main entry points to the area under temporary closure will be posted to notify the public of the temporary closure. These events are authorized on public land under a Special Recreation Permit (SRP), in conformance with the Wickenburg Travel Management Plan and the Bradshaw-Harquahala Record of Decision and Approved Resource Management Plan. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following temporary closures and restrictions within Vulture Mine Recreation Management Zone:

*Description of Race Course Closed Area:* Areas subject to this temporary closure include the race course and all public lands situated within the interior of the race course. The race course begins at the intersection of BLM routes 9092F and 9090C, traveling east along 9090C to 9090D, going south and then east along 9090D to 9090, continuing along 9090 north to 9093A, to 9274 traveling northeast to 9094, traveling southeast to 9195, south on 9195 to Vulture Mine Road (including the camping area to the west and east of the road, which varies in width from 268 feet to 70 feet between the signs indicating ''No Vehicles Beyond this Point''), then north on 9195 to 9286, then traveling northeast to 9196, to 9192 and then to route 9095, traveling north and west to 9089C to 9089A north to 9092B west to 9092 to 9092F and south returning to the beginning intersection with 9090C.

*Closure:* The designated race course and all areas within the boundary of the race course as described above are temporarily closed to public entry during the temporary closures.

*Exclusive Use:* During the temporary closure, the affected area will be for the exclusive use of Vulture Mine Off-Road Challenge participants, registered spectators for the Vulture Mine Off-Road Challenge races, and other authorized users with a valid SRP for activities within the temporary closure area. For the temporary closure area, anyone without a SRP authorizing use within the temporary closure area during the temporary closure period is prohibited from using the area.

*Exceptions:* The temporary closures do not apply to Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or firefighting forces in the performance of their official duties; Vulture Mine Off-Road Challenge event officials and race participants; vendors with a valid BLM SRP; and registered event spectators.

*Enforcement:* Any person who violates the temporary closures may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

*Effect of Closure:* The entire area encompassed by the designated race course and all areas within the race course as described above and in the time period as described above are temporarily closed to all public use, including pedestrian use and vehicles, unless specifically excepted as described above.

**Authority:** 43 CFR 8364.1.

**Angie Meece,**

*Acting Field Manager.*

[FR Doc. 2019–25329 Filed 11–20–19; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRSS–EQD–SSB-NPS0027445; PPAKWEARS2, PPMPRLE1Z.LS0000 (199); OMB Control Number 1024–0262]**

## Agency Information Collection Activities; Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before January 21, 2020.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov*; or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0262 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov*; or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0262 in the subject line of your comments.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used

in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* Under the provisions of The Alaska National Interest Lands Conservation Act (ANILCA), subsistence harvests by local rural residents are considered to be the priority consumptive use of park resources. This collection gathers information on subsistence harvest patterns and the impact of rural economy from resident zone communities associated with Alaskan parks, preserves, and monuments. The NPS is seeking an extension to continue to survey Alaska residents who customarily and traditionally engage in subsistence uses within a national park, preserve, or monument.

In 2017, the collection was reinstated and increased the scope of inquiry to include the following Alaskan National Parks, Preserves, and Monuments:

- Aniakchak National Monument (ANIA),
- Bering Land Bridge National Preserve (BELA),
- Cape Krusenstern National Monument (CAKR),
- Gates of the Arctic National Park and Preserve (GAAR),
- Kobuk Valley National Park (KOVA),
- Noatak National Preserve (NOAT),
- Wrangell-St. Elias National Park and Preserve (WRST) and
- Yukon-Charley Rivers National Preserve (YUCH).

This survey is conducted through in-person interviews. A facilitator collects information about harvests, uses, and sharing of subsistence resources. Search and harvest areas are also mapped over the course of the interview. The information from this collection will be used by the NPS, the Federal Subsistence Board, the State of Alaska, and local/regional advisory councils in making recommendations and informing decisions regarding seasons and harvest limits of fish, wildlife, and plants in the region which communities have customarily and traditionally used.

*Title of Collection:* Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments.

*OMB Control Number:* 1024–0262.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* One-time.

*Total Estimated Annual Nonhour Burden Cost:* None.

| Activity | Estimated annual respondents | Estimated annual responses | Average completion time per response | Estimated annual burden hours * |
|---|---|---|---|---|
| Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments (all communities): | | | | |
| Individuals/Households | 1,140 | 1,140 | 1 Hour | 1,140 |
| Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments (non-response script and survey): | | | | |
| Individuals/Households | 1,274 | 1,274 | 10 Minutes | 213 |
| Totals: | 2,414 | 2,414 | | 1,353 |

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Phadrea Ponds,**

*Acting, Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2019–25264 Filed 11–20–19; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–AKR–GLBA–NPS0027719; PX.XGLBARP18.00.1 (199); OMB Control Number 1024–0281]**

### Agency Information Collection Activities; Glacier Bay National Park and Preserve Bear Sighting and Encounter Reports

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before January 21, 2020.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov*; or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0281 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Margaret Hazen, Glacier Bay National Park and Preserve, Supervisory Park Ranger, PO Box 140, Gustavus, AK 99826; or by email at *Margaret_Hazen@nps.gov*; or by telephone at 907–697–2608. Please reference OMB Control Number 1024–0281 in the subject line of your comments.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The National Park Service Organic Act, 54 U.S.C. 100101(a) *et seq.,* requires that the NPS preserve national parks for the enjoyment, education, and inspiration of this and future generations. Additionally, NPS regulations codified in 36 CFR 1–7, 12 and 13, are designated to implement statutory mandates that provide for resource protection and public enjoyment. In order to monitor resources and wildlife in the Glacier Bay National Park and Preserve (GLBA) and to enhance the safety of future visitors, the park monitors all sightings and interactions by visitors with bears. Observations and interactions by visitors are recorded using two forms: NPS 10–405, ''Tatshenshini—Alsek River Bear Report'' and 10–406, ''Bear Information Management Report.'' The bear sighting and encounter reporting forms are an extension of our statutory authority and responsibility to protect the park areas we administer and to manage the public use thereof.

Bear sighting data provides the park with important data used to determine bear movements, habitat use, and species distribution. This information can be used in backcountry management and planning, field research planning, and educational outreach for visitors. Bear-human interaction data is vital to understand how bears respond to people, detecting changes in bear behavior, and identifying potential areas of high bear-human conflict. Obtaining immediate information on bear-human conflicts allows managers to respond promptly to mitigate further conflicts. Proactive mitigation includes notifying other backcountry users, issuing advisories or recommendations, or issuing closures to prevent further conflicts and maintain public safety. Additionally, managers may respond to reports of bear-human conflict with bear management techniques such as hazing or aversive conditioning. Obtaining current accurate information on bear sightings and interactions is essential for public safety and to effectively manage bears and people to minimize conflicts. Summary statistics (without personal information) may be generated to examine long-term trends in types and locations of bear-human interactions.

The submission of NPS Form 10–405 is voluntary upon exiting the park backcountry and is used to collect information regarding bear sightings within GLBA. The collection and timeliness of the data collection is critical for the NPS' ability to enhance the safety of future visitors and to protect the bear population at the park. Information collected via NPS Form 10–405 includes:

- Group name;
- Take-out date;
- Whether visitor encountered dirty campsites left by previous users or observe unsafe or inappropriate behavior by other groups; and
- Detailed information for each sighting documented on the form, to include:
  - Date/time;
  - Species type
  - Total number of bears seen together (for each sighting);
  - Bear unit type;
  - Estimation of distance between visitor and bear(s);
  - Whether the bear was aware of the group;
  - Bear reaction to group;
  - Activity of group;
  - Number of observers; and
  - Location description/campsite name/GPS position/other comments.

Submission of a completed NPS Form 10–406 is voluntary when a bear enters camp, approaches the group, damages gear, obtains food, and/or acts in an aggressive or threatening manner towards the group. The collection and timeliness of data concerning bear-human contact is critical for the NPS' ability to enhance the safety of future visitors and to protect the bear population at the park. Information collected via NPS Form 10–406 includes:

- Name and phone number of the primary person involved in the interaction;
- Group type: park visitor, concession employee, contractor, researcher, NPS employee, or other;
- Number of people who encountered the bear;
- Corresponding sighting number on NPS Form 10–405; Location 1–28 (Backcountry vs. Developed Area A and B);
- Types of vegetation in area of encounter;
- The bear's activity when it was first observed;
- The group's activity prior to seeing the bear;
- The bear's initial and subsequent reaction to the group;
- Group's response to bear's reaction;
- Group's distance to the bear;
- Whether food was present, and if so, if it was eaten by the bear;
- Whether property was damaged;
- Detailed description of the interaction;
- Detailed description of the bear, to include color, markings, scars, tags, etc.;
- Date, time, and duration of encounter;
- Exact location of encounter documented on map provided by GLBA, to include the latitude/longitude;
- Where did the individual learn about how to behave while in bear country; and
- Whether visitor encountered dirty campsites left by previous users or observe unsafe or inappropriate behavior by other groups.

*Title of Collection:* Glacier Bay National Park and Preserve Bear Sighting and Encounter Reports.

*OMB Control Number:* 1024–0281.

*Form Number:* 10–405, ''Tatshenshini—Alsek River Bear Report'' and 10–406, ''Bear Information Management Report''.

*Type of Review:* Extension of a currently approved collection.

*Description of Respondents:* Backcountry and frontcountry visitors to Glacier Bay National Park and Preserve.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

| Activity | Estimated annual number of responses | Estimated completion time per response (minutes) | Estimated total annual burden hours |
|---|---|---|---|
| NPS Form 10–405, ''Tatshenshini—Alsek River Bear Report Form 1'' | 40 | 5 | 3 |
| NPS Form 10–406, ''Tatshenshini—Alsek River Bear Information Management (BIM) Report Form 2'' | 10 | 5 | 1 |
| Totals | 50 | | 4 |

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Phadrea Ponds,**

*Acting Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2019–25266 Filed 11–20–19; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–1184]**

## Certain Shaker Screens for Drilling Fluids, Components Thereof, and Related Marketing Materials; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 18, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of M–I L.L.C. of Houston, Texas. An amended complaint was filed on November 7, 2019. The amended complaint alleges violations of 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 shaker screens for drilling fluids, components thereof, and related market materials by reason of infringement of: (1) Certain claims of U.S. Patent No. 7,210,582 (''the '582 patent''); U.S. Patent No. 7,810,649 (''the '649 patent''); and U.S. Patent No. 8,925,735 (''the '735 patent''); and (2) U.S. Trademark Registration No. 2,151,736 (''the '736 trademark'') and U.S. Trademark Registration No. 2,744,891 (''the '891 trademark''). The amended complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

**ADDRESSES:** The amended complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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.*

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

*Scope of Investigation:* Having considered the amended complaint, the U.S. International Trade Commission, on November 15, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–12 of the '582 patent; claims 1–7 and 9 of the '649 patent; and claims 1–9, 12, 13, and 16–19 of the '735 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of the '736 trademark and the '891 trademark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''sifting screens (commonly referred to as 'shaker screens') that are fitted into drilling mud shakers (also referred to as 'shale shakers') to separate solids from liquid drilling muds brought up from down-hole when drilling for oil and gas, components thereof including the rigid frame over which the wire mesh sieving screen may be fitted, and related marketing materials'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: M–I L.L.C., 5950 N. Course Drive, Houston, TX 77072.

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon

which the amended complaint is to be served:

Hebei GN Solids Control Co., Ltd., No. 3 Industry Road, Dachang Chaobai River Development Area, Langfang, China 065300

GN Solids America LLC, 6710 Windfern Road, Houston, TX 77040

Anping Shengjia Hardware Mesh Co., Ltd., Huangcheng Industrial Zone, Anping County, Hengshui City, China 053600

Hebei Hengying Wire Cloth Co., Ltd., No. 17 Jing Wu Road, High and New Tech Development Zone, Anping County, Hebei Province, China 053600

Xi'an Brightway Energy Equipment Co., Ltd., Jinye Road, City Gate Block D, 12th Floor, Suite 1206, Xi'an City, High Tech Development Zone, China 710065

Brightway Solids Control Co., Ltd., 5855 Sovereign Drive, Suite A, Houston, TX 77036

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the Administrative Law Judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 18, 2019.

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2019–25277 Filed 11–20–19; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Agency Information Collection Activities; Comment Request; Equal Employment Opportunity in Apprenticeship Training

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Equal Employment Opportunity in Apprenticeship Training.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by January 21, 2020.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Tiffany Ramos by telephone at 202–693–3563 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *OA-ICRs@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, Room C–5321, 200 Constitution Avenue NW, Washington, DC 20210; by email: *OA-ICRs@dol.gov;* or by Fax: 202–693–3799.

**FOR FURTHER INFORMATION CONTACT:** Contact Tiffany Ramos by telephone at 202–693–3563 (this is not a toll-free number) or by email at *OA-ICRs@dol.gov.*

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

ETA is requesting the regular three-year approval on a revision to a currently approved ICR pursuant to the Paperwork Reduction Act. If approved, this request will enable ETA to continue to collect data from applicants and apprentices, who file a discrimination complaint. Under the National Apprenticeship Act of 1937 (NAA) (29 U.S.C. 50), the Secretary of Labor is charged with the establishment of labor standards designed to safeguard the welfare of apprentices and promote apprenticeship opportunity. The NAA authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship.''

Title 29 CFR part 30 (part 30), titled ''Equal Employment Opportunity in Apprenticeship,'' sets forth policies and procedures to promote the equality of opportunity in apprenticeship programs registered with DOL and recognized State Apprenticeship Agencies. These regulations prohibit discrimination in registered apprenticeship on the basis of race, color, religion, national origin, sex (including pregnancy and gender identity), disability, age (40 or older), genetic information, and sexual orientation, and require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for registering apprenticeship programs, for reviewing apprenticeship programs, for processing complaints, and for deregistering non-complying apprenticeship programs. Part 30 also provides policies and procedures for continuation or withdrawal of recognition of state agencies, which register apprenticeship programs for Federal purposes.

The Complaint Form—Equal Employment Opportunity in Apprenticeship Programs, ETA Form 9039, which is used by applicants and/or apprentices to file a complaint of discrimination with the DOL, is set to expire on January 31, 2020. This

proposed information collection request seeks a revision of approved ETA Form 9039 (OMB Control No. 1205–0224), which is set to expire on January 31, 2020.

The proposed revisions to ETA Form 9039 consist of (1) minor edits for clarity; (2) an update to the Office of Apprenticeship's room number; (3) a correction to the number of days (*i.e.,* 300) that a complaint must be filed as required under part 30; (4) an update to the list of protected bases to include disability, age (40 or older), genetic information, sex (including pregnancy and gender identity), and sexual orientation and their associated definitions as required under part 30; (5) and an update to the racial category definitions so that it adheres to the OMB standards on race. The National Apprenticeship Act of 1937 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0224.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

*Agency:* DOL–ETA.

*Type of Review:* Revision.

*Title of Collection:* Equal Employment Opportunity in Apprenticeship Training.

*Form:* ETA Form 9039.

*OMB Control Number:* 1205–0224.

*Affected Public:* Individuals/households, state/local/tribal governments, Federal government, private sector (businesses or other for-profits, and, not-for-profit institutions).

*Estimated Number of Respondents:* 50,139.

*Frequency:* Varies.

*Total Estimated Annual Responses:* 103,110.

*Estimated Average Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 191,355.

*Total Estimated Annual Other Cost Burden:* $0.

**John Pallasch,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 2019–25191 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–FR–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Class Exemption for Certain Transactions Involving Purchase of Securities Where Issuer May Use Proceeds To Reduce or Retire Indebtedness to Parties in Interest (PTE 1980–83)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Class Exemption for Certain Transactions Involving Purchase of Securities where Issuer May Use Proceeds to Reduce or Retire Indebtedness to Parties in Interest (PTE 1980–83),'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201908-1210-003* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the ''Class Exemption for Certain Transactions Involving Purchase of Securities where Issuer May Use Proceeds to Reduce or Retire Indebtedness to Parties in Interest (PTE 1980–83)'' information collection. PTE 80–83 provides an exemption from certain prohibited transaction provisions of ERISA and from certain taxes imposed by the Code for transactions in which an employee benefit plan purchases securities when the proceeds from such purchase may be used to reduce or retire a debt owed by a party in interest with respect to such plan, provided that specified

conditions are met. Among other conditions, PTE 80–83 requires adequate records pertaining to an exempted transaction for a duration of six years.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0064.

OMB authorization for an ICR cannot be for more than three (3) years without renewal and the current approval for this collection is scheduled to expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, reference the 60-day notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0064. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Class Exemption for Certain Transactions Involving Purchase of Securities where Issuer May Use Proceeds to Reduce or Retire Indebtedness to Parties in Interest (PTE 1980–83).

*OMB Control Number:* 1210–0064.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 25.

*Total Estimated Number of Responses:* 25.

*Total Estimated Annual Time Burden:* 15 hours.

*Total Estimated Annual Other Costs Burden:* $0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: November 14, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25254 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–29–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Statutory Exemption for Cross-Trading of Securities

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Statutory Exemption for Cross-Trading of Securities'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201908-1210-006* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Statutory Exemption for Cross-Trading of Securities information collection. The Interim Final Rule on Statutory Exemption for CrossTrading of Securities implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of ERISA, as added by section 611(g) of the PPA. Section 611(g)(1) of the PPA created a new statutory exemption, added to section 408(b) of ERISA as subsection 408(b)(19), that exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of ERISA those cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager, provided that certain conditions are satisfied. Section 611(g)(3) of the PPA further directed the Secretary to issue regulations, within 180 days after enactment, regarding the content of the policies and procedures to be adopted by an investment manager to satisfy the conditions of the new statutory exemption. The Department issued a final cross trading regulation on October 7, 2008. The recordkeeping requirement in the regulation constitutes an information collection within the meaning of the PRA, for

which the Department has obtained approval from OMB under OMB Control No. 1210–0130.

OMB authorization for an ICR cannot be for more than three (3) years without renewal and the current approval for this collection will expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, reference the 60-day notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0130. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Statutory Exemption for Cross-Trading of Securities.

*OMB Control Number:* 1210–0130.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 297.

*Total Estimated Number of Responses:* 2,673.

*Total Estimated Annual Time Burden:* 3,104 hours.

*Total Estimated Annual Other Costs Burden:* $13,400.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: November 15, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25259 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–29–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Worker Profiling and Reemployment Services Activity and Worker Profiling and Reemployment Services Outcomes

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Worker Profiling and Reemployment Services Activity and Worker Profiling and Reemployment Services Outcomes,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Worker Profiling and Reemployment Services Activity and Worker Profiling and Reemployment Services Outcomes information collection. Reporting Forms ETA–9048 and ETA–9049 are used to identify those claimants who are most likely to exhaust their Unemployment Insurance benefits and to provide reemployment services to expedite those beneficiaries return to suitable work. The ETA–9048 report provides a count of the claimants who were referred to Worker Profiling and Reemployment Services (WPRS) and a count of those who completed the services. The ETA–9049 report provides the subsequent collection of wage records, which is a useful management tool for monitoring the success of the WPRS program in the State. This ICR also covers preliminary activities when States collect information from program beneficiaries. Social Security Act authorizes this information collection. *See* 42 U.S.C. 503(a) and (j).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0353.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For

additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 3, 2019 (84 FR 19119).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0353. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Title of Collection:* Worker Profiling and Reemployment Services Activity and Worker Profiling and Reemployment Services Outcomes.

*OMB Control Number:* 1205–0353.

*Affected Public:* State, Local and Tribal Governments; Individuals or Households.

*Total Estimated Number of Respondents:* 1,061,510.

*Total Estimated Number of Responses:* 2,123,338.

*Total Estimated Annual Time Burden:* 2,759,895 hours.

*Total Estimated Annual Other Costs Burden:* $0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: November 14, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25258 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Agricultural Workers Survey

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''National Agricultural Workers Survey,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1205-011* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the National Agricultural Workers Survey (NAWS) information collection. The National Agricultural Workers Survey is an employment based annual survey of the demographic, employment, and health characteristics of hired crop workers, including those who employers hire indirectly through labor contractors. The survey began in 1988. Each year the NAWS contractor interviews between 1,500 and 3,500 crop workers. The contractor interviews crop workers three times per year to account for the seasonality of agricultural employment. ETA uses NAWS data to estimate each State's share of crop workers who are eligible for employment and training services through ETA's National Farmworker Jobs Program. Other Federal agencies similarly use the survey's data to estimate the number and characteristics of crop workers and their dependents who qualify to participate in or receive services from various migrant and seasonal farmworker programs. The United States Department of Agriculture routinely uses NAWS data, along with other data, to estimate changes in agricultural productivity. The Wagner-Peyser Act authorizes this information collection. *See* 29 U.S.C. 49f(d) and 49l–2(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0453.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 25, 2019 (84 FR 35886).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0453. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Title of Collection:* National Agricultural Workers Survey.

*OMB Control Number:* 1205–0453.

*Affected Public:* Private Sector—Farms; Individuals or Households.

*Total Estimated Number of Respondents:* 6,090.

*Total Estimated Number of Responses:* 6,090.

*Total Estimated Annual Time Burden:* 1,615 hours.

*Total Estimated Annual Other Costs Burden:* $0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: November 14, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25253 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–FM–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certificate of Electrical Training and Applications for MSHA Approved Tests and State Tests Administered as Part of an MSHA-Approved State Program

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mining Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Certificate of Electrical Training and Applications for MSHA Approved Tests and State Tests Administered as Part of an MSHA-approved State Program'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Certificate of Electrical Training and Applications for MSHA Approved Tests and State Tests Administered as Part of an MSHA-approved State Program information collection. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines. Under section 305(g) of the Mine Act, all electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions.

Title 30 CFR 75.153 and 77.103 define a person as qualified to perform electrical work if he has been qualified as a coal mine electrician by a State that has a coal mine electrical qualification program approved by MSHA; or if he has at least one year of experience performing electrical work underground in a coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by MSHA or has attained a satisfactory grade on a series of five written tests approved by MSHA. MSHA Form 5000–1 provides the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulations. The information provided on the form enables MSHA to determine if the applicants satisfy the requirements to obtain the certification or qualification. The Department has received approval from OMB for this ICR under OMB Control No. 1219–0001.

OMB authorization for an ICR cannot be for more than three (3) years without renewal and the current approval for this collection will expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing

requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, reference the 60-day notice published in the **Federal Register** on August 21, 2019 (84 FR 43620).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–MSHA.

*Title of Collection:* Certificate of Electrical Training and Applications for MSHA Approved Tests and State Tests Administered as Part of an MSHA-approved State Program.

*OMB Control Number:* 1219–0001.

*Affected Public:* Private Sector: Businesses or other for-profits; State, Local and Tribal Governments; Individuals or Households.

*Total Estimated Number of Respondents:* 266.

*Total Estimated Number of Responses:* 2,025.

*Total Estimated Annual Time Burden:* 849 hours.

*Total Estimated Annual Other Costs Burden:* $413.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: November 15, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25257 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Finding Under Employee Retirement Income Security Act Section 3(40)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Petition for Finding Under Retirement Income Security Act Section 3(40),'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201908-1210-004* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Petition for Finding Under Employee Retirement Income Security Act Section 3(40) information collection. Rules codified beginning at 29 CFR 2570.150 set forth an administrative procedure (''procedural rules'') for obtaining a determination by the Department as to whether a particular employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. These procedural rules concern specific criteria set forth in 29 CFR 2510.3–40 (''criteria rules''), which, if met, constitute a finding by the Department that a plan is collectively bargained. Plans that meet the requirements of the criteria rules are not subject to state law. Among other requirements, the procedural rules require submission of a petition and affidavits by parties seeking a finding.

OMB authorization for an ICR cannot be for more than three (3) years without renewal and the current approval for this collection will expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, reference the 60-day notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0119. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Petition for Finding Under Employee Retirement Income Security Act Section 3(40).

*OMB Control Number:* 1210–0119.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 10.

*Total Estimated Number of Responses:* 10.

*Total Estimated Annual Time Burden:* 50 hours.

*Total Estimated Annual Other Costs Burden:* $42,695.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: November 14, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25255 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Plan Asset Transactions Determined by In-House Asset Managers Under Prohibited Transaction Class Exemption 96–23

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Plan Asset Transactions Determined by In-House Asset Managers under Prohibited Transaction Class Exemption 96–23'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 23, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201908-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Plan Asset Transactions Determined by In-House Asset Managers under Prohibited Transaction Class Exemption 96–23 (PTE 96–23) information collection. PTE 96–23, a class exemption, permits various transactions involving employee benefit plans whose assets are managed by in-house asset managers (INHAMs), provided the conditions of the exemption are met. The Department submitted the ICR included in the Proposed Amendment to PTE 96–23 for Plan Asset Transactions Determined by In-House Asset Managers to OMB for review and clearance at the time the Notice of the proposed exemption was published in the **Federal Register** (June 14, 2010, 75 FR 33642). OMB approved the amendment under OMB control number 1210–0145.

OMB authorization for an ICR cannot be for more than three (3) years without renewal and the current approval for this collection will expire on November 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, reference the 60-day notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0145. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Plan Asset Transactions Determined by In-House Asset Managers under Prohibited Transaction Class Exemption 96–23.

*OMB Control Number:* 1210–0145.

*Affected Public:* Private Sector—Not-for-profit institutions; Businesses or other for-profits.

*Total Estimated Number of Respondents:* 20.

*Total Estimated Number of Responses:* 20.

*Total Estimated Annual Time Burden:* 940 hours.

*Total Estimated Annual Other Costs Burden:* $400,000.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: November 13, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–25256 Filed 11–20–19; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2010–0037]**

### Standard for Welding, Cutting, and Brazing; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard for Welding, Cutting, and Brazing.

**DATES:** Comments must be submitted (postmarked, sent, or received) by January 21, 2020.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0037, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2010–0037) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the below phone number to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupationl injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

Section 1910.255(e) requires that a periodic inspection of resistance welding equipment be made by qualified maintenance personnel, and that a certification record be generated and maintained. The certification shall include the date of the inspection, the signature of the person who performed the inspection and the serial number, or other identifier, for the equipment inspected. The record shall be made available to an OSHA inspector upon request. The maintenance inspection ensures that welding equipment is in safe operating condition while the maintenance record provides evidence to workers and agency compliance officers that employers performed the required inspections.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend the approval of the collection of information (paperwork) requirements contained in the Standard for Welding, Cutting, and Brazing (29 CFR part 1910, subpart Q). The agency requests an adjustment decrease of 231 burden hours (from 5,732 burden hours to 5,501 burden hours) associated with the collection of information. The agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* The Standard for Welding, Cutting, and Brazing (29 CFR part 1910, subpart Q).

*OMB Number:* 1218–0207.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 20,627.

*Frequency of Response:* On occasion.

*Total Responses:* 82,508.

*Average Time per Response:* OSHA estimates it will take 1 minute (.02 hour) to maintain the inspection certification record to 5 minutes (.08 hour) for each welder to perform the inspection periodically (semiannually).

*Estimated Total Burden Hours:* 5,501.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0037). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as your social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

## V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on November 14, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–25192 Filed 11–20–19; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2010–0017]**

### Occupational Exposure to Noise Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the collection of information contained in the Occupational Exposure to Noise Standard.

**DATES:** Comments must be submitted (postmarked, sent, or received) by January 21, 2020.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0017, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2010–0017) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and dates of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information requirements in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and incidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

The collection of information specified in the Noise Standard (29 CFR

1910.95) protects workers from suffering material hearing impairment. The collection of information contained in the Noise Standard includes conducting noise monitoring; notifying workers when they are exposed at or above an 8-hour time-weighted average of 85 decibels (dBa); providing workers with initial and annual audiograms; notifying workers of a loss in hearing based on comparing audiograms; maintaining records of workplace noise exposure and workers' audiograms; and allowing workers access to materials and records required by the Standard.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

The agency is requesting an adjustment increase of burden hours associated with the collection of information in the Standard from 2,184,591 to 2,240,636 (a total increase of 56,045 hours). The agency is also requesting an adjustment increase in the cost under Item 13 from $31,242,929 to $34,812,006 (a total increase of $3,569,077). The agency estimates that there are 215,624 establishments and 3,684,785 employees exposed to 85 dBA affected by the Standard. OSHA estimates that the number of establishments from the previous ICR decreased by 0.2%, while the estimated number of employees from the previous ICR increased by 2.5%. These estimated decreases and increases are based on updated County Business Pattern data for manufacturing.

*Type of Review:* Extension of a currently approved collection.

*Title:* Occupational Exposure to Noise Standard (29 CFR 1910.95).

*OMB Control Number:* 1218–0048.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 215,624.

*Total Responses:* 22,630,728.

*Frequency of Responses:* On occasion.

*Average Time per Response:* Various.

*Estimated Total Burden Hours:* 2,240,636.

*Estimated Cost (Operation and Maintenance):* $34,812,006.

**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0017). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

**V. Authority and Signature**

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on November 14, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–25193 Filed 11–20–19; 8:45 am]

BILLING CODE 4510–26–P

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting

**DATE AND TIME:** The Legal Services Corporation's Board of Directors will meet telephonically on November 22, 2019. The meeting will commence at 3:00 p.m. Eastern Time and will continue until the conclusion of the Committee's agenda.

**LOCATION:** John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW, Washington, DC 20007.

**PUBLIC OBSERVATION:** Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

**CALL-IN DIRECTIONS FOR OPEN SESSIONS:**

- Call in number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 932–809–0043
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of agenda.
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of April 1, 2019 through September 30, 2019.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

**CONTACT PERSON FOR INFORMATION:** Karly Satkowiak, Special Counsel, at (202) 295–1633. Questions may be sent by email to *satkowiakk@lsc.gov*.

**ACCESSIBILITY:** LSC complies with the Americans with Disabilities Act and

Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Karly Satkowiak, at 202–295–1633 or *satkowiakk@lsc.gov,* at least 2 business days in advance of the meeting.

If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 18, 2019.

**Stefanie Davis,**

*Senior Assistant General Counsel .*

[FR Doc. 2019–25369 Filed 11–19–19; 11:15 am]

BILLING CODE 7050–01–P

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

*Date and Time:* December 12, 2019; 9:00 a.m. to 5:00 p.m.; December 13, 2019; 9:00 a.m. to 12:30 p.m.

*Place:* National Science Foundation, 2415 Eisenhower Avenue, Room E2020, Alexandria, VA 22314.

*Type of Meeting:* Open.

*Contact Person:* Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8700.

*Summary of Minutes:* Posted on SBE advisory committee website at: *https://www.nsf.gov/sbe/advisory.jsp.*

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

**Agenda**

- Welcome, Introductions, and Preview of Agenda
- Directorate for Social, Behavioral, and Economic Sciences (SBE) Update
- Division of Behavioral and Cognitive Sciences Committee of Visitors Report
- National Academies of Science, Engineering, and Medicine report, Reproducibility and Replicability in Science
- NSF Distinguished Lecture in the Social, Behavioral, and Economic Sciences: Dr. Jennifer Lerner, Harvard University
- Opportunities for collaboration between SBE and the Directorate for Computer and Information Science and Engineering
- SBE Sciences and National Security
- New SBE Advisory Committee Member Research Presentations
- SBE Division Leadership—Visions
- NSF Big Ideas Update
- Committee on Equal Opportunities in Science and Engineering Update
- Advisory Committee for Environmental Research and Education Update
- Wrap-up, Assignments, and Closing Remarks

Dated: November 18, 2019.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2019–25275 Filed 11–20–19; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

### 669th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on December 4–7, 2019, Two White Flint North, 11545 Rockville Pike, ACRS Conference Room T2D10, Rockville, MD 20852.

**Wednesday, December 4, 2019, Conference Room T2D10**

*1:00 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*1:05 p.m.–2:30 p.m.: Peach Bottom Subsequent License Renewal* (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff and Exelon regarding the subject topic.

*2:45 p.m.–5:00 p.m.: NuScale Source Term Topical Report Methodology* (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and NuScale regarding the subject topic. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

*5:00 p.m.–5:30 p.m.: Susquehanna Atrium 11 Fuel Transition and Application/Framatome* (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject topic. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

*5:30 p.m.–6:00 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

**Thursday, December 5, 2019, Conference Room T2D10**

*8:30 a.m.–10:30 a.m.: NuScale Design Certification Application Safety Evaluation* (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the need for further briefings by the staff to support the Committee's Review. For specific chapters to be discussed please contact Mike Snodderly at 301–415–2241. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

*10:45 a.m.–12:30 p.m.: GE/GNF Control Rod Drop Accident Methodology* (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and GE/GNF regarding the subject topic. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

*1:30 p.m.–3:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations* (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would

constitute a clearly unwarranted invasion of personal privacy.] [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

*3:45 p.m.–6:00 p.m.: Preparation of ACRS Reports/NuScale Chapters Discussion* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and NuScale chapters. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

**Friday, December 6, 2019, Conference Room T2D10**

*8:30 a.m.–9:30 a.m.: Preparation for Commission Meeting* (Open)—The Committee will prepare for the meeting with the Commission.

*10:00 a.m.–12:00 p.m.: Meeting with the Commission*—The Committee will meet with the Commission.

*2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

**Saturday, December 7, 2019, Conference Room T2D10**

*8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Ms. Paula Dorm, ACRS Audio Visual Technician (301–415–7799), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: November 18, 2019.

**Russell E. Chazell,**

*Federal Advisory Committee Management Officer, Office of the Secretary.*

## NUCLEAR REGULATORY COMMISSION

## 669th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

**Accession No: ML19** **Publicly Available Y** **Sensitive N**

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| DATE | 11/13/2019 | 11/13/2019 | 11/13/2019 |

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[FR Doc. 2019–25218 Filed 11–20–19; 8:45 am]
BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 11006121; NRC–2019–0230]**

## Curtiss-Wright Electro-Mechanical Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Export 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 an export license amendment (XR177/01), requested by Curtiss-Wright Electro-Mechanical Corporation (CW-EMD). On October 23, 2019, CW-EMD filed a license amendment application to export nuclear reactor equipment. The request seeks the NRC's approval for the export of six reactor coolant pumps (RCPs)—two of the six, will serve as replacement RCPs—to the People's Republic of China (PRC). The NRC is providing notice of the opportunity to request a hearing on CW-EMD's revised application. The request seeks the NRC's approval of the application authorizing the export of the RCPs to PRC.

**DATES:** Submit comments by December 23, 2019. Requests for a hearing or a petition for leave to intervene must be filed by December 23, 2019.

**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–2019–0213. 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:** Andrea R. Jones, Office of International Programs, telephone: 404–997–4443, email: *Andrea.Jones2@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to NRC–2019–0230 or Docket No. 11006121 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 NRC–2019–0230.
- *NRC's public website:* Go to *https://www.nrc.gov* and search for XR177/01, Docket No. 11006121, or Docket ID NRC–2019–0230.
- *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 amendment from CW–EMD is available in ADAMS under Accession No. ML19304A061 and additional information is available in ADAMS under XR–177/01 and under Docket No. 11006121.
- *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 NRC–2019–0230 or Docket No. 11006121 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 October 23, 2019, NRC received an application from CW–EMD requesting a license amendment for specific export license (XR177/01) for the export of four RCPs and two replacement RCPs—for a total of six RCPs—from the Commonwealth of Pennsylvania for installation, operation, and maintenance at the Haiyang Nuclear Power Plant (NPP), Unit 4 only, in the PRC. The current export license XR177 authorizes the export of 12 RCPs and six replacement RCPs, for installation into Xudapu NPP, Unit 1 only; Sanmen NPP, Unit 3 only; and Haiyang NPP, Unit 3 only, in the PRC (ADAMS Accession No. ML19024A208).

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 CW–EMD on October 23, 2019, for the export of RCPs from the Commonwealth of Pennsylvania to the PRC.

### III. Opportunity To Request a Hearing and Petition for Leave To Intervene

The NRC is noticing the request to amend the export license XR177, to export six RCPs to Haiyang NPP, Unit 4 only; opening the opportunity for public comment; and opening the opportunity to file a request for a hearing or petition for leave to intervene for 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.

**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<br>Date of application<br>Date received<br>Application No.<br>Docket No.<br>ADAMS Accession No. | Material type | Total quantity | End use | Country of destination |
|---|---|---|---|---|
| Curtiss-Wright Electro-Mechanical Corporation.<br>October 23, 2019.<br>October 29, 2019.<br>XR177/01<br>11006121<br>ML19304A061 | Nuclear reactor equipment consisting of reactor coolant pumps (RCPs), as described in paragraph 4; and related minor reactor components, as described in paragraph 11 of Appendix A to Title 10 of the *Code of Federal Regulations*. | Four RCPs and two replacement RCPs. | Installation, operation, and maintenance for Haiyang NPP, Unit 4 only. | People's Republic of China. |

Dated at Rockville, Maryland, this 15th day of November 2019.

For the Nuclear Regulatory Commission.

**Mohamed K. Shams,**

*Acting Deputy Director, Office of International Programs.*

[FR Doc. 2019–25194 Filed 11–20–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–438 and 50–439; NRC–2019–0228]**

## Bellefonte Nuclear Plant; Consideration of Approval of Transfer of Construction Permits and Conforming Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Application for direct transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Nuclear Development, LLC (ND) on November 13, 2018. The application seeks NRC approval of the direct transfer of construction permits Nos. CPPR–122 and CPPR–123, for Bellefonte Nuclear Plant, Units 1 and 2, from the current holder, Tennessee Valley Authority (TVA), to ND. The application contains sensitive unclassified non-safeguards information (SUNSI).

**DATES:** Comments must be filed by December 23, 2019. A request for a hearing must be filed by December 11, 2019. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

**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–2019–0228. 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.

- *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: Rulemaking 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 FURTHER INFORMATION CONTACT:** Omid Tabatabai, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6616, email: *Omid.Tabatabai@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2019–0228 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–2019–0228.
- *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 Application for Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments is available in ADAMS under Accession ML18318A428.
- *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–2019–0228 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 the issuance of an order under § 50.80 of title 10 of the *Code of Federal Regulations* (10 CFR) approving the direct transfer of control of construction permits Nos. CPPR–122 and CPPR–123, for Bellefonte Nuclear Plant, Units 1 and 2, currently held by TVA. The transfer would be to Nuclear Development, LLC.

Following approval of the proposed direct transfer of control of the license, Nuclear Development, LLC would acquire ownership of the facility. Nuclear Development, LLC would be responsible for the operation and maintenance of Bellefonte Nuclear Plant, Units 1 and 2. Nuclear Development, LLC plans to complete the construction of Bellefonte Nuclear Plant, Units 1 and 2.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission may require any person who submits an application for license pursuant to 10 CFR 50.80 to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and NRC regulations) to possession of the facility or site involved.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

## III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

## IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 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 20 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.

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 20 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. 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.

**V. 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated November 13, 2019, as supplemented on August 28, 2019.

### VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning William R. McCollum, 1–828–686–1621, for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland, this 18th day of November, 2019.

For the Nuclear Regulatory Commission.

**Omid Tabatabai-Yazdi,**

*Sr. Project Manager, New Reactor Licensing Branch, Division of New and Renewed License, Office of Nuclear Reactor Regulation.*

[FR Doc. 2019–25248 Filed 11–20–19; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Notice of Submission for Renewal of a Previously Approved Information Collection: Questionnaire for National Security Positions, Standard Form 86 (SF 86)

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Office of Personnel Management (OPM), Suitability Executive Agent Programs, is notifying the general public and other federal agencies that OPM proposes to request the Office of Management and Budget (OMB) to renew a previously-approved information collection, Questionnaire for National Security Positions, Standard Form 86 (SF 86).

**DATES:** Comments are encouraged and will be accepted until December 23, 2019.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget by the following method: *http://www.regulations.gov.* Follow the instructions for submitting comments. All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from member of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection, with applicable supporting documentation, may be obtained by contacting Suitability Executive Agent Programs, U.S. Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Lisa Loss or by electronic mail at *SuitEA@opm.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces that OPM has submitted to OMB a request for renewal of a previously-approved information collection, control number 3206–0005, Questionnaire for National Security Positions, Standard Form 86 (SF 86). The public has an additional 30-day opportunity to comment.

The Questionnaire for National Security Positions, Standard Form 86 (SF 86) is completed by civilian employees of the Federal Government, military personnel, and non-federal employees, including employees of general contractors and individuals otherwise not directly employed by the Federal Government but who perform work for or on behalf of the Federal Government. For applicants for civilian Federal employment, the SF 86 is to be used only after a conditional offer of employment has been made. The Electronic Questionnaires for Investigations Processing (e-QIP) is a web-based system application that houses the SF 86. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

OPM recommends renewal of the form without any proposed changes, except to underlying authorities, which have been revised in the period since the last renewal, and the Privacy Act Information Statement, to acknowledge the transfer of background investigations files from OPM to DoD. No other changes are recommended at this time. Ongoing assessments will occur to ensure the SF 86 reflects and collects pertinent information for the investigative process and aligns with governing policies, rules, and regulations requiring use of this form.

The 60 day **Federal Register** Notice was published on June 12, 2019 (84 FR 27372). No comments were received.

### Analysis

*Agency:* Office of Personnel Management, Suitability Executive Agent Programs.

*Title:* Questionnaire for National Security Positions, Standard Form 86 (SF 86).

*OMB Number:* 3206–0005.

*Affected Public:* Individuals.

*Number of Respondents:* 470,124.

*Estimated Time per Respondent:* 150 minutes.

*Total Burden Hours:* 1,175,310.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2019–25188 Filed 11–20–19; 8:45 am]

**BILLING CODE 6325–38–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* November 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 15, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 561 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–28, CP2020–26.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019–25185 Filed 11–20–19; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87550; File No. SR–NYSEAMER–2019–48]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules 1.1E and 7.29E To Eliminate the Delay Mechanism and Amend Exchange Rule 7.31E and Related Exchange Rules To Re-Introduce Previously-Approved Order Types and Modifiers

November 15, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2019, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 1.1E and 7.29E to eliminate the Delay Mechanism and amend Rule 7.31E and related rules to re-introduce previously-approved order types and modifiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to decommission its Delay Mechanism and re-introduce orders and modifiers that were eliminated in connection with launching the Delay Mechanism. To effect these changes, the Exchange proposes to amend Rules 1.1E and 7.29E to eliminate the Delay Mechanism and amend Rule 7.31E and related rules to re-introduce previously-approved order types and modifiers.

Background

In 2017, the Exchange transitioned to trading on the Pillar trading platform. In advance of that transition, the Exchange amended its rules to transition from a Floor-based point-of-sale trading model to a fully automated price-time priority allocation model.[4] In the Pillar Filing, the Exchange added Rule 7.31E, which describes the order types and modifiers that would be available on the Exchange once it transitioned to Pillar, and which was based on NYSE Arca, Inc. (''NYSE Arca'') Rule 7.31–E. Among the orders and modifiers that were approved in the Pillar Filing were ALO Orders, Intermarket Sweep Orders designated Day (''Day ISO''), Non-Display Remove Modifiers, and MPL–ALO Orders.[5]

In connection with the transition to the Pillar trading platform, the Exchange introduced the Delay Mechanism, which was approved in a separate proposed rule change.[6] Rule 1.1E(y) defines the Delay Mechanism to mean a delay that is 350 microseconds of latency that is added to specified order processing. That rule further provides that due to force majeure events and acts of third parties, the Exchange does not guarantee that the delay will always be 350 microseconds. Finally, that Rule provides that the Exchange will periodically monitor such latency, and will make adjustments to the latency as reasonably necessary to achieve consistency with the 350 microsecond target as soon as commercially practicable and that if the Exchange determines to increase or decrease the delay period, it will submit a rule filing pursuant to Section 19 of the Act.

Rule 7.29E(b)(1) provides that the Exchange will apply the Delay Mechanism to:

(A) All inbound communications from an ETP Holder to the NYSE American Marketplace;

(B) all outbound communications to an ETP Holder from the NYSE American Marketplace;

(C) all outbound communications the NYSE American Marketplace routes to an Away Market;

(D) all inbound communications from an Away Market about a routed order; and

(E) all outbound communications (*e.g.,* bids, offers, and trades) to the Exchange's proprietary data feeds.

Rule 7.29E(b)(2) provides that the Exchange will not apply the Delay Mechanism to:

(A) All inbound communications from data feeds;

(B) order processing and order execution on the Exchange's Book; and

(C) all outbound communications (*e.g.,* bids, offers, and trades) to the single plan processors under Rules 601 and 602 of Regulation NMS.

In the Delay Mechanism Filing, the Exchange noted that in conjunction with implementing the Delay Mechanism, the Exchange would no longer offer ALO Orders or Day ISO functionality.[7] Accordingly, before transitioning to Pillar, the Exchange filed a separate proposed rule change to eliminate ALO Orders and Day ISOs and related functionality.[8] To effect the

[4] *See* Securities Exchange Act Release Nos. 79993 (February 9, 2017), 82 FR 10814 (February 15, 2017) (SR–NYSEMKT–2017–01) (''Pillar Filing'') and 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (SR–NYSEMKT–2017–01) (Approval Order). The Exchange separately filed to establish the rules governing market makers on the Exchange. *See* Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR–NYSEMKT–2017–04) (Approval Order).

[5] *See* Pillar Filing, *id.* (Rules 7.31E(e)(2), 7.31E(e)(3)(D), 7.31E(e)(2)(B)(iv)(b), 7.31E(3)(F), 7.31E(d)(3)(G)).

[6] *See* Securities Exchange Act Release No. 79998 (February 9, 2017), 82 FR 10828 (February 15, 2017) (SR–NYSEMKT–2017–05) (''Delay Mechanism Filing'') and 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR–NYSEMKT–2017–05) (Approval Order).

[7] *See* Delay Mechanism Filing, *supra* note 6.

[8] *See* Securities Exchange Act Release No. 81115 (July 11, 2017), 82 FR 32745 (July 17, 2017) (SR–

Continued

elimination of ALO Orders, the Exchange made the following changes to the rules that were approved in the Pillar Filing:

- Deleted Rule 7.31E(e)(2) and its subparagraphs, which described ALO Orders, and replaced that section of the Rule with the term ''Reserved.''
- Deleted Rule 7.31E(d)(2)(B), which provided that Limit Non-Display Orders may be designated with a Non-Display Remove Modifier.
- Deleted the last sentence of Rule 7.31E(d)(3)(E) and Rules 7.31E(d)(3)(F) and (G), which described MPL–ALO Orders and related Non-Display Remove Modifier functionality.
- Deleted Rule 7.31E(e)(1)(C), which provided that an MKT Only Order may be designated with a Non-Display Remove Modifier.
- Amended Rule 7.31E(j)(1) to delete the reference to ''ALO Order.''
- Amended Rules 7.46E(f)(5)(F)(ii) and (iii) to delete references to ALO Orders.

To effect the changes described in the Delay Mechanism Filing to eliminate Day ISO Orders, the Exchange made the following changes to the rules that were approved in the Pillar Filing:

- Deleted Rules 7.31E(e)(3)(C) and (D), which described Day ISO and Day ISO ALO Orders. The Exchange also amended Rule 7.31E(e)(3) to provide that an ISO must be designated IOC and deleted the specific reference to ''IOC ISO'' in Rule 7.31E(e)(3)(B).
- Amended Rules 7.11E(a)(5)(A) and 7.11E(a)(5)(A)(ii) to delete references to ''Day ISO'' and make related conforming changes.
- Amended Rule 7.31E(a)(2)(C) to delete the last two sentences, which described how Limit Orders are repriced upon arrival of a Day ISO.
- Amended Rule 7.35E(h)(3)(C) to delete the last sentence, which described how Day ISOs are processed when transitioning to continuous trading.
- Deleted current Rule 7.46E(f)(5)(F)(i)(a), which relates to Day ISO Orders, and the designation of subparagraph (b). The text of then-approved Rule 7.46E(f)(5)(F)(i)(b) became the last sentence of 7.46E(f)(5)(F)(i).

Proposed Amendments

In the Delay Mechanism Filing, the Exchange noted that the Delay Mechanism was designed to provide a competitive trading model to those ETP Holders and issuers that prefer to trade or list on an exchange that offers an intentional, symmetrical delay.

The Exchange has now been operating with the Delay Mechanism for over two years. However, we have not had any issuers interested in listing because of the Delay Mechanism. Additionally, market participants have not increased their trading volume on the Exchange as a result of adding the Delay Mechanism. For example, since introducing the Delay Mechanism, market share on the Exchange has not materially changed, and some market quality measures have declined. Specifically, when comparing monthly statistics for Exchange-listed securities for the first six months of trading on the Exchange in 2017 (pre-Delay Mechanism) with trading on the Exchange for the period July 2017 through September 2019 (post-Delay Mechanism), the Exchange has observed the following changes in market performance.

| | Pre-delay mechanism | Post-delay mechanism |
|---|---|---|
| NYSE American's Average Quoted Spread (bps) | 208.2 | 292.4 |
| NYSE American's Average Quoted Shares at the BBO | 2,762 | 1,197 |
| NYSE American's Average Quoted Notional at the BBO | $13,342 | $9,549 |
| NYSE American's % of trading day quoting at the NBBO | 71.3% | 68.4% |
| NYSE American's Market Share | 12.1% | 11.5% |
| Consolidated Average Daily Volume | 123,906,053 | 113,831,729 |

The Exchange believes that if market participants were interested in trading on an exchange with an intentional, symmetrical delay, more order flow would have been directed to the Exchange. But it simply has not.

The Exchange therefore proposes to eliminate the Delay Mechanism. To effect this change, the Exchange proposes to delete the definition of ''Delay Mechanism'' in Rule 1.1E(y) and delete Rule 7.29E(b), which are the rules that were added in the Delay Mechanism Filing to establish the Delay Mechanism.

The Exchange also proposes to re-introduce previously-approved order types and modifiers that were deleted in anticipation of launching the Delay Mechanism, with specified differences described below. Specifically, the Exchange proposes to add back rules to support ALO and related functionality, as follows:

- Amend Rule 7.31E(e)(2) to delete the term ''Reserved'' and add back the rule text that describes ALO Orders, as approved in the Pillar Filing. The Exchange proposes a non-substantive difference from the version of the rule approved in the Pillar Filing to use the term ''Non-Routable Limit Order'' instead of ''MKT-Only Order.''
- Amend Rule 7.31E(d)(2) to add back sub-paragraph (B), as approved in the Pillar Filing, which would provide that Non-Displayed Limit Orders may be designated with a Non-Display Remove Modifier. The Exchange proposes a non-substantive difference from the version of the rule approved in the Pillar Filing to use the term ''Non-Displayed Limit Order'' instead of ''Limit Non-Display Order.''
- Amend Rule 7.31E(d)(3) relating to MPL Orders to re-introduce MPL–ALO Orders and the Non-Display Remove Modifier. Since the Pillar Filing, Rule 7.31E(d)(3) has been amended, which resulted in changes to sub-numbering.[9] With respect to the Non-Display Remove Modifier, the Exchange proposes to re-introduce rule text previously approved in the Pillar Filing as Rule 7.31E(d)(3)(G) with a non-substantive difference that it would be numbered Rule 7.31E(d)(3)(F). The Exchange also proposes to re-introduce a new last sentence to Rule 7.31E(d)(3)(D), which was previously approved in the Pillar Filing as the last sentence of Rule 7.31E(d)(3)(E).

With respect to MPL–ALO Orders, as noted in the Pillar Filing, at that time, Rule 7.31E(d)(3) was based on NYSE Arca Rule 7.31–E(d)(3) without any substantive differences. Since approval

NYSEMKT–2017–38) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

[9] *See* Securities Exchange Act Release No. 85144 (September 21, 2017), 82 FR 45099 (September 27, 2017) (SR–NYSEAmer-2017–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change) (''Pillar ALO/Day ISO Filing'').

of the Pillar Filing, NYSE Arca has amended Rule 7.31–E(d)(3) relating to MPL–ALO Orders.[10] The Exchange proposes that when re-introducing MPL–ALO Orders on the Exchange, Rule 7.31E(d)(3) would be amended to add new sub-paragraph (E) to reflect the changes described in the Arca MPL Filing; the Exchange will not re-introduce the text that was approved in the Pillar Filing as Rule 7.31E(d)(3)(F).

As proposed, Rule 7.31E(d)(3)(E) would provide that an MPL Order may be designated with an ALO Modifier, which would be defined as an MPL–ALO Order. The proposed rule would further provide that an MPL–ALO Order to buy (sell) will trade with resting orders to sell (buy) with a working price below (above) the midpoint of the PBBO at the working price of the resting orders, but will not trade with resting orders to sell (buy) priced at the midpoint of the PBBO unless such resting order is designated with a Non-Display Remove Modifier pursuant to Rule 7.31E(d)(3)(F). Finally, the Rule would provide that if an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy), a subsequently arriving order to sell (buy) eligible to trade at the midpoint will trade ahead of a resting order to sell (buy) that is not displayed at that price. If such resting order to sell (buy) is displayed, the MPL–ALO Order to buy (sell) will not be eligible to trade at that price. As noted above, this proposed rule text is based on NYSE Arca Rule 7.31–E(d)(3)(E), NYSE National Rule 7.31(d)(3)(E), and NYSE Chicago Rule 7.31(d)(3)(E) without any differences.

- Amend Rule 7.31E(e)(1) to add back sub-paragraph (C), as approved in the Pillar Filing, which would provide that a Non-Routable Limit Order may be designated with a Non-Display Remove Modifier. The Exchange proposes a non-substantive difference from the version of the rule approved in the Pillar Filing to use the term ''Non-Routable Limit Order'' instead of ''MKT-Only Order.''
- Amend Rule 7.31E(j)(1) to add back the reference to ''ALO Order,'' as approved in the Pillar Filing.

The Exchange also proposes to add back rules to support Day ISO, as follows:

- Amend Rule 7.31E(e)(3) to add back subparagraphs (C) and (D), as approved in the Pillar Filing, which describe Day ISO and Day ISO ALO Orders. The Exchange proposes non-substantive differences from the version of the rule approved in the Pillar Filing to use the terms ''Non-Routable Limit Order'' instead of ''MKT-Only Order'' and ''Non-Displayed Limit Order'' instead of ''Limit Non-Displayed Order.''
- Amend Rule 7.31E(e)(3) to delete the requirement that an ISO must be designated IOC and amend Rule 7.31E(e)(3)(B) to add back the term ''IOC ISO,'' both of which were approved in the Pillar Filing.
- Amend Rules 7.11E(a)(5)(A) and 7.11E(a)(5)(A)(ii) to add back references to ''Day ISO'' and make related conforming changes, as approved in the Pillar Filing.
- Amend Rule 7.31E(a)(2)(C) to add back rule text describing when Limit Orders would be repriced under this provision. The Exchange proposes that the text that would be added to this Rule would be based on the rules of NYSE Arca, NYSE, NYSE National, and NYSE Chicago, which were amended/adopted after the Pillar Filing, without any differences.[11] As proposed, the text that would be added to this rule would provide that if a Day ISO to buy (sell) arrives before the PBO (PBB) is updated, such re-priced Limit Order(s) to buy (sell) would be repriced to the lower (higher) of the display price of the Day ISO or the original price of the Limit Order(s).
- Amend Rule 7.35E(h)(3) to add back the last sentence under subparagraph (C) of that Rule that was approved in the Pillar Filing, which describes how Day ISOs are processed when transitioning to continuous trading. The Exchange proposes a non-substantive difference to include this sentence under new subparagraph (D) to Rule 7.35E(h)(3).[12]

At this time, the Exchange does not propose to revert any of the other changes made in the Pillar ALO/Day ISO Filing. Specifically, the Exchange does not propose any changes to Pegged Orders and does not propose to amend Rule 7.46 relating to the Tick Size Pilot, which is no longer operative.

With the elimination of the Delay Mechanism and re-introduction of ALO Orders, Day ISO, Non-Display Remove Modifiers, and MPL–ALOs, the Exchange will operate on a fully-automated price-time priority trading model that is substantially identical to the trading models of its affiliated exchanges NYSE Arca and NYSE National. The Exchange is not proposing to change its transaction fees for trading on the Exchange. The Exchange currently charges a flat fee for orders that provide or remove liquidity, provided that it does not charge for orders that provide displayed liquidity.[13] This pricing model differs from the pricing model on NYSE Arca, which uses a maker-taker model, and NYSE National, which uses a taker-maker model.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date of this proposed rule change by Trader Update. The Exchange anticipates that the implementation date will be in November 2019.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that eliminating the Delay Mechanism by deleting Rules 1.1E(y) and 7.29E(b) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the reasons for establishing the Delay Mechanism no longer exist. Specifically, the Delay Mechanism was designed to provide a competitive trading model for those ETP Holders and issuers that prefer to trade or list on an exchange that offers such a delay.

Following two years of operating an exchange with the Delay Mechanism, the Exchange believes market

[10] *See* Securities Exchange Act Release No. 82504 (January 16, 2018), 83 FR 3038 (January 22, 2018) (SR–NYSEArca-2018–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change) (''Arca MPL Filing''). The rules of the Exchange's affiliates—New York Stock Exchange LLC (''NYSE''), NYSE National, Inc. (''NYSE National''), and most recently approved, NYSE Chicago, Inc. (''NYSE Chicago'')—that describe MPL–ALO Orders and related Non-Display Remove Modifier are similarly based on the NYSE Arca rule, as amended in the Arca MPL Filing. *See* NYSE Rule 7.31(d)(3)(E) (except does not include reference to a Non-Display Remove Modifier, which is not currently available on NYSE); NYSE National Rule 7.31(d)(3)(E); and NYSE Chicago Rule 7.31(d)(3)(E).

[11] *See, e.g.,* Securities Exchange Act Release No. 85265 (March 7, 2019), 84 FR 9175 (March 13, 2019) (SR–NYSEArca–2019–08). *See also* NYSE Rule 7.31(a)(2)(C), NYSE National Rule 7.31(a)(2)(C), and NYSE Chicago Rule 7.31(a)(2)(C).

[12] *See* NYSE Arca Rule 7.35–E(h)(3)(D).

[13] *See* NYSE American Equities Fee Schedule, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

participants are not interested in this trading model. The Exchange believes that if market participants were interested in trading on an exchange with an intentional, symmetrical delay, more order flow would have been directed to the Exchange. But it simply has not. Accordingly, the Exchange believes that decommissioning the Delay Mechanism would be consistent with the protection of investors and the public interest, as they have not chosen to use this trading model.

In addition, comparison of numerous market quality metrics for Exchange-listed securities between the Pre-Delay Mechanism and Post-Delay Mechanism periods indicate that the Delay Mechanism resulted in a degradation of the Exchange's displayed liquidity. Eliminating the Delay Mechanism is expected to reverse this trend.

The Exchange believes that the proposed re-introduction of ALO Orders, Day ISO, Non-Display Remove Modifiers, and MPL–ALO Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange is proposing rules that either have already been approved in the Pillar Filing, or are based on the rules of NYSE Arca, NYSE, NYSE National, and NYSE Chicago. Accordingly, the Exchange is not proposing new or novel order types, but rather, will make available on the Exchange order types and modifiers that are already available on affiliated exchanges.

*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 anticipated that the Delay Mechanism would provide a competitive trading model for those ETP Holders and issuers that prefer to trade or list on an exchange that offers an intentional, symmetrical delay. Following two years of operating an exchange with the Delay Mechanism, the Exchange believes that market participants are not interested in this trading model. Accordingly, the Exchange does not believe that eliminating the Delay Mechanism would impose any burden on competition.

The Exchange further believes that re-introducing ALO Orders, Day ISO, Non-Display Remove Modifiers, and MPL–ALO Orders would promote competition by offering ETP Holders greater choice among the Exchange and its affiliated exchanges that offer similar trading functionality. With the decommissioning of the Delay Mechanism and re-introduction of order types and modifiers, the Exchange does not propose to change its transaction fee model, and therefore would be differentiated from NYSE Arca and NYSE National because it charges a flat fee for all orders, regardless of whether an order provides or removes liquidity (except for orders that provide displayed liquidity, which are not charged at all). Accordingly, the Exchange believes that the proposed rule change would promote competition by providing greater optionality to ETP Holders that are interested in using the re-introduced order types on an exchange that offers a flat-fee pricing model.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has represented that the existing delay mechanism has not attracted new issuers or additional trading volume to the Exchange, and that re-introducing previously approved order types would allow the Exchange to have similar trading functionality with other exchanges. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[21]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [22] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–48 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–NYSEAMER–2019–48. This file number should be included on the subject line if email is used. To help the

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(2)(B).

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–NYSEAMER–2019–48 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25207 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87551; File No. SR–NYSE–2019–58]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Offer New Credits and Rebates

November 15, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 1, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to offer (1) new tiered credits for member organizations providing additional liquidity in Non-Displayed Limit Orders across Tapes A, B and C, and (2) new incremental credits and rebates applicable to certain Designated Market Makers transactions. The Exchange proposes to implement the fee change effective November 1, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Price List to offer (1) new tiered credits for member organizations providing additional liquidity in Non-Displayed Limit Orders across Tapes A, B and C, and (2) new incremental credits and rebates applicable to certain Designated Market Makers (''DMM'') transactions.

The proposed change responds to the current competitive environment by offering additional incentives to member organizations to provide additional liquidity in Non-Displayed Limit Orders[4] and to existing DMMs to increase their quoting at the National Best Bid or Offer (''NBBO'') in their assigned More Active Securities and Less Active Securities.[5]

The Exchange proposes to implement the fee change effective November 1, 2019.

Competitive Environment

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.''[6]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] 31 alternative trading systems,[9] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ''Non-Displayed Limit Orders'' in Rule 7.31(d)(2) were previously known as ''Non-Display Reserve orders.'' The Exchange proposes to use the new term and replace two outdated references to ''Non-Display Reserve orders'' on the first page of the Price List. The Exchange also proposes to capitalize the word ''order'' following MPL throughout.

[5] ''More Active Securities'' are securities with an average daily consolidated volume (''Security CADV'') in the previous month equal to or greater than 1,000,000 shares per month. ''Less Active Securities'' are securities that have a Security CADV of less than 1,000,000 shares per month in the previous month.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[8] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/* . *See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

order flow. More specifically, for the month of September 2019, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) in Tapes A, B and C securities was only 9.3%.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations and DMMs to quote and trade at specified levels. The proposed fee change is designed to encourage member organizations to provide additional liquidity to the Exchange in Non-Displayed Limit Orders and to encourage DMMs to increase their quoting at the NBBO in their assigned More Active Securities and Less Active Securities by offering a series of incremental enhanced credits and rebates, as follows.

Proposed Rule Change

Credits for Non-Displayed Limit Orders

Member organizations currently receive a Non-Tier Adding Credit for Non-Displayed Limit Orders when adding liquidity to the Exchange. The Price List instead reflects that member organizations are not charged. The Exchange proposes to replace ''No Charge'' in the current Price List with ''No credit,'' add the phrase ''unless a higher credit applies,'' and specify the following tiered credits for member organizations adding liquidity in Non-Displayed Limit Orders.

The Exchange proposes that a member organization that has Adding ADV in Non-Displayed Limit Orders that is at least 0.12% of Tapes A, B and C CADV[12] combined, excluding any liquidity added by a DMM, would be eligible for a $0.0010 credit. In addition, the Exchange proposes that a member organization that has Adding ADV in Non-Displayed Limit Orders that is at least 0.15% of Tapes A, B and C CADV combined, excluding any liquidity added by a DMM, would be eligible for a $0.0018 credit.

For example, assume Member Organization B added an average of 7.8 million shares in Non-Displayed Limit Orders in a month where Tapes A, B and C CADV was 6.5 billion, or 0.12% of Tape A, B and C CADV. Member Organization B would qualify for the $0.0010 credit. If Member Organization B instead provided an average of 13 million shares in Non-Displayed Limit Orders, or 0.20%, Member Organization B would qualify for the higher $0.0018 credit.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing Non-Displayed Limit Orders in the Tapes A, B and C securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently no member organizations that could qualify for the proposed credits based on their current trading profile on the Exchange, but believes that at least 5 member organizations could qualify for the tier if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Proposed DMM Credits

The section of the Exchange's Price List entitled ''Fees and Credits applicable to Designated Market Makers (''DMMs'')'' sets out different monthly rebate amounts to DMMs depending on the CADV of the security and the DMM quoting percentage and size in any month in which the DMM meets the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement, as well as DMM providing as a percent of the NYSE's total intraday adding liquidity, as those terms are defined in the Price List.[13] The Exchange also provides monthly rebates to DMMs depending on the Security CADV[14] and the DMM quoting percentage.

Incremental Credits for Increased DMM Quoting at the NBBO

More Active Securities

Currently, DMMs earn a rebate of $0.0027 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets the More Active Securities Quoting Requirement[15] and has a DMM Quoted Size[16] for an applicable month that is at least 5% of the NYSE Quoted Size, unless the more favorable rates set forth below in the Price List apply. DMMs electing the optional monthly rebate per security (''Rebate per Security'') would receive a lower monthly rebate per share (''Optional Credit'') of $0.0026 per share if the quoting requirements are met.[17]

The Exchange proposes that a DMMs that (1) meets the current requirements would receive an incremental credit of $0.0004 per share in each eligible DMM assigned More Active Security if the DMM also (2) increases their quoting at the NBBO by at least 5% over their quoting at the NBBO in September 2019 (the ''Baseline Month'') in at least 300

[11] *See id.*

[12] The terms ''ADV'' and ''CADV'' are defined in footnote * of the Price List.

[13] *See* notes 15 and 23, *infra.*

[14] The Price List uses ''Security CADV'' to mean the average daily consolidated volume for the applicable security, and to remove any confusion with the term ''ADV'' as defined and used elsewhere in the Price List.

[15] The ''More Active Securities Quoting Requirement'' is met if the More Active Security has a stock price of $1.00 or more and the DMM quotes at the National Best Bid or Offer (''NBBO'') in the applicable security at least 10% of the time in the applicable month. Both ''More Active Securities'' and the ''More Active Securities Quoting Requirement'' are defined in the current Price List. The Exchange is not proposing any changes to these definitions.

[16] The ''NYSE Quoted Size'' is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The ''DMM Quoted Size'' is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO. *See* Price List, n. 7.

[17] The Exchange proposes non-substantive conforming changes to this section of the Price List. First, the Exchange would add the missing word ''applies'' following ''set forth below.'' Second, the Exchange would add the following sentence that appears in the other sections of the Price List where the term ''NYSE total intraday adding liquidity'' is used to the end of the section: ''Unless otherwise stated, the NYSE total intraday adding liquidity will be totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers, customers, Floor brokers, and DMMs.''

assigned securities (to be defined as the ''DMM Additional Quoting Requirement''). The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

Currently, DMMs earn a rebate of $0.0031 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement, (2) has a DMM Quoted Size for an applicable month that is at least 10% of the NYSE Quoted Size, and (3) the DMM quotes at the NBBO in the applicable security at least 20% of the time in the applicable month and for providing liquidity that is more than 5% of the NYSE's total intraday adding liquidity in each such security for that month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0003 per share if the quoting and providing requirements are met.[18]

A DMM that meets (1) these current requirements, and (2) the DMM Additional Quoting Requirement would receive an incremental credit of $0.0003 per share in each eligible assigned More Active Security. The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

DMMs currently earn a rebate of $0.0034 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement, (2) has a DMM Quoted Size for an applicable month that is at least 15% of the NYSE Quoted Size, for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month, and (3) the DMMs quotes at the NBBO in the applicable security at least 30% of the time in the applicable month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0033 per share if the quoting and providing requirements are met.[19]

The Exchange proposes that a DMM that meets (1) these current requirements, and (2) the DMM Additional Quoting Requirement would receive an incremental credit of $0.0001 per share in each eligible assigned More Active Security.[20] The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

Finally, DMMs currently earn a rebate of $0.0015 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM does not meet the More Active Securities Quoting in the applicable month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0012 per share if the quoting requirements are met.[21]

The Exchange proposes that a DMM that (1) has DMM assigned securities that did not meet the More Active Securities Quoting Requirement in the applicable security, and (2) meets the DMM Additional Quoting Requirement would receive an incremental credit of $0.0012 per share in each eligible assigned DMM More Active Security. The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

Less Active Securities[22]

In the case of Less Active Securities, DMMs currently earn a rebate of $0.0035 per share when adding liquidity with orders, other than MPL Orders, in Less Active Securities if the Less Active Security has a stock price of $1.00 or more and the DMM meets the Less Active Securities Quoting Requirement.[23] DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0031 per share if the quoting requirements are met.

The Exchange proposes that a DMM that meets (1) these current requirements and (2) the DMM Additional Quoting Requirement will receive an incremental credit of $0.0010 per share in each eligible assigned Less Active Security.[24]

In addition, DMMs currently earn a rebate of $0.0015 per share when adding liquidity in shares of Less Active Securities if the Less Active Security has a stock price of $1.00 or more and the DMM does not meet the Less Active Securities Quoting Requirement in the applicable security in the applicable month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0011 per share if the quoting requirements are met.

The Exchange proposes that a DMM that (1) has DMM assigned securities that did not meet the Less Active Securities Quoting Requirement in the applicable security, and (2) meets the DMM Additional Quoting Requirement will receive an incremental credit of $0.0020 per share in each eligible assigned Less Active Security.[25]

The following example demonstrates how the proposed incremental credits would operate.

In the Baseline Month, assume DMM Y has 500 assigned securities, 300 of which are More Active Securities and 200 of which are Less Active Securities. Further assume that the DMM's quoting at the NBBO was as follows:

- 50% time at the NBBO each in 100 securities in the Baseline Month, and 60% time at the NBBO each in the billing month for those same securities;
- 20% time at the NBBO each in 250 securities in the Baseline Month and 40% time at the NBBO each in the

[18] In this section of the Price List, the Exchange proposes two non-substantive changes. In addition to capitalizing ''order'' following MPL, the Exchange would move the sentence describing calculation and composition of NYSE total intraday adding liquidity to end of the section and add ''Unless otherwise stated'' to the beginning the sentence.

[19] In this section of the Price List, the Exchange proposes the non-substantive change of moving the sentence describing the calculation and composition of NYSE total intraday adding liquidity to end of the section and add ''Unless otherwise stated'' to the beginning the sentence. In the following section setting forth the rebate of $0.0035 per share and $0.0034 if electing the Optional Credit, the Exchange would also add ''Unless otherwise stated'' to the beginning the same sentence describing calculation and composition of NYSE total intraday adding liquidity.

[20] No incremental credit for current credit of $0.0035 for More Active Securities is proposed as that is the highest credit available.

[21] In this section, the Exchange's non-substantive conforming change would be to add the sentence describing the calculation and composition of NYSE total intraday adding liquidity to end of the section.

[22] In this section, the Exchange's non-substantive conforming change would be to add ''in'' before ''Less Active Securities.''

[23] The ''Less Active Securities Quoting Requirement'' is met when a security has a consolidated ADV of less than 1,000,000 shares per month in the previous month and a stock price of $1.00 or more, and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month.

[24] No incremental credit for current credit of $0.0045 for Less Active Securities is proposed as that is the highest credit available.

[25] If a DMM is assigned a security after the Baseline Month, the DMM quoting for the Baseline Month would be assigned as 0%. If a DMM quoted at the NBBO over 95% in the Baseline Month in an assigned security, that same security would count toward the DMM Additional Quoting Requirement since the maximum quoting, or 100%, would less than 5% over the quoting in the Baseline Month.

billing month for those same securities; and

• 30% time at the NBBO each in 150 securities in the Baseline Month and 20% time at the NBBO each in the billing month for those same securities.

DMM Y would qualify for the DMM Additional Quoting Requirement since DMM Y had 100 securities that had 10% higher quoting over the Baseline Month and 250 securities that had 20% higher quoting over the Baseline Month, for a total of 350 securities, regardless of whether those securities were More Active or Less Active Securities.

The other 150 securities with 20% time at the NBBO would not count towards the requirement since their time at the NBBO was 10% lower, or less than the 5% increase required.

Further assume that DMM Y's 300 More Active Securities and 200 Less Active Securities were eligible for the following credits in the billing month:

• If 175 of DMM Y's More Active Securities were eligible for $0.0031 in credits, the DMM Additional Quoting Requirement would qualify those securities for an additional credit of $0.0003 or $0.0034, combined.

• If 125 of DMM Y's More Active Securities were eligible for $0.0035 in credits, the DMM Additional Quoting Requirement would not qualify those securities for an additional credit since $0.0035 would be the highest credit.

• If 125 of DMM Y's Less Active Securities were eligible for $0.0015 in credits, the DMM Additional Quoting Requirement would qualify those securities for an additional credit of $0.0020 or $0.0035, combined.

• If 75 of DMM Y's Less Active Securities were eligible for $0.0045 in credits, the DMM Additional Quoting Requirement would not qualify those securities for a higher credit since $0.0045 is the highest credit.

The proposed rule change is designed to incentivize DMMs to increase trading volume in their assigned More Active Securities on the Exchange.

Enhanced DMM Monthly Rebates

Currently, the Exchange provides additional monthly rebates to DMMs in addition to the current rate on transactions, prorated to the number of trading days in a month that a stock is assigned to a DMM, depending on the Security CADV and the DMM quoting percentage, as follows.

The monthly rebates payable to DMMs for securities with a Security CADV of 250,000 up to 1,500,000 shares in the previous month, applicable in any month in which the DMM meets the Less Active Securities Quoting Requirement in an applicable security, are as follows:

• $500 rebate if the DMM quotes at the NBBO 50% of the time or more in an applicable security.

• $425 rebate if the DMM quotes at the NBBO at least 40% and up to 50% of the time in an applicable month in an applicable security.

• $350 rebate if the DMM quotes at the NBBO at least 30% and up to 40% of the time in an applicable month in an applicable security.

• $275 rebate if the DMM quotes at the NBBO at least 20% and up to 30% of the time in an applicable month in an applicable security.

• $200 rebate if the DMM quotes at the NBBO at least 15% and up to 20% of the time in an applicable month in an applicable security.

The monthly rebates payable to DMMs for securities with a Security CADV of 100,000 up to 250,000 shares in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which the DMM meets the Less Active Securities Quoting Requirement, are as follows:

• $450 rebate if the DMM quotes at the NBBO 50% of the time or more in an applicable security.

• $375 rebate if the DMM quotes at the NBBO at least 40% and up to 50% of the time in an applicable month in an applicable security.

• $300 rebate if the DMM quotes at the NBBO at least 30% and up to 40% of the time in an applicable month in an applicable security.

• $225 rebate if the DMM quotes at the NBBO at least 20% and up to 30% of the time in an applicable month in an applicable security.

• $150 rebate if the DMM quotes at the NBBO at least 15% and up to 20% of the time in an applicable month in an applicable security.

Finally, the current monthly rebate payable to DMMs for securities with a Security CADV of less than 100,000 shares in the previous month in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which the DMM meets the Less Active Securities Quoting Requirement, are as follows:

• $400 rebate if the DMM quotes at the NBBO 50% of the time or more in an applicable security.

• $325 rebate if the DMM quotes at the NBBO at least 40% and up to 50% of the time in an applicable month in an applicable security.

• $250 rebate if the DMM quotes at the NBBO at least 30% and up to 40% of the time in an applicable month in an applicable security.

• $175 rebate if the DMM quotes at the NBBO at least 20% and up to 30% of the time in an applicable month in an applicable security.

• $100 rebate if the DMM quotes at the NBBO at least 15% and up to 20% of the time in an applicable month in an applicable security.

In each case, the Exchange proposes that DMMs meeting the Less Active Securities Quoting Requirement as well as the DMM Additional Quoting Requirement in the billing month would qualify for the next highest monthly rebate in each tier. For example, using DMM Y with 500 assigned securities and qualified for the DMM Additional Quoting Requirement in the billing month in the previous example, assume DMM Y had 200 assigned securities with a Security CADV under 1,500,000 shares as follows:

• 125 securities with Security CADV between 250,000 and 1,500,000, that each had a DMM quote at the NBBO of 40%. Those securities would each receive a rebate for the month of $500, the next highest rebate over the current $425 rebate.

• 75 securities with Security CADV between 100,000 and 250,000, that each had a DMM quote at the NBBO of 20%. Those securities would each receive a rebate for the month of $300, the next highest rebate over the current $225 rebate.

DMM Quoting Share

Currently, the Exchange provides all of the market data quote revenue (the ''Quoting Share'') received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any security that has a Security CADV of less than 1,500,000 shares in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which a DMM quotes at the NBBO at least 20% of the time in the applicable month. If the DMM quotes at the NBBO at least 15% of the time in the applicable month in a security that has a Security CADV of less than 1,500,000 shares in the previous month but quotes less than 20% of the time in the applicable month, the DMM receives 50% of the Quoting Share.

The Exchange proposes that DMMs that quote at the NBBO at least 15% of the time in the applicable month in a security that has a Security CADV of less than 1,500,000 shares in the previous month but quote less than 20% of the time in the applicable month and meet the DMM Additional Quoting Requirement would also receive 100% of the Quoting Share.

The proposed change is not otherwise intended to address any other issues,

and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[27] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for market makers to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. The Exchange believes that the proposal to offer tiered credits for member organizations that add additional liquidity in Non-Displayed Limit Orders to the Exchange is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. Further, the proposal to offer enhanced credits, rebates, and quoting share to DMMs in order to increase their quoting at the NBBO in their assigned More Active Securities and Less Active Securities is a reasonable means to increase DMM quoting at the NBBO in their assigned securities more frequently, which could attract additional orders to the Exchange and contribute to price discovery. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation. The proposal would also reward DMMs, who have greater risks and heightened quoting and other obligations than other market participants.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that the proposed tiered credits for member organizations adding liquidity in Non-Displayed Limit Orders is equitable because the proposed credits would create incentives for adding greater liquidity and providing price improvement. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. The Exchange notes that it currently provides similar non-tiered and tiered credits for Mid-Point Limit orders of $0.0010, $0.0020, $0.0025 and $0.00275.

The Exchange believes that the proposed enhanced credits and rebates to DMMs is an equitable allocation of fees because it would reward DMMs for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer DMMs an incremental credits for increased quoting at the NBBO in addition to the current rates.

The proposed rule change is also equitable because it would apply equally to all existing and potential DMM firms. The Exchange notes that 3 of the 5 DMM firms could qualify for the proposed incremental credits and enhanced rebates. The Exchange believes that the proposal would provide an equal incentive to all DMMs to increase quoting at the NBBO in their assigned securities, and that the proposal constitutes an equitable allocation of fees because all similarly situated DMMs would be eligible for the same incremental rebates.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes that offering the proposed credits to member organizations based on the amount of liquidity provided to the Exchange in Non-Displayed Limit Orders would provide a further incentive for all member organizations to provide additional liquidity to the Exchange. Similarly, the proposed additional credits and enhanced rebates for DMMs would provide an additional incentive to DMMs to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMMs to better compete for order flow, thus enhancing competition. The Exchange also believes that the requirement that DMMs increase quoting that is at least 5% over the DMM's quoting in at least 300 DMM assigned securities over the Baseline Month in order to qualify for the credits is not unfairly discriminatory because it would apply equally to all DMMs.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[29] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would incentivize member organizations to provide additional liquidity in Non-Displayed Limit Orders to a public exchange and incentivize DMMs to quote and trade in their DMM assigned securities, which could attract additional liquidity and contribute to price discovery. Additional liquidity on a public exchange benefits all market participants because they provide

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4) & (5).

[28] *See* Regulation NMS, 70 FR at 37499.

[29] 15 U.S.C. 78f(b)(8).

greater execution opportunities on the Exchange and improves the public quotation. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [30]

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed credits for member organizations providing liquidity in Non-Displayed Limit Orders would incentivize all member organizations submit additional liquidity to the Exchange, contributing to greater liquidity on the Exchange. Similarly, the proposed incremental credits and enhanced rebates would continue to incentivize DMMs to quote and trade at the NBBO more frequently, which could attract additional liquidity and contribute to price discovery. Greater liquidity benefits all market participants because it provides greater execution opportunities on the Exchange. The proposed credits and rebates would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that for the month of September 2019, the Exchange's market share of intraday trading (excluding auctions) in Tapes A, B and C securities was only 9.3%.[31] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [32] of the Act and subparagraph (f)(2) of Rule 19b–4 [33] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [34] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–58 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–NYSE–2019–58. 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–NYSE–2019–58 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

[30] Regulation NMS, 70 FR at 37498–99.

[31] *See* note 11, *supra.*

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

[34] 15 U.S.C. 78s(b)(2)(B).

[35] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87546; File No. SR–CBOE–2019–105]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 15, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 1, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). Cboe Options migrated its trading platform to the same system used by the Cboe Affiliated Exchanges, on October 7, 2019 (the ''migration''). As a result of the migration, the Exchange adopted a new connectivity infrastructure, including new physical ports and corresponding fees.[3] The Exchange proposes to waive physical port fees for connections to PULSe, effective November 1, 2019.

By way of background, a physical port is utilized by a Trading Permit Holder (''TPH'') or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located. Prior to migration, the Exchange utilized Network Access Ports for these physical connections to the Exchange and assessed fees based on the gigabit size of the port. Specifically, TPHs and non-TPHs could elect to connect to Cboe Options' trading system via either a 1 gigabit per second (''Gb'') Network Access Port or a 10 Gb Network Access Port. The Exchange assessed a monthly fee of $1,500 per port for 1 Gb Network Access Ports and a monthly fee of $5,000 per port for 10 Gb Network Access Ports for access to Cboe Options primary system. Network Access Ports could also be used to send orders to PULSe. Upon migration, the TPHs and non-TPHs had the option to alternatively elect to connect to Cboe Options via new latency equalized Physical Ports. Through January 31, 2020 however, Cboe Options market participants will still have the ability to connect to Cboe Options' trading system via the current Network Access Ports. For the month of October 2019, TPHs and non-TPHs would be assessed (1) $1,500 per 1 Gb port, regardless if it was a legacy Network Access Port or new Physical Port and (2) $5,000 per 10 Gb port, regardless if it was a legacy Network Access Port or Physical Port.[4] As of November 1, 2019, the monthly fee per 1 Gb Network Access Port and Physical Port is $1,500 and the monthly fee per 10 Gb Network Access Port and Physical Port is $7,000.

The Exchange notes that although the new latency equalized Physical Ports became available on October 7, 2019, the new Physical Ports cannot currently be utilized to send orders to PULSe. Accordingly, users who wish to route orders to PULSe via the Exchange's physical ports must maintain and use a legacy Network Access Fee Port and cannot use any of the new Physical Ports for such purpose. As such, the Exchange proposes to provide that fees for one Network Access Port that is used only to access PULSe will be waived per TPH or non-TPH. As such, the Exchange proposes to provide that fees for one Network Access Port that is used only to access PULSe will be waived per TPH or non-TPH. The Exchange notes that whether a user requires a 1 Gb Network Access Port or 10 Gb Network Access Port for this particular purpose may depend on their own connectivity architecture (*i.e.,* some participants may not be able to route orders to PULSe over a 1 Gb, whereas others may not be able to route over a 10 Gb). Accordingly, the Exchange will waive fees for either a 1 Gb or 10 Gb Network Access Port. Such ports will be configured to only allow routing of orders to PULSe, regardless of size, and notes further that for this particular purpose, a 10 Gb port does not have an advantage over a 1 Gb port.

The Exchange lastly proposes to eliminate now obsolete language in the Physical Connectivity Fees table. Particularly, the Exchange proposes to eliminate the Monthly Fees column for fees through October 31, 2019 and eliminate the reference to ''Effective November 1, 2019'' in the title of the column with for fees effective November 1, 2019.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed waiver is reasonable as users subject to the proposed waiver would not have to pay a fee for one Network Access Port used only to access PULSe. As noted above, the recently adopted latency equalized Physical Ports that TPHs and

[3] The Exchange notes that effective October 7, 2019, market participants will no longer have connectivity to the old Exchange architecture.

[4] If a TPH replaced a legacy Network Access Port with a new C1 latency equalized Physical Port in October 2019, the TPH was not billed an additional fee for the new C1 platform physical connection for October.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

non-TPHs may purchase to connect to the Exchange's trading system, do not support the routing of orders to PULSe. As such, TPHs that wish to route orders to PULSe via physical ports must maintain a legacy Network Access Port. Due to this limitation, the Exchange believe it's reasonable to waive fees for one Network Access Port that is used only to access PULSe. As noted above, the Exchange believes it's appropriate to waive either one 1 Gb Network Access Port or one 10 Gb Network Access Port, as for this particular purpose, there is no latency advantages to maintain a 10 Gb versus 1 Gb port and because users' own architecture may require one size over the other. The Exchange believes the proposed waiver is equitable and not unfairly discriminatory as it applies to any TPH or non-TPH that must maintain a Network Access Port for the sole purpose of accessing PULSe.

Lastly, the Exchange believes eliminating obsolete language in the Fees Schedule pertaining to fees assessed in a prior month maintains clarity in the Fees Schedule and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes applies uniformly to all similarly situated market participants. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–105 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–105. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–105, and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25215 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87545; File No. SR–CboeEDGA–2019–019]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

November 15, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2019, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange proposes to amend its fee schedule in connection with its standard rebates and its Remove Volume Tiers.[3]

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 18% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0024 per share for orders that remove liquidity and assesses a fee of $0.0030 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Change to the Remove Volume Tiers

In response to the competitive environment described above, the Exchange offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. For example, pursuant to footnote 7 of the Fees Schedule, the Exchange offers a Remove Volume Tier (Tier 1) that provides Members an opportunity to receive an enhanced rebate of $0.0026 for liquidity removing orders that yield fee codes ''N'',[5] ''W'',[6] ''6'',[7] and ''BB''.[8] To qualify for the current Remove Volume Tier, a Member must have an ADAV[9] of greater than or equal to 0.20% of the TCV[10] and have a remove ADV[11] of greater than or equal to 0.40% of the TCV for orders yielding the applicable fee codes. The Exchange now proposes to amend the criteria to achieve Tier 1. Specifically, the proposed criteria under Tier 1 would provide a Member with an opportunity to receive an enhanced rebate of $0.0022 for qualifying, liquidity removing orders (*i.e.,* yielding fee code N, W, 6, or BB) where a Member adds or removes an ADV of greater than or equal to 0.05% of the TCV. The proposed criteria change is designed to incentivize Members to increase their overall order flow, both adding and removing orders, in order to receive an enhanced rebate on their liquidity removing orders. The Exchange notes that the proposed criteria change is also designed to make it easier to achieve an enhanced rebate on liquidity removing orders by removing the ADAV threshold component, as well as reducing the ADV threshold as a percentage of TCV for both add and remove orders. The proposed change also reduces the enhanced rebate offered under Tier 1, commensurate with proposed lower tier requirements. The Exchange believes the proposed opportunity to receive an enhanced rebate for both liquidity adding and removing orders incentivizes an increase in overall order flow to the Book. The proposed modification Tier 1 provides both liquidity providing Members and liquidity executing Members an additional opportunity to receive an enhanced rebate. Thus, it provides liquidity adding Members on the Exchange a further incentive to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange a further incentive to increase transactions and take execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem.

The Exchange also proposes to adopt another Remove Volume Tier (proposed Tier 2), to provide Members an additional opportunity to qualify for an enhanced rebate by means of liquidity removing volume. Specifically, proposed Remove Volume Tier 2 would provide an enhanced rebate of $0.0028 for qualifying, liquidity removing orders (*i.e.,* yielding fee code N, W, 6, or BB) where a Member removes an ADV of greater than or equal to 0.10% of the TCV and has a Step-Up Remove TCV from October 2019 of greater than or equal to 0.05%. The Exchange notes that a Step-Up Remove means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV, and now proposes to incorporate this

[3] The Exchange initially filed the proposed change on business date November 1, 2019 (SR–CboeEDGA–2019–018). On business date November 13, 2019, the Exchange withdrew those filings and submitted this filing.

[4] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (October 25, 2019), available at *https://markets.cboe.com/us/equities/market_statistics/*. This market share percentage is based on a Month-to-Date volume summary.

[5] Appended to orders that remove liquidity from EDGA (Tape C).

[6] Appended to orders that remove liquidity from EDGA (Tape A).

[7] Appended to orders that remove liquidity from EDGA, pre and post market (All Tapes).

[8] Appended to orders that remove liquidity from EDGA (Tape B).

[9] ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[10] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[11] ADV means daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

definition into its Fee Schedule as a result of its reference in proposed Remove Volume Tier 2. The Exchange notes that this definition is consistent with the definitions in the Fees Schedules of the Exchange's affiliated exchanges.[12] As a result, the Exchange hopes to incentivize more Members to remove additional liquidity from the Exchange, in turn, increasing the number of liquidity executing orders that are sent to the Exchange to transact with the increased number of liquidity adding orders, thereby improving overall liquidity and market quality on the Exchange.

The Exchange notes the proposed tiers are available to all Members and are competitively achievable for all Members that submit add and/or remove order flow, in that, all firms that submit the requisite displayed order flow could compete to meet the tiers.

Proposed Change to the Standard Rebate for Liquidity Removing Orders

As stated above, the Exchange currently provides a standard rebate of $0.0024 per share for liquidity removing orders (*i.e.,* those yielding fee codes N, W, 6, and BB) in securities priced at or above $1.00. Orders in securities priced below $1.00 that remove liquidity are not assessed a fee. The Exchange now proposes to reduce the current standard rebate of $0.0024 per share to $0.0018 per share for orders that remove liquidity for securities priced at or above $1.00. Orders that remove liquidity in securities priced below $1.00 would continue to be free. Although the proposed standard rebate is lower than the current standard rebate for liquidity removing orders, Members will now be able to achieve higher rebates for liquidity removing orders pursuant to proposed Remove Volume Tiers 1 and 2 described above, which are tied to the levels of a Member's add and/or remove order flow. Therefore, the reduced standard rebate for liquidity removing orders is balanced by the increased enhanced rebate opportunities for such orders and aligns with the Exchange's objective in implementing the proposed Remove Volume Tiers to encourage an overall increase in order flow and facilitate improved market quality on the Exchange.

[12] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Definitions; Cboe BYX U.S. Equities Exchange Fee Schedule, Definitions; and Cboe EDGX U.S. Equities Exchange Fee Schedule, Definitions. The Exchange notes that EDGX Fee Schedule specifically defines Step-Up Add TCV, however, its definition is generally aligned with the definition of Step-Up Remove TCV.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that proposed Tier 1 is reasonable because it provides an opportunity for Members to receive a discounted rate by means of liquidity adding and removing orders and eases the difficulty in reaching the tier criteria. Likewise, the Exchange believes that proposed Tier 2 is reasonable because it provides an additional opportunity for Members to receive a discounted rate by means of liquidity removing orders. In addition to this, the Exchange believes the proposed reduction in the standard rebate for liquidity removing orders is reasonable because it serves as a balance to the proposed increase in enhanced rebates for liquidity removing orders and the additional opportunities to achieve such increased incentives, which are tied to relative increases in Members' liquidity adding and/or removing order flow.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f.(b)(5).

Accordingly, balancing the reduced standard rebate for liquidity removing orders with the increased enhanced rebate opportunities for such orders helps support Exchange's objective in implementing increased incentives to encourage an overall increase in order flow and contribution to market quality on the Exchange. The Exchange also notes that, though the standard rebate will be lower, Members will still receive rebates for such orders.

The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[16] including the Exchange,[17] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and rebates.[18]

Moreover, the Exchange believes the proposed modification to ease the criteria under Remove Volume Tier 1, by removing the ADAV threshold component and decreasing the AVD

[16] *See e.g.,* The Nasdaq BX, Inc. Rules, Equity 7 Pricing Schedule, Sec. 118(a), which generally provides credits to members for adding and/or removing liquidity that reaches certain thresholds of Consolidated Volume; *and* Cboe BYX U.S. Equities Exchange Fee Schedule, Footnote 1, Add/Remove Volume Tiers, which provides similar incentives for liquidity removing orders.

[17] *See generally,* Cboe EDGA U.S. Equities Exchange Fee Schedule, Footnote 7, Add/Remove Volume Tiers.

[18] *See supra* note 15 [sic]. BX offers credits between $0.0017 and $0.0013 per share for liquidity removing orders (substantially similar to those rebates which the Exchange proposes) depending on different criteria levels achieved; *see also* Securities and Exchange Act Release No. 87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031), which, akin to the Exchange's proposal herein, recently reduced the credits for certain liquidity removing orders while balancing such with an increase in credits for others.

threshold as a percentage of TCV for both liquidity adding and removing orders, is a reasonable means to further incentivize Members to increase their overall order flow to the Exchange by encouraging those Members who could not achieve the tier previously to increase their add and remove volume to receive the tier's reduced rate. As such, adopting criteria based on a Member's adding and removing orders will encourage liquidity providing Members to provide for a deeper, more liquid market, and Members executing on the Exchange to increase transactions and take such execution opportunities provided by increased liquidity. Similarly, the Exchange believes that proposed Remove Volume Tier 2 is a reasonable means to encourage overall order flow to the Exchange. As described above, Tier 2 is designed to incentivize Member's to increase their liquidity removing order flow to the Exchange based on increasing their daily total remove volume above a percentage of the total volume and their Step-Up remove TCV above a percentage from October 2019. Particularly, the Exchange believes that an increase in Members' remove volume will incentivize more Members to send liquidity adding orders to the Exchange in response to the increase in number of orders removing such liquidity provided on the Exchange. The Exchange believes that an increase in overall order flow as a result of the proposed tiers would benefit all investors by deepening the Exchange's liquidity pool, providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

In line with the proposed ease in criteria difficulty under Tier 1, the Exchange believes that providing a lesser enhanced rebate than currently offered is reasonable as it is commensurate with the proposed decreased criteria. The Exchange also believes that the proposed enhanced rebate under Tier 2, which is higher than that of the Tier 1 rebate, reasonably reflects the scaled difficulty from achieving Tier 1 to achieving the additional Step-Up criteria and incremental increase in the ADV threshold as a percentage TCV (as well as its narrower scope of remove volume orders) in proposed Tier 2. The Exchange further notes that the reduction in the standard rebate offered on the Exchange is reasonable because it, too, appropriately reflects the incremental difficulty in receiving the enhanced rebates; in that, Members automatically receive the standard rebate ($0.0018) for liquidity removing orders, followed by an incrementally higher rebate ($0.0022) achieved by certain order flow (Tier 1), and by another, incrementally higher rebate ($0.0028) (achieved by certain additional order flow plus meeting a Step-Up component (Tier 2). The proposed enhanced rebate amounts pursuant to the proposed Remove Volume Tiers also do not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the discounted fees assessed under the existing Add Volume Tiers, for which a Member must have a daily volume add (ADAV) of 0.10% or greater than the TCV (Add Volume Tier 1) or a daily volume add (ADAV) of 0.45% or greater than the TCV (Add Volume Tier 2), is $0.0026 per share and $0.0022 per share, respectively. In other words, under the Add Volume Tiers, Members can receive a $0.0004 and $0.0008 ''discount'', respectively, from the standard $0.0030 assessed for liquidity adding orders. This is comparable to the proposed additional $0.0004 and $0.0008 rebates (to the proposed $0.0018 standard rebate) offered under the proposed Remove Volume Tiers for liquidity removing orders. Also, as stated, the proposed reduction in the standard rebate offered for liquidity removing orders is in line with rebates for liquidity removing orders in place on other equities exchanges.[19]

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Remove Volume Tiers, and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Given previous months' data, the Exchange notes that none of its Members reached current Tier 1 in the last month.[20] Accordingly, the proposed ease in criteria for Tier 1 is designed as an incentive to any and all Members interested in meeting the tier criteria who were not previously able to meet such criteria to submit additional add and remove order flow to achieve the proposed discount. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for modified Remove Volume Tier 1, as well as proposed Remove Volume Tier 2. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that over 10 Members will be able to compete for and reach proposed Tier 1 and at least four Members will be able to compete for and reach proposed Tier 2. The Exchange anticipates that both tiers will include various Member types, including liquidity providers (*e.g.* wholesale firms that mainly are market makers for retail orders) and broker-dealers (*e.g.* bulge bracket firms that conduct trading on behalf of customers), each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria under the respective tiers, the Member will merely not receive an enhanced rebate. Furthermore, the proposed enhanced rebates would uniformly apply to all Members that meet the required criteria under the respective proposed tiers. In addition, the Exchange also believes that the proposed reduction in the standard rebate for a Member's liquidity removing orders represents an equitable allocation of rebates and is not unfairly discriminatory because, as stated, it is appropriately in line with the incrementally increasing rebates offered by the proposed Remove Volume Tiers, and it will continue to automatically apply to all Members' liquidity removing orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a

[19] *See supra* note 17 [sic].

[20] Previous months' data is not indicative of those firms that would have achieved proposed Tier 2 given that proposed Tier 2's Step-Up Remove baseline is from October 2019, which has not yet concluded.

result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed rebates if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to direct displayed liquidity and, as a result, executable order flow and improved price transparency, to the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 18% of the market share.[22] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[24] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [25] of the Act and subparagraph (f)(2) of Rule 19b–4 [26] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [27] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR-CboeEDGA–2019–019 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR-CboeEDGA–2019–019. 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

[21] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[22] *See supra* note 3 [sic].

[23] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(2).

[27] 15 U.S.C. 78s(b)(2)(B).

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 No. SR-CboeEDGA–2019–019, and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25211 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87547; File No. SR–CboeBZX–2019–095]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Definition of the Final Last Sale Eligible Trade

November 15, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2019, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the definition of the Final Last Sale Eligible Trade (''FLSET'') such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. 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/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the definition of the Final Last Sale Eligible Trade (''FLSET'') such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. The FLSET is used by the Exchange for a number of important purposes related to auctions in BZX-listed securities. For example, the FLSET sets the Halt Auction Reference Price for Halt Auctions following Non-LULD Regulatory Halts,[3] and, in some cases, becomes the BZX Official Closing Price for a security where there is no Closing Auction, or where there is a Closing Auction but only an odd lot quantity is executed.[4] Today, pursuant to BZX Rule 11.23(a)(9), the last trade occurring during Regular Trading Hours on the Exchange sets the FLSET if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. The last trade executed on BZX during Regular Trading Hours could be for a round lot or odd lot quantity. The Exchange believes, however, that it is undesirable for an odd lot execution that may be for an economically insignificant notional value to set the FLSET. The Exchange therefore proposes to amend BZX Rule 11.23(a)(9) such that the FLSET would be set by the last *round lot* trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted.

In addition, BZX Rule 11.23(a)(9) further provides that where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. The Exchange proposes two changes to this language. First, the Exchange proposes to replace language that references ''BZX Exchange'' with simply ''the Exchange'' consistent with the defined term codified in BZX Rule 1.5(k) and used throughout the rulebook. Second, the Exchange proposes to amend the rule such that the last *round lot* trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. Although the Exchange has generally interpreted this requirement to convey that the last round lot trade reported to the consolidated tape, *i.e.,* consolidated last sale eligible trade, would set the FLSET, it is currently possible for an odd lot trade that was executed in the Exchange's Opening Auction to set the FLSET in limited circumstances where the opening print was the last reported trade. Thus, adding this language to the rule would both increase clarity now that odd lot trades are reported to the consolidated tape,[5] and ensure that odd lot Opening Auctions would no longer be used to set the FLSET. Further, the proposed change would assist in conforming the descriptions in the rule given the changes previously discussed to the FLSET definition to explicitly reference round lot trades in the first part of the rule. As is the case today, if there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day would continue to be used.

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BZX Rule 11.23(d)(2)(C)(i)(B).

[4] *See* BZX Rule 11.23(c)(2)(B), (B)(ii)(a). For BZX-listed corporate securities, the FLSET would be the BZX Official Closing price if there is no Closing Auction. If there is no round lot Closing Auction in a BZX-listed ETP, the FLSET would be the BZX Official Closing Price if a trade that would qualify as the FLSET occurred within the last five minutes before the end of Regular Trading Hours, or if there is no such qualifying trade but a time-weighted average price of the NBBO midpoint cannot be determined pursuant to BZX Rule 11.23(c)(2)(B)(ii)(b).

[5] Historically, odd lot trades were not reported to the consolidated tape. In 2013, the CTA and UTP Plans were amended such that odd lot trades would be reported but would continue to be ineligible to set the consolidated last sale. *See* Securities Exchange Act Release Nos. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05), 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (S7–24–89).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The FLSET is the last sale formulation designed for use in BZX auctions pursuant to BZX Rule 11.23, and is used for a number of purposes including to set various reference prices, and in some cases to set the BZX Official Closing Price in the absence of a Closing Auction where sufficient size is executed to set the closing price. Given the importance of the FLSET to the Exchange's auction processes, the Exchange believes that it is consistent with the public interest and the protection of investors to eliminate odd lot executions from the FLSET determination. Today, as discussed in the purpose section of this proposed rule change, only round lot executions from other exchanges are eligible to establish the FLSET used by BZX but an odd lot trade on BZX would nevertheless be FLSET eligible if executed in the last one second, or in limited circumstances where an odd lot Opening Auction sets the last reported trade. Further, this may be true whether or not there is a round lot execution on the Exchange or another exchange that would otherwise have set the FLSET, and that would have been for a more economically significant notional value. The consolidated last sale price disseminated pursuant to the CTA and UTP Plans similarly disregard odd lot executions in an effort to ensure that such last sale prices remain economically significant, even though the CTA and UTP Plans otherwise provide transparency into odd lot executions. The Exchange believes that it is similarly appropriate to limit the Exchange's last sale calculation, *i.e.,* the FLSET, to round lot executions to ensure that this value represents an economically significant last sale price to be utilized for the Exchange's auction processes. With this change, the Exchange's FLSET calculation will also be more aligned with other equities exchanges, such as NYSE Arca, Inc. (''Arca'') that also disregard odd lot executions in similar situations.[8] Arca's auction processes are not identical to those of the Exchange—*e.g.,* Arca uses a weighting of the consolidated last sale eligible trade and the time weighted average price of the NBBO midpoint to set the official closing price in certain circumstances.[9] Nevertheless, Arca similarly excludes odd lot executions from its last sale formulation where relevant to its auction process. The Exchange believes that a similar restriction would be appropriate for its FLSET formulation, notwithstanding any differences in the auction processes employed by each exchange.

The Exchange also notes that clarifying change to replace the term ''BZX Exchange'' with ''the Exchange'' as defined pursuant to the Exchange's rules is non-substantive and is being made to enhance the readability of the Exchange's rules. The Exchange therefore believes that this change is consistent with the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the FLSET continues to be a meaningful value to be used for auctions in BZX-listed securities. The Exchange believes the proposed changes would improve the experience of members and investors trading on the Exchange without imposing any significant burden on competition. In today's highly competitive market, the Exchange must continually refine its offerings to ensure the best trading experience for members and investors. Rather than burden competition, the Exchange believes that the proposed rule change is evidence of robust competition between equities markets that benefits the industry.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were solicited or received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative immediately. In its request, the Exchange states that it currently uses a combination of both round lot and odd lot trades in calculating the FLSET while other exchanges disregard odd lot executions in similar situations, and expresses its belief that it is desirable to limit the FLSET to round lot executions as it would help to ensure that the FLSET represents an economically significant last sale price to be utilized for its auction processes. The Exchange states that waiver of the operative delay would allow it to promptly amend its rules to ensure that only round lot trades are eligible to set the FLSET, to the benefit of members and investors, and is therefore consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] For example, the last consolidated round lot price is ordinarily used to set the reference price for trading halt auctions on Arca. *See* Arca Rule 7.35–E(a)(8)(A). Similarly, the consolidated last sale eligible trade, which as previously explained must be for a round lot, may be used in determining the official closing price on Arca. *See* Arca Rule 1.1(ll)(1).

[9] *See* Arca Rule 1.1(ll)(1).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

public interest, and therefore hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–095 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeBZX–2019–095. 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 No. SR–CboeBZX–2019–095, and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25208 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12), (59).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87555; File No. SR–NYSEAMER–2019–49]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Its Annual Listing Fees for Equity Securities

November 15, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 4, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its annual listing fees for equity securities. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its annual listing fees for equities set forth in Section 141 of the NYSE American Company Guide (the ''Company Guide'') with effect from the beginning of the calendar year commencing on January 1, 2020. These amendments only reflect changes in the amounts charged on an annual basis for listed securities and do not reflect any change in the services provided to the issuer in connection with such listing.

Currently, the annual fee schedule in relation to any listed issue of equity securities is as follows: $45,000 for issues of 50 million shares or fewer; $60,000 for issues of more than 50 million shares and not more than 75 million shares; and $70,000 for issues with in excess of 75 million shares outstanding. The Exchange proposes to increase the annual fee for issues of 50 million shares or fewer from $45,000 to $50,000. In addition, it proposes to charge $70,000 for all issues with more than 50 million shares outstanding (*i.e.,* an increase of $10,000 for issues with more than 50 million shares and not more than 75 million shares outstanding and no increase with respect to any issue with more than 75 million shares outstanding).

The Exchange proposes to make the aforementioned fee increases in Section 141 to reflect increases in the cost of servicing listings and conducting the required associated regulatory oversight. The revised fees will be applied in the same manner to all issuers and the changes will not disproportionately affect any specific category of issuers. The Exchange believes that it is appropriate to adopt a two-tier annual

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

listing fee schedule rather than the current three-tier approach is equitable [sic] because the Exchange has observed that the costs associated with servicing the listings of issuers in the two current higher tiers are generally very similar and the proposed merging of those tiers therefore better aligns the fee structure with the costs associated with listing those issuers.

The Exchange also proposes to remove from Section 141 several references to fee provisions that are no longer relevant, as those fee rates are no longer applicable.

*2. Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) [5] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange operates in a highly competitive marketplace for the listing of equity securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the small increase to the annual fees for equity securities represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. Adopting a two-tier annual listing fee schedule rather than the current three-tier approach is equitable because the Exchange has observed that the costs associated with servicing the listings of issuers in the two current higher tiers are generally very similar and the proposed merging of those tiers therefore better aligns the fee structure with the costs associated with listing those issuers.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the same fee schedule will apply to all listed issuers. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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 proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee changes can impose any burden on intermarket competition

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Regulation NMS, 70 FR at 37499.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [10] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–49 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–49. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–49 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25210 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87549; File No. SR–ICC–2019–012]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

November 15, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) and Rule 19b–4, 17 CFR 240.19b–4, notice is hereby given that on November 1, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Treasury Operations Policies and Procedures (''Treasury Policy''). These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICC proposes to revise its Treasury Policy. Specifically, ICC proposes clarification updates related to its use of a committed repurchase (''repo'') facility, acceptable forms of United States (''US'') Treasury collateral, and its collateral valuation process. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes amendments to the 'Funds Management' section with respect to its use of a committed repo facility. Namely, ICC proposes to clarify that the committed repo facility can be used to generate temporary liquidity through the sale and agreement to repurchase securities pledged by ICC Clearing Participants (''CPs'') to satisfy their Initial Margin (''IM'') and Guaranty Fund (''GF'') requirements. ICC proposes to include that, when applicable, the facility can be used to rehypothecate sovereign debt from overnight repo investments in the event of a counterparty default. ICC also proposes to note that the facility can be used to sell, with the agreement to repurchase, sovereign debt securities that are held by ICC pursuant to direct investments in such securities.

ICC proposes to update the 'Custodial Assets' section regarding acceptable forms of US Treasury collateral and ICC's collateral valuation process. Under the Treasury Policy, acceptable forms of non-cash collateral for IM and GF are limited to US Treasury securities. ICC proposes to specify that Floating Rate Notes and STRIPS are not acceptable forms of US Treasury collateral for IM and GF. ICC also proposes to add language stating that, with respect to its collateral valuation process, Euros that are used to cover a US Dollar denominated product requirement will be subject to a haircut.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [1] requires, among other things, that the rules of a clearing agency be designed to

[1] 15 U.S.C. 78q–1(b)(3)(F).

promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[2] because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. The proposed changes allow ICC to provide additional clarity regarding its use of the committed repo facility, acceptable forms of US Treasury collateral, and its collateral valuation process. The proposed updates ensure that the documentation of ICC's Treasury Policy remains up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's treasury functions, which promotes the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and contributes to the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible within the meaning of Section 17A(b)(3)(F) of the Act.[3]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[4] Rule 17Ad–22(b)(3)[5] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. ICC believes that the proposed changes enhance its ability to manage its financial resources, including by more clearly articulating details related to the use of the committed repo facility, acceptable forms of US Treasury collateral, and the collateral valuation process. Specifically, the additional details relating to ICC's use of a committed repo facility clarify, among other things, that when applicable, the facility can be used to rehypothecate sovereign debt from overnight repo investments in the event of a counterparty default. The proposed changes also identify Floating Rate Notes and STRIPS as unacceptable forms of US Treasury collateral for IM and GF and, with respect to the collateral valuation process, specify that Euros that are used to cover a US Dollar denominated product requirement will be subject to a haircut. Such proposed changes strengthen the documentation of ICC's treasury operations, which supports ICC's ability to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[6]

Rule 17Ad–22(d)(3)[7] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks. The proposed changes strengthen ICC's ability to safeguard assets and limit the potential for loss or delay in access to such assets by ensuring that ICC has clear and comprehensive procedures for the use of the committed repo facility, transparent and well-documented policies regarding acceptable types of US Treasury collateral, and clear and effective procedures for collateral valuation. Moreover, ICC believes that having policies and procedures that clearly and accurately document ICC's treasury functions are an important component to the effectiveness of ICC's treasury operations, which promote ICC's ability to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks. Such changes are therefore reasonably designed to meet the requirements of Rule 17Ad–22(d)(3).[8]

*(B) Clearing Agency's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's Treasury Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## 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 self-regulatory organization 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, 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–ICC–2019–012 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

[2] *Id.*

[3] *Id.*

[4] 17 CFR 240.17Ad–22.

[5] 17 CFR 240.17Ad–22(b)(3).

[6] *Id.*

[7] 17 CFR 240.17Ad–22(d)(3).

[8] *Id.*

All submissions should refer to File Number SR–ICC–2019–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2019–012 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25206 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87552; File No. SR–NYSE–2019–59]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Revise the Step Up Tier 2 Adding Credit in Tape A Securities

November 15, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 1, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to revise the Step Up Tier 2 Adding Credit in Tape A securities. The Exchange proposes to implement the fee changes effective November 1, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Price List to revise the Step Up Tier 2 Adding Credit in Tape A securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective November 1, 2019.

Competitive Environment

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.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

order flow. More specifically, for the month of September 2019, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) in Tapes A, B and C securities was only 9.3%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by lowering the adding requirement in order for member organizations to qualify for the November 2019 Step Up Tier 2 Adding Credit, thereby incentivizing member organizations to step up their liquidity-providing orders on the Exchange on all tapes.

Proposed Rule Change

Currently, a member organization that sends orders, except Mid-Point Liquidity Orders (''MPL'') and Non-Displayed Limit Orders, that add liquidity (''Adding ADV'') in Tape A securities would receive a credit of $0.0029 if:

- The member organization quotes at least 15% of the National Best Bid or Offer (''NBBO'') [10] in 300 or more Tape A securities on a monthly basis, and
- The member organization's Adding ADV as a percentage of NYSE consolidated average daily volume (''CADV''),[11] excluding any orders by a Designated Market Maker (''DMM''), is at least two times more than the member organization's July 2019 Adding ADV as a percentage of NYSE CADV, and
- The member organization's Adding ADV as a percentage of NYSE CADV, excluding any liquidity added by a DMM, exceeds that member organization's Adding ADV in July 2019 taken as a percentage of NYSE CADV as follows:
- For the billing month of October 2019, an Adding ADV, excluding any liquidity added by a DMM, that is at least 0.35% of NYSE CADV over that member organization's July 2019 Adding ADV taken as a percentage of NYSE CADV.
- For the billing month of November 2019, an Adding ADV, excluding any liquidity added by a DMM, that is at least 0.70% of NYSE CADV over that member organization's July 2019 Adding ADV taken as a percentage of NYSE CADV.
- For the billing month of December 2019 and for every month thereafter, an Adding ADV, excluding any liquidity added by a DMM, that is at least 1.05% of NYSE CADV over that member organization's July 2019 Adding ADV taken as a percentage of NYSE CADV.

In addition, a member organization that meets these requirements, and thus qualifies for the $0.0029 credit in Tape A securities, would be eligible to receive an additional $0.00005 per share if trades in Tapes B and C securities against the member organization's orders that add liquidity, excluding orders as a Supplemental Liquidity Provider (''SLP''), equal to at least 0.20% of Tape B and Tape C CADV combined.

The Exchange proposes to lower the Adding ADV requirement for the billing month of November 2019. Specifically, in order to qualify for the Step Up Tier 2 Adding Credit of $0.0029 for the current billing month, a member organization would need to have an Adding ADV, excluding any liquidity added by a DMM, that is at least 0.35% of NYSE CADV over that member organization's July 2019 Adding ADV taken as a percentage of NYSE CADV. The other requirements for qualifying for the Step Up Tier 2 Adding Credit and the additional credit would remain unchanged.

For example, member organization A has an Adding ADV of 12 million shares when NYSE CADV (Tape A) was 3.0 billion, or 0.40% of NYSE CADV in all Tape A securities, in the baseline month of July 2019 (the ''Baseline Month''). Member organization A also has an Adding ADV of 0.75% of US CADV in Tape A securities in November 2019.

Based on the foregoing, member organization A would meet the 0.35% step up requirement for November 2019 but fall short of the two times Adding ADV as a percentage of NYSE CADV requirement in order to qualify for the proposed tier. In order to qualify for the proposed rate in November 2019, member organization A would need at least 0.80% share of NYSE CADV in November 2019, or 2 times the 0.40% Adding ADV in Baseline Month.

Finally, the Exchange proposes the non-substantive change of deleting the Adding ADV requirements for the October 2019 billing month from the rule.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There is currently 1 firm that qualified for the proposed higher Step Up Tier 2 Adding Credit for the October 2019 billing month, but the Exchange believes that at least 7 additional member organizations could qualify for the tier if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

[9] *See id.*

[10] *See* Rule 1.1(q) (defining ''NBBO'' to mean the national best bid or offer).

[11] The terms ''ADV'' and ''CADV'' are defined in footnote * of the Price List.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) & (5).

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. As noted, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) for the month of September 2019, in Tapes A, B and C securities was only 9.3%.[15]

Specifically, the Exchange believes that the proposed lower Adding ADV requirements to qualify for the Step Up Tier 2 for the November 2019 billing month would provide an incentive for member organizations to route additional liquidity-providing orders to the Exchange in Tape A securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide a higher credit for orders that provide additional liquidity.

As previously noted, 1 member organization qualify for the Step Up Tier 2 Adding Credit for the October 2019 billing month but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed lower Adding ADV requirement is reasonable as it would provide an additional incentive for member organizations to direct order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that a lower Adding ADV requirement in order to qualify for the Step Up Tier 2 credit for the November 2019 billing month is equitable because the lower requirement could attract additional order flow, thus improving market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery.

As noted, 1 member organization has qualified for the Step Up Tier 2 Adding Credit, but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed lower Adding ADV requirement for the November 2019 billing month is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the Step Up Tier 2 Adding Credit in November 2019 if they maintain or increase their Adding ADV over their own baseline of order flow. The Exchange believes that lowering the Adding ADV requirement will make it more likely that additional member organizations will qualify for the credit for the current billing month, thereby continuing to attract order flow and liquidity to the Exchange and providing additional price improvement opportunities on the Exchange that benefit investors generally. As to those market participants that would not qualify for the adding liquidity credit even with the lower Adding ADV requirement, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to provide a lower Adding ADV requirement in order to qualify for the per share step up credit, as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up 2 Tier's requirement. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the

[14] *See* Regulation NMS, 70 FR at 37499.

[15] *See* note 8 *supra.*

[16] 15 U.S.C. 78f(b)(8).

Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

*Intramarket Competition.* The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants that meet the revised Adding ADV requirement for November 2019, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) for the month of September 2019, in Tapes A, B and C securities was only 9.3%.[18] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

[17] Regulation NMS, 70 FR at 37498–99.

[18] *See* note 8 *supra.*

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–59 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–NYSE–2019–59. 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–NYSE–2019–59 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25212 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87548; File No. SR–NYSEAMER–2019–50]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 7.37E Regarding the Exchange's Use of Data Feeds From NYSE Chicago, Inc. and Amend Exchange Rule 7.45E To Reflect That Archipelago Securities LLC Would Function as a Routing Broker for NYSE Chicago, Inc.

November 15, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 8, 2019, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (1) Amend Rule 7.37E to amend in Exchange rules the Exchange's use of data feeds from NYSE Chicago, Inc. (''NYSE Chicago'') for order handling and execution, order routing, and regulatory compliance; and (2) amend Rule 7.45E to reflect that Archipelago Securities LLC (''Arca Securities'') would function as a routing broker for the Exchange's affiliate, NYSE Chicago. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to update and amend the table in Rule 7.37E that sets forth on a market-by-market basis the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, execution and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the table would be amended to include NYSE Chicago, which intends to migrate to the Pillar trading platform.[4] Rule 7.37E currently provides that the Chicago Stock Exchange, Inc., the predecessor name of NYSE Chicago, utilizes the securities information processor (''SIP'') data feed as its primary source for the handling, execution and routing of orders, as well as for regulatory compliance, and does not use a secondary source. Once NYSE Chicago transitions trading to Pillar, it would use a direct data feed as its primary source and the SIP data feed as a secondary source. To reflect these changes, the Exchange proposes to amend Rule 7.37E to specify which data feeds the Exchange would use for NYSE Chicago. Specifically, the Exchange proposes to amend the rule to provide that NYSE Chicago would use the direct data feed as the primary source and would use the SIP data feed as a secondary source.

Additionally, the Exchange proposes to amend Rule 7.45E to reflect that Arca Securities would function as a routing broker for the Exchange's affiliate, NYSE Chicago. Specifically, the Exchange proposes to amend Rule 7.45E(c)(1) and (2) to reference NYSE Chicago as an affiliate of the Exchange for the purposes of the inbound routing function performed by Arca Securities. The proposed rule change would provide more clarity and transparency to all the functions that Arca Securities performs on behalf of the Exchange and its affiliates, which now includes NYSE Chicago. The Exchange is not proposing any substantive change to the rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to update the table in Rule 7.37E to include NYSE Chicago will ensure that Rule 7.37 correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, execution and routing of orders, and for performing the regulatory compliance checks to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency. The Exchange believes its proposed rule change to amend Rule 7.45E also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because the proposed rule change would enhance the clarity and transparency in Exchange Rules surrounding the inbound routing function performed by Arca Securities for the Exchange's affiliate, NYSE Chicago.

### *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 proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about which data feeds the Exchange uses for execution and routing decisions, and provide clarity in Exchange rules that Arca Securities would perform the inbound routing function on behalf on the Exchange's affiliate, NYSE Chicago.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which

[4] NYSE Chicago has announced that, subject to rule approvals, it will transition to trading on Pillar on November 4, 2019. *See* Trader Update, available at *https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSEChicago_Migration_update_9.4.pdf.* The Exchange originally filed the proposed rule change on October 31, 2019 (SR–NYSEAMER–2019–47) and withdrew such filing on November 8, 2019, and is now submitting this proposed rule change to make a technical change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the proposal would correctly identify and publicly state on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, execution and routing of orders, and for performing the regulatory compliance checks to each of those functions. Further, the Exchange represents that the proposal would enhance the clarity and transparency in Exchange Rules surrounding the inbound routing function performed by Arca Securities for NYSE Chicago. Based on the Exchange's representations, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–50 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–NYSEAMER–2019–50. 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–NYSEAMER–2019–50 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25209 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[9] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87554; File No. SR–NYSE–2019–61]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Proprietary Market Data Fee Schedule Regarding the NYSE Best Quote and Trades Market Data Feed

November 15, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 4, 2019, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') regarding the NYSE Best Quote and Trades (''BQT'') market data feed. The Exchange proposes to make the fee change effective November 4, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes a non-substantive amendment to the Market Data Fee Schedule regarding the NYSE BQT market data feed that does not add or change any existing fees. The proposed amendment would include a reference to market data products from NYSE Chicago, Inc. (''NYSE Chicago'').

The NYSE BQT data feed provides best bid and offer and last sale information for the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca''), NYSE American LLC (''NYSE American''),[4] and NYSE National, Inc. (''NYSE National'').[5] In connection with the transition to trading to the Pillar trading platform of another affiliate of the Exchange, NYSE Chicago,[6] the Exchange recently filed a proposed rule change to amend the content of the NYSE BQT market data feed [7] to include NYSE Chicago BBO and NYSE Chicago Trades market data feeds.[8]

The Exchange currently charges an access fee of $250 per month for the NYSE BQT data feed. The Exchange is not proposing any change to the access fee. Footnote 5 to the Market Data Fee Schedule further provides that to subscribe to NYSE BQT, subscribers must also subscribe to, and pay applicable fees for, NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE American BBO, NYSE American Trades, NYSE National BBO, and NYSE National Trades. Because, as provided for in the NYSE BQT Filing, NYSE will begin included data from NYSE Chicago BBO and NYSE Chicago Trades in NYSE BQT, the Exchange proposes to add references to NYSE Chicago BBO and NYSE Chicago Trades to Footnote 5 to the Market Data Fee Schedule. Accordingly, in addition to subscribing to, and paying for, NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE American BBO, NYSE American Trades, NYSE National BBO and NYSE National Trades, subscribers of NYSE BQT will need to subscribe to NYSE Chicago BBO and NYSE Chicago Trades. Because there are currently no fees for NYSE Chicago BBO and NYSE Chicago Trades, adding these products to Footnote 5 of the Market Data Fee Schedule will not increase the fees for NYSE BQT.

In anticipation of NYSE Chicago BBO and NYSE Chicago Trades being included in NYSE BQT, all current NYSE BQT customers have subscribed to NYSE Chicago BBO and NYSE Chicago Trades and therefore will be able to comply with the requirement proposed in this rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides an equitable allocation of reasonable fees among its members, issuers, and other persons using its facilities and is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [11] in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange further believes that requiring market data recipients to separately subscribe to and pay for the ten underlying data feeds to NYSE BQT is reasonable because by design, NYSE BQT represents an aggregated and consolidated version of those existing ten data feeds. The Exchange notes that it is not seeking with this filing to establish fees relating to the underlying BBO and Trades data feeds, as those fees have already been established consistent with Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder, and which may be amended from time to time. However, the Exchange believes it would be unfair if it did not require NYSE BQT data feed recipients to separately subscribe to and pay for those underlying feeds because otherwise, NYSE BQT data feed recipients would be receiving a data product that includes such underlying data at a lower cost than separately subscribing to the underlying data feeds. The Exchange therefore believes that the fee structure for NYSE BQT would not be lower than the cost to another party to create a comparable product, including the cost of receiving the underlying data feeds.

The Exchange further believes that the proposed NYSE BQT fee structure is equitable and not unfairly discriminatory because all vendors and subscribers that elect to purchase NYSE BQT would be subject to the same fees. In addition, vendors and subscribers that do not wish to purchase NYSE BQT may separately purchase the individual underlying data feed, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating NYSE BQT. To enable such competition, the Exchange would continue to offer NYSE BQT on terms that a subscriber of the underlying feeds could offer a competing product if it so chooses.

With respect to this proposed rule change, because NYSE Chicago does not currently charge any fees for NYSE Chicago BBO or NYSE Chicago Trades, the proposed amendment to include these products in Footnote 5 to the Market Data Fee Schedule will not change any fees for NYSE BQT. Moreover, current subscribers to NYSE BQT have already subscribed to NYSE Chicago BBO and NYSE Chicago Trades, and therefore such subscribers will not have any issues complying with this proposed rule change.

The Exchange also notes that the use of NYSE BQT is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own

[4] *See* Securities Exchange Act Release No. 34–73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (''NYSE BQT Approval Order'').

[5] *See* Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Content of the NYSE Best Quote & Trades Data Feed) (SR–NYSE–2018–22).

[6] NYSE Chicago has announced that, subject to rule approvals, it will transition to trading to Pillar on November 4, 2019. *See* Trader Update, available at *https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSEChicago_Migration_update_9.4.pdf.*

[7] *See* SR–NYSE–2019–60, filed on November 4, 2019 (the ''NYSE BQT Filing'').

[8] *See* Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR–NYSEChicago–2019–15).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4), (5).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.603.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

underlying data products, and proprietary data products offered by the Exchange's competitors, and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to these data products further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar ''best quote and trade'' market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute NYSE BQT, prospective users likely would not subscribe to, or would cease subscribing to, NYSE BQT. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the NYSE BQT feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective users would avail themselves of that lower cost and elect not to take NYSE BQT.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[15] 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. As noted above, the NYSE BQT data feed represents aggregated and consolidated information of ten existing market data feeds. Although the Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are the exclusive distributors of the underlying BBO and Trades feeds from which certain data elements are taken to create NYSE BQT, the Exchange may not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed. Any other market data recipient of the underlying data feeds would be able, if they chose, to create a data feed with the same information as NYSE BQT and distribute it to their clients on a level playing field with respect to latency and cost as compared to the Exchange's product.

The market for proprietary data products is competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [16]

Moreover, competitive markets for listings, order flow, executions, and transaction reports impose pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [17] Indeed, equity trading is currently dispersed across 13 exchanges,[18] 31 alternative trading systems,[19] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).[20] And as the Commission's own Chief Administrative Law Judge found after considering extensive fact and expert testimony and documentary evidence on the subject, ''there is fierce competition for trading services (or 'order flow')'' among exchanges, and ''the record evidence shows that competition plays a significant role in restraining exchange pricing of depth-of-book products.'' *In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken By Self-Regulatory Organizations,* Initial Decision Release No. 1015, Administrative Proceeding File No. 3–15350 (June 1, 2016), at pp. 8 and 33.

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based

[15] 78 U.S.C. 78f(b)(8).

[16] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in *U.S.* v. *Deutsche Borse AG and NYSE Euronext*, Case No. 11–cv–2280 (DC Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[17] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[18] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[19] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[20] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make NYSE BQT available unless their customers request it, and customers will not elect to pay for NYSE BQT unless the product can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–61 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–NYSE–2019–61. 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–NYSE–2019–61 and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–25216 Filed 11–20–19; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16186 and #16187; Texas Disaster Number TX–00528]**

## Administrative Declaration of a Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 11/14/2019.

*Incident:* Severe Storms, Straight-line Winds, Hail and Tornado.

*Incident Period:* 10/20/2019 through 10/21/2019.

**DATES:** Issued on 11/14/2019.

*Physical Loan Application Deadline Date:* 01/13/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/14/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Dallas

*Contiguous Counties:*

Texas: Collin, Denton, Ellis, Kaufman, Rockwall, Tarrant

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.000 |
| Homeowners without Credit Available Elsewhere | 1.500 |
| Businesses with Credit Available Elsewhere | 7.750 |
| Businesses without Credit Available Elsewhere | 3.875 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 3.875 |

| | Percent |
|---|---|
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 16186 B and for economic injury is 16187 0.

The States which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–25229 Filed 11–20–19; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16184 and #16185; Illinois Disaster Number IL–00054]**

### Administrative Declaration of a Disaster for the State of Illinois

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 11/14/2019.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 02/24/2019 through 07/03/2019.

**DATES:** Issued on 11/14/2019.

*Physical Loan Application Deadline Date:* 01/13/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/14/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Alexander, Jersey, Rock Island, Stephenson.

*Contiguous Counties:*

Illinois: Calhoun, Carroll, Greene, Henry, Jo Daviess, Macoupin, Madison, Mercer, Ogle, Pulaski, Union, Whiteside, Winnebago.

Iowa: Clinton, Louisa, Muscatine, Scott.

Kentucky: Ballard.

Missouri: Cape Girardeau, Mississippi, Saint Charles, Scott.

Wisconsin: Green, Lafayette

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 4.125 |
| Homeowners Without Credit Available Elsewhere | 2.063 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.750 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 16184 6 and for economic injury is 16185 0.

The States which received an EIDL Declaration # are Illinois, Iowa, Kentucky, Missouri, Wisconsin.

(Catalog of Federal Domestic Assistance Number 59008)

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–25235 Filed 11–20–19; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16183; Florida Disaster Number FL–00150 Declaration of Economic Injury]**

### Administrative Declaration of an Economic Injury Disaster for the State of Florida

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Florida, dated 11/13/2019.

*Incident:* Hurricane Dorian.

*Incident Period:* 08/28/2019 through 09/09/2019.

**DATES:** Issued on 11/13/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/13/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Brevard, Broward, Clay, Collier, Duval, Flagler, Franklin, Hillsborough, Indian River, Lake, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Orange, Osceola, Palm Beach, Pinellas, Polk, Saint Johns, Saint Lucie, Seminole, Volusia

*Contiguous Counties:*

Florida: Alachua, Baker, Bradford, Citrus, Desoto, Glades, Gulf, Hardee, Hendry, Highlands, Lee, Levy, Liberty, Okeechobee, Pasco, Putnam, Sarasota, Sumter, Wakulla

Georgia: Camden, Charlton

The Interest Rates are:

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for economic injury is 161830.

The States which received an EIDL Declaration # are Florida, Georgia.

(Catalog of Federal Domestic Assistance Number 59008)

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–25226 Filed 11–20–19; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF STATE

**[Public Notice: 10954]**

### Foreign Affairs Policy Board Meeting Notice of Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy

Board to take place on December 16, 2019, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) technology tools needed to advance the State Department's mission; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Duncan Walker at (202) 647–2236.

**Duncan H. Walker,**

*Designated Federal Officer, Department of State.*

[FR Doc. 2019–25187 Filed 11–20–19; 8:45 am]

**BILLING CODE 4710–10–P**

## STATE JUSTICE INSTITUTE

### SJI Board of Directors Meeting, Notice

**AGENCY:** State Justice Institute.

**ACTION:** Notice of meeting.

**SUMMARY:** The SJI Board of Directors will be meeting on Monday, December 2, 2019 at 1:00 p.m. The meeting will be held at SJI Headquarters in Reston, Virginia. The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2020, and other business. All portions of this meeting are open to the public.

**ADDRESSES:** State Justice Institute Headquarters, 11951 Freedom Drive, Suite 1020, Reston, Virginia 20190.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

**Jonathan D. Mattiello,**

*Executive Director.*

[FR Doc. 2019–25289 Filed 11–20–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0085]**

### Hours of Service of Drivers: National Waste & Recycling Association; Application for Exemption

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to grant the National Waste & Recycling Association's (NWRA) request for exemption from the requirement that short-haul drivers utilizing the records of duty status (RODS) exception return to their normal work-reporting location within 12 hours after coming on duty. The exemption enables all NWRA members' short-haul commercial motor vehicle (CMV) drivers in the waste and recycling industry to return to their work-reporting location within 14 hours (instead of the current 12 hours) without losing their short-haul status. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** This exemption is effective November 21, 2019 through November 21, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–2722; 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, FMCSA–2019–0085 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

#### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 also provide an opportunity for public comment on the request.

The Agency reviews the 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 must specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

#### III. Request for Exemption

Under FMCSA's current hours-of-service (HOS) rules, drivers are not required to prepare and maintain records of duty status (RODS) provided that (among other things) they return to their normal work reporting location and are released from work within 12 hours after coming on duty (49 CFR 395.1(e)(1)). A driver who exceeds the12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD) (49 CFR 395.8(a)(1)(i)).

NWRA represents approximately 700 publicly traded and privately-owned local, regional, national and international waste and recycling companies. These motor carriers operate more than 100,000 waste and recycling collection trucks and employ an even greater number of commercial motor vehicle (CMV) drivers. Its drivers routinely qualify for the short-haul HOS exception in 49 CFR 395.1(e)(1); however, on occasion, these drivers cannot complete their duty day within 12 hours. The drivers may exceed the 12-consecutive hour limitation of the short-haul exception more than 8 times

in any 30-day period due to operating restrictions placed upon the industry by States and localities, inclement weather, traffic congestion, and other circumstances beyond their control. Once they exceed the 8-in-30-day threshold, NWRA member companies must install electronic logging devices (ELDs) to document driver's duty status (49 CFR 395.8(a)(1)(iii)(A)(1)). Therefore, NWRA's application for a 14-hour day would help some of its member carriers to avoid the economic burden of installing ELD's when their drivers occasionally exceed the 8-in-30-day threshold for the ELD mandate.

NWRA notes that drivers in the asphalt-paving business were granted a similar exemption [83 FR 3864, Jan. 26, 2018], and that 49 CFR 395.1(e)(1)(ii)(B) reflects a statutory exemption for the ready-mixed concrete industry. NWRA further notes that FMCSA recently granted one of its member companies, Waste Management Holdings, Inc., a similar exemption [83 FR 53940, Oct. 25, 2018]. NWRA argues that granting a broader exemption would create regulatory consistency across the entire waste and recycling industry.

NWRA asserts that waste and recycling carriers have virtually no record of HOS violations in the Agency's Compliance, Safety, Accountability (CSA) Safety Measurement System (SMS), nor is there a history of CSA interventions for HOS non-compliance by these carriers. NWRA adds that there is no equivalent or greater level of safety that ELDs would bring to the waste and recycling industry.

NWRA's application for exemption is available for review in the docket referenced at the beginning of the notice.

## IV. Public Comments

On March 29, 2019, FMCSA published notice of this application and requested public comment (84 FR 12019). The Agency received 13 comments 12 supporting the application. Seven of these comments were filed by waste and recycling-related companies: Republic Services; Waste Connections; Rumpke Waste and Recycling; Kimble Recycling and Disposal; Waste Management; Texas Disposal Systems; and the National Demolition Association. Five individuals also supported the exemption request. One individual opposed the application.

The primary reasons cited for supporting the NWRA request include the following: (1) The HOS of waste and recycling drivers are impacted by factors outside their control, which means the driver cannot always return to the work reporting location within the allotted 12 hours; (2) requiring waste and recycling drivers to log their HOS on an ELD causes driver distraction; and (3) granting NWRA's application for exemption is consistent with a number of the Agency's prior exemptions, including those issued to the National Asphalt Pavement Association and Waste Management, Inc.

Regarding the first reason given in support of the exemption, commenters noted that drivers may exceed the 12-hours on-duty limitation under the short-haul exemption more than eight times in any 30-day period due to operating restrictions placed upon the industry by the State, localities, inclement weather, traffic congestion, and other circumstances beyond their control. With regard to the second reason, commenters believe that, from a safety perspective, the following burdens and risks are a concern, particularly for residential, short-haul drivers: An ELD device which requires interaction by the driver making frequent duty-status changes, as the trucks stop to pick up waste, would cause significant distractions; and maneuvering through residential areas, parking lots, among parked cars, pedestrians, and other motorists of all types requires the constant, undivided attention of drivers, both for their own safety and for that of the general public.

Commenters further argued that granting a broader exemption to NWRA member companies—based on prior FMCSA exemptions on this same issue—would create regulatory consistency across the entire waste and recycling industry. One individual commenter opposed the application, stating that the Agency should stop granting exemptions like the one requested by NWRA.

## V. FMCSA Response to Comments

The Agency agrees with the commenters who support the application because the exemption would not allow additional driving time during the work shift or allow driving after the 14th hour from the beginning of the work shift. In addition, drivers would remain limited by the weekly 60- or 70-hour limits and the employer must maintain accurate time records concerning the time the driver reports for work each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day. The exemption would provide limited relief from the recordkeeping requirements for HOS for short-haul drivers who find it necessary to exceed the 12-hour limit, which impacts the type of HOS records required. The Agency has granted similar exemptions to the National Asphalt Paving Association [January 26, 2018, (83 FR 3864)], the Motion Picture Association of America [January 19, 2018, (83 FR 2869)], and Waste Management Holdings, Inc. [October 25, 2018 83 FR 53940].

## VI. FMCSA Decision

FMCSA has evaluated NWRA's application and the public comments and determined that it is appropriate to grant the request. Because the exemption would extend neither the 11-hour driving time allowed during the work shift nor the 14-hour driving window applicable to all other truck drivers, there is no reason to believe that the safety performance of these drivers would be compromised. Drivers would continue to return to the normal work-reporting location at the end of each work shift and continue to comply with the weekly HOS limits. Therefore, the Agency believes that the exempted drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exemption will allow drivers for NWRA's member companies to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours.

The FMCSA emphasizes that absent the exemption, these drivers could take advantage of the current exemption that allows driver up to eight days within a 30-consecutive day period to operate beyond the short-haul limits without incurring the costs of using ELDs. Through this exemption, motor carriers and drivers will have additional flexibility to address situations when drivers operate beyond the 12-hour short-haul limit for more than 8 days during a 30-day period.

## VII. Terms and Conditions for the Exemption

- Drivers for member companies of the National Waste & Recycling Association must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- Drivers for NWRA member companies must return to the work reporting location and be released from work within 14 consecutive hours.
- NWRA member companies must maintain accurate time records concerning the time the driver reports for work each day, the total number of

hours the driver is on duty each day, and, the time the driver is released from duty each day.

*Extent of the Exemption*

This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(ii) and is available only to drivers for companies that are members of NWRA. These drivers must comply will all other applicable provisions of the FMCSRs.

*Preemption*

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

*Notification to FMCSA*

Any NWRA member company utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

(a) Identity of the exemption: ''National Waste & Recycling Association;''

(b) Name of operating motor carrier;

(c) Date of the accident;

(d) City or town, and State, in which the accident occurred, or closest to the accident scene;

(e) Driver's name and license number;

(f) Vehicle number and State license number;

(g) Number of individuals suffering physical injury;

(h) Number of fatalities;

(i) The police-reported cause of the accident;

(j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

(k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record.

Interested parties or organizations possessing information that would otherwise show that any or all of these motor carriers are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company and drivers in question.

Issued on: November 15, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25335 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0387]**

### Qualification of Drivers; Exemption Applications; Hearing

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for two individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on October 22, 2019. The exemptions expire on October 22, 2021. Comments must be received on or before December 23, 2019.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0387 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2014-0387.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0387), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0387.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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

FMCSA will consider all comments and material received during the comment period.

*B. Viewing Documents and Comments*

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0387* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue

SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*C. Privacy Act*

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

**II. Background**

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The two individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

**III. Request for Comments**

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

**IV. Basis for Renewing Exemptions**

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the two applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The two drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of October 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Richard A. Carter (MD) and Donnie Lamar McEntire, Jr. (GA).

The drivers were included in docket number FMCSA–2014–0387. Their exemptions are applicable as of October 22, 2109, and will expire on October 22, 2021.

**V. Conditions and Requirements**

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**VI. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VII. Conclusion**

Based upon its evaluation of the two exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 14, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–25341 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0368]**

### Hours of Service of Drivers: North Shore Environmental Construction, Inc.; Application for Exemption

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to deny North Shore Environmental Construction, Inc.'s (North Shore) application for exemption from the ''14-hour rule'' of the hours-of-service (HOS) regulations for drivers responding to actual and potential environmental emergencies. FMCSA analyzed the exemption application and the public comments and determined that the applicant will not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, FMCSA–2018–0368 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 also provide an opportunity for public comment on the request.

The Agency reviews the 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 must also specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

North Shore Environmental Construction, Inc. (North Shore) seeks an exemption from the ''14-hour rule'' [49 CFR 395.3(a)(2)] for its drivers responding to environmental emergencies. North Shore employs 12 commercial driver's license holders and its total number of commercial motor vehicles (CMVs) is 15. In responding to emergency incidents, North Shore's technicians work alongside a mix of private industry and public agencies; their work often has a direct impact on the protection of both public safety and the environment. North Shore advises that it is contractually required to provide direct assistance to responsible parties who are experiencing actual or potential environmental emergencies. North Shore's employees are hybrid driver/operator/technicians. Their duties include industrial maintenance, spill response, sampling, lab packing, and waste management. Per North Shore, with the current driver shortage, obtaining drivers with these additional skills and experience has become problematic.

North Shore requested relief from the ''14-hour rule.'' North Shore states that the hours-of-service (HOS) rules have always been an issue for emergency response companies. It requests this exemption to allow the company to respond to a release or threat of a release of oil and other hazardous materials (HM), subject to the following conditions for each driver:

- On-duty period will not exceed 4.5 additional hours for initial response;
- Any driver who exceeds the 14-hour period would in no case exceed a total of 8 hours' drive time;
- Drivers would not exceed 70 hours on duty in 8 days;
- Drivers would be required to take 10 hours off duty, subsequent to the duty day; and
- All activities would be subject to the electronic logging device rule.

According to North Shore, the initial response hours are the most critical in an environmental emergency. North Shore believes that a tightly managed exemption provides a risk averse situation by discouraging potentially unmanaged risk taking. If the exemption is not granted, there could be a disruption of nation/regional commerce activities, including power restoration activities and protection of interstate commerce and infrastructure.

A copy of the North Shore application for exemption is available for review in the docket for this notice.

## IV. Method To Ensure an Equivalent Level of Safety

To ensure an equivalent level of safety North Shore offers to implement policies on fatigue and transportation management. North Shore also offers the maintenance of a multitude of safety, security, annual medical surveillance, and training plans, as well as comprehensive drug and alcohol programs compliant with multiple Department of Transportation regulations.

## V. Public Comments

On December 18, 2018, FMCSA published notice of this application and requested public comment (83 FR 64925). The Agency received three comments, all opposing the exemption. The Commercial Vehicle Safety Alliance (CVSA) argued that the request is both unjustified and impractical. According to CVSA, ''first and foremost, exemptions from federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. The Federal Motor Carrier Safety Regulations (FMCSRs) and HM Regulations exist to ensure that those operating in the transportation industry are equipped to do so safely. If granted, this exemption would place an excessive burden on the enforcement community and negatively impact safety. The federal HOS requirements exist to help prevent and manage driver fatigue.''

The Agency also received comments from Mr. Brian Fuller and Mr. Michael Millard. Both opposed exemptions from the HOS rules in general. Mr. Millard also argued that the requested exemption is duplicative of the emergency relief rule under § 390.23.

## VI. FMCSA Response and Decision

FMCSA has evaluated North Shore's application for exemption and the public comments submitted and hereby denies the exemption. When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and to reduce the possibility of driver fatigue.

Based on the body of research the Agency has relied upon in developing the HOS requirements, there is no basis for granting an exemption that would allow an individual to drive after the 18th hour after coming on duty when there is no mandatory off-duty time included within the 18-hour period. Although the applicant explained that drivers would not exceed 8 hours of driving time during a work shift, the Agency does not believe there is a basis for concluding that the 8-hour limit on driving time offsets the potential

increase in safety risks associated with an 18.5 hour driving window.

The applicant is essentially requesting that the 14-hour rule be extended by 4.5 hours in exchange for a 3-hour reduction in the driving-time limit. The Agency does not find this safety equivalency claim to be persuasive.

The North Shore application does not analyze the safety impacts the requested exemption from the HOS regulations may cause nor does it provide countermeasures to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. Furthermore, the applicant did not provide clear parameters that would have to be met to trigger the exemption.

For these reasons, FMCSA denied the request for exemption.

Issued on: November 14, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25340 Filed 11–20–19; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0235]**

### Hours of Service of Drivers: Wolfe House Movers, LLC and Wolfe House Movers of Indiana, LLC; Application for Exemption

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

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny Wolfe House Movers, LLC and Wolfe House Movers of Indiana, LLC (Wolfe) an exemption from the hours-of-service (HOS) 60-hour/7-day rule for its drivers engaged in transporting steel beams and dollies to and from various job sites for lifting and moving buildings. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies Wolfe's application for an exemption.

**DATES:** This decision is effective November 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. La Tonya Mimms, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–9220. Email: *HOURSOFSERVICE@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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2018–0235 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket in person by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 also 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 decision of the Agency 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 must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

Wolfe House Movers, LLC (USDOT 1276267), and Wolfe House Movers of Indiana, LLC (USDOT 1679025) (Wolfe) seek an exemption from the HOS requirement of 49 CFR 395.3(b)(1) which prohibits a motor carrier from permitting or requiring a driver to drive a property-carrying CMV after the driver has been on duty 60 hours within a period of 7 consecutive days if the employing motor carrier does not operate CMVs every day of the week. Wolfe does not operate CMVs every day of the week and is therefore prohibited from using the 70-hour/8-day rule in 49 CFR 395.3(b)(2) for its business operations.

According to Wolfe, its primary line of business is lifting and moving buildings. Drivers employed by Wolfe transport steel beams and dollies to and from various jobsites where work is performed. Wolfe advised that its owners believe that Sunday is a day of rest and worship and refuse any business opportunities that would require Sunday work.

Because Wolfe does not conduct business on Sunday, its commercial business operations are subject to the 60-hours-in-7-day rule set forth in 49 CFR 395.3(b)(1). Due to the geographical spread of its operations, Wolfe asserted that the 60-hour limitation is a substantial burden. Wolfe explained in its application that the company attempts to schedule work so that all crews can be at their home terminal before the 60th on-duty hour of the week. However, weather, traffic, or jobsite conditions sometimes delay completion of projects causing crews to be stranded one or two hours' drive from the home terminal. When delays occur relief drivers are sent in non-commercial vehicles to pick up stranded drivers so that the drivers who have run out of hours can drive back to the home terminal using the non-commercial vehicles while the relief drivers return the CMVs to the terminal.

Wolfe reports that it is a small company and it is difficult to have relief drivers available on short notice; this is unproductive and costly for the company. Wolfe asserted that the stress and pressure associated with approaching the 60-hour cut-off is likely to have a detrimental effect on the safety performance of even well-trained and well-qualified drivers.

According to Wolfe, allowing it to use the 70-hour on-duty limit for all drivers not operating CMVs on Sundays would provide the following significant safety benefits:

- The need for relief drivers would be significantly reduced or eliminated. This would result in fewer on-road miles driven (by eliminating the need for a relief driver to drive up to 100 miles out to pick up the CMV and for the regular driver to drive the non-CMV

back the same 100 miles). This would also mean that the CMV would continue to be driven by the driver most familiar with it, rather than a part-time driver.

• Drivers would be less stressed, knowing that they have sufficient time to complete their weekly schedule even if they are delayed by heavy traffic, weather conditions, etc.

A copy of Wolfe's application for exemption is available for review in the docket for this notice.

## V. Public Comments

On October 18, 2018, FMCSA published notice of this application and requested public comment (83 FR 52872). The Agency received two comments.

Mr. Michael Millard wrote, ''If the FMCSA considers approving the request there should be additional requirements to address training on driver fatigue so drivers and supervisors can recognize the symptoms and not allow drivers to violate Part 392.3 regarding ill or fatigued drivers. If the petition is approved the carrier should only be allowed to use the 34-hour restart once every six days.''

Mr. Stanley Roberts stated that ''If they get a waiver then there would have to be waivers for several industries and businesses. I contend that the majority of their work would be considered regional at best and that their drivers are close enough to make it home on 60-hr/7-day rules.''

## VI. FMCSA Decision

FMCSA has evaluated Wolfe's application and the public comments and decided to deny Wolfe's exemption request to operate up to 70 hours in a 6-day period; the company does not operate CMVs on Sundays. Wolfe did not demonstrate how operating up to 70 hours within 6 consecutive days of operations (compared to the limit of 60 hours within 6 consecutive days of operations) would maintain a level of safety equivalent to, or greater than, the level of safety that would be achieved without the exemption [49 CFR 381.305(a)]. The company did not provide any countermeasures (*e.g.,* additional off-duty time, etc.) to address the approximately 17 percent increase in the maximum amount of on-duty time that may be accumulated before driving is prohibited.

Issued on: November 15, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25330 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0079]**

# Hours of Service of Drivers: PJ Helicopters, Inc.; Application for Exemption

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

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny PJ Helicopters, Inc.'s (PJH) request for an exemption from the Federal hours-of-service (HOS) rules for its ground support equipment operators. The requested exemption would have allowed PJH's ground support equipment operators a 16-hour window within which to complete all driving, and enable these operators to use an 8-consecutive hour off-duty break, combined with at least two other off-duty hours during the 16-hour window within which driving would be completed, in lieu of taking 10 consecutive hours off duty. FMCSA analyzed the exemption application and public comments and determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, FMCSA–2019–0079, in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 must publish its decision 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 must specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

PJH's exemption application states that the company has been serving the utility helicopter industry as an emergency response company for more than 45 years. Most of its customers are firefighting agencies, law enforcement agencies, and public utilities. PJH's customers require timely responses and long hours when dealing with emergency-related incidents. PJH's helicopters must be fueled and serviced in a timely fashion by its ground support crews. PJH requested an exemption from 49 CFR 395.3(a)(1) and (2) for its ground support equipment operators.

The requested exemption would apply to approximately 32 ground support equipment operators, each of whom possesses a commercial driver's license with applicable endorsements, including the tank vehicle endorsement. PJH states that it is an emergency response company contracted to agencies focused on public safety and that there currently are no exemption provisions in the 49 CFR part 395 for private companies that assist in emergency efforts. PJH's Federal and State government contracts specify that ground support equipment operators must be available for a maximum of 14

hours. At the end of the day, when the helicopter has finished flying, a mechanic must inspect and repair the aircraft as needed. With a long flight day and these added duties, a PJH mechanic will exceed the ''14-hour rule'' when traveling between the helicopter landing zone and the mechanic's lodging. Without the requested 16-hour exemption, PJH's ground crew must be released earlier to reach their lodging before reaching the 14-hour ''driving window'' limit, which decreases the availability of the aircraft by a minimum of 14 total hours each week.

The second component of PJH's exemption request is intended to work in conjunction with the first. It would allow ''ground crew members'' to take only 8, instead of 10, consecutive hours off duty before coming on duty again, provided they take at least 2 hours off duty during the prior 16-hour driving window PJH requested and are responding to or returning from an active incident as requested by an officer of a public agency or public utility.

PJH estimates that its drivers would need to use this exemption, on average, once every two weeks during the months of April through October.

The PJH application for exemption is filed in the docket for this notice.

## IV. Public Comments

On March 29, 2019, FMCSA published notice of this application and requested public comments (84 FR 12018). The Agency received three comments. The Commercial Vehicle Safety Alliance (CVSA) opposed this exemption, stating that the request is both unjustified and impractical. CVSA argued that the Federal HOS requirements exist to help prevent and manage driver fatigue and set forth a framework that, if followed, allows for drivers to get the rest necessary to operate their vehicles safely. CVSA argued that the Federal HOS requirements, if followed, allow drivers to get the rest necessary to operate their vehicles safely. Per CVSA, exemptions from Federal safety regulations have the potential to undermine safety while complicating the enforcement process. If granted, this exemption would place an excessive burden on the enforcement community and negatively impact safety.

CVSA concluded its comment with an emphasis on PJH's failure to meet a key component of a credible exemption request, *i.e.,* to identify adequately how its drivers would maintain an equivalent level of safety while operating under extended HOS requirements. Two other comments were filed by individuals—one favored the request, the other took no position either for or against the request.

## V. Equivalent Level of Safety

To ensure an equivalent level of safety PJH is offering the use of electronic logging devices, at least 2 hours off-duty during the requested 16-hour period, and infrequent use of the exemption if granted. According to PJH drivers would need to use the exemption on average once every 2 weeks during the months of April through October.

## VI. FMCSA Response

When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and on a continuing basis to help reduce the possibility of driver fatigue. The PJH application does not provide an analysis of the safety impacts the requested exemption from the HOS regulations may cause. Additionally, it provides no countermeasures that PJH would undertake to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations.

Although the applicant is offering at least 2 hours off duty during the requested 16 hour on duty period, the applicant offered no data or information that would suggest that allowing a 16-hour window for multiple consecutive days with only 8 hours off duty would achieve an equivalent level of safety.

## VII. FMCSA Decision

FMCSA has reviewed PJH's application and the public comments and has concluded that the requisite level of safety cannot be ensured, for the reasons discussed above. Accordingly, FMCSA denies the request for exemption.

Issued on: November 15, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25336 Filed 11–20–19; 8:45 am]

**BILLING CODE 4910–EX–P**

# DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0312]**

## Hours of Service of Drivers: American Bakers Association and International Dairy Foods Association; Application for Exemption

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

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny the joint request from the American Bakers Association (ABA) and International Dairy Foods Association (IDFA) for an exemption from the Federal hours-of-service (HOS) rules for commercial motor vehicle (CMV) drivers. The requested exemption would have covered rivers engaged in the delivery of baked goods and milk products in anticipation of a natural disaster or emergency, such as extreme weather events, natural disasters, etc. FMCSA analyzed the application and public comments, and determined that drivers operating under the proposed exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, FMCSA–2018–0312, in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 must also specify the effective period (up to 5 years) and explain the terms and conditions of an exemption. An exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

The American Bakers Association (ABA) represents the wholesale baking industry; the International Dairy Foods Association (IDFA) represents the dairy manufacturing and marketing industry. ABA/IDFA seek an exemption from the provisions of 49 CFR 395.3, ''Maximum driving time for property-carrying vehicles,'' for their drivers delivering ''essential food staples,'' particularly baked goods and milk products, in anticipation of natural disasters or other emergency conditions. The requested exemption would cover only the 72-hour period in advance of, during, and shortly after the emergency condition, when ABA/IDFA claim the hours-of-service (HOS) rules can be an unintended barrier to efficient disaster preparations and operations.

The applicants indicated that disaster conditions would include the events listed in the definition of ''Emergency'' in 49 CFR 390.5 but be modified to encompass conditions that are expected but have not yet occurred. The exemption would apply 72-hours in advance of the time that a natural disaster or emergency is reasonably anticipated until a reasonable time after the disaster has ended. The applicants state that, although some element of reasonable judgment is necessarily inherent in this proposed approach, a definition that is tied to § 390.23 would defeat the purpose of the exemption by forcing suppliers to wait for the issuance of an official Declaration of Emergency by the President, State governors, or FMCSA, which would often leave insufficient lead time to avoid the depletion of the merchandise from the shelves. Accordingly, the requested exemption would allow suppliers to use reasonable judgment based on early warning announcements, such as hazardous weather announcements. Per ABA/IDFA, the best way to prepare for anticipated disasters or emergencies is to increase delivery runs ahead of the impending situation.

In short, this exemption would allow suppliers of essential food staples to increase driving hours to pre-stock stores before an emergency made such deliveries more difficult or even impossible. The exemption would help avoid shortages of essential food staples at retail stores and food establishments that could otherwise result if deliveries are restricted by the generally applicable HOS rules in 49 CFR 395.

The application for exemption is in the docket for this notice.

## IV. Public Comments

On December 18, 2018, FMCSA published notice of this application and requested public comments (83 FR 64927). The Agency received 13 comments. Four commenters, including the Commercial Vehicle Safety Alliance (CVSA), opposed the exemption request. CVSA said it was both unjustified and impractical. Per CVSA, exemptions from Federal safety regulations have the potential to undermine safety while complicating the enforcement process. Furthermore, the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations exist to ensure that those operating in the transportation industry are equipped to do so safely. CVSA stated that, if granted, the exemption would burden the enforcement community excessively and impact safety negatively. CVSA added that exemptions cause confusion and inconsistency in enforcement, which undermines the very foundation of the Federal commercial motor vehicle (CMV) enforcement program—uniformity. CVSA insisted that regulations are effective only if they are clear and enforceable.

Four other commenters also opposed the application, indicating that the HOS ''blanket'' exemption requested by ABA/IDFA is covered by 49 CFR 390.23, which provides regulatory relief for regional and local declared emergencies.

Eight commenters supported the ABA/IDFA exemption. One said the following, ''In the current driver shortage, finding the capacity to deliver our products is hard enough. Ahead of a storm, where the need for bread dramatically increases, increasing delivery capacity is nearly impossible. If this exemption were to be granted, these companies would be able to utilize this flexibility to keep up with demands for our food products. The exemption would not only help our company meet this increased demand, but would also dramatically increase roadway safety by reducing the number of driver who run out of hours in traffic.''

## V. FMCSA Response and Decision

FMCSA has evaluated ABA/IDFA's joint application and the public comments and decided to deny the exemption. When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and on a continuing basis to help reduce the possibility of driver fatigue.

The ABA/IDFA application provides neither an analysis of the potential safety impacts of the requested exemption nor countermeasures to be undertaken to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. In addition, comments received—most notably those comments from CVSA—opposed the granting of the exemption as it could cause confusion and undermine enforcement.

The Agency cannot ensure that the exemption would achieve an equivalent level of safety for the following reasons:

1. The terms and conditions, as proposed in the application, would provide unlimited flexibility in: Driving more than 11-hours, following 10 consecutive hours off-duty; driving after the 14th hour of coming on duty; driving after accumulating 60 hours on duty in 7 consecutive days, or 70 hours on duty in 8 consecutive days; accumulating less than 10 consecutive hours off duty following a work shift. The exemption would not include specific criteria controlling drivers' work and rest schedules which makes it impossible to ensure there is an equivalent level of safety for drivers operating under the exemption. Also, the absence of specific criteria or terms

means the exemption could not be enforced.

2. The exemption would allow unlimited flexibility based on weather or other conditions which may or may not result in an emergency declaration. Relief would be provided in anticipation of problems. In fact, ABA/IDFA member companies would be allowed to determine whether the weather conditions warrant the use of the exemption based on their judgment or reasonable anticipation of the need for certain food products. Also, there would be no documentation clearly identifying which drivers are responding to the urgent need identified by the ABA/IDFA member companies. Enforcement officials would have no way of knowing whether a driver was operating under such an exemption except by asking him/her. FMCSA cannot delegate to private parties the inherently Federal authority to determine the applicability of an exemption from the Federal Motor Carrier Safety Regulations.

For the reasons discussed above, FMCSA denies the request for exemption.

Issued on: November 14, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25337 Filed 11–20–19; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0347]**

### Commercial Driver's License Standards: Application for Exemption; Navistar, Inc. (Navistar)

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

**ACTION:** Notice of final disposition; granting of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant an exemption to Navistar, Inc. (Navistar) and two drivers from the commercial driver's license (CDL) regulations for commercial motor vehicle (CMV) drivers, Mr. Thomas Nickels, Senior Vice President, Engineering Optimization, with MAN Truck & Bus SE (MAN) in Munich, Germany, and Mr. Lukas Walter, Senior Vice President, Engineering Powertrain for MAN, each of whom holds a valid German commercial license. MAN is partnering with Navistar to develop technological advancements in fuel economy and emissions reductions. Mr. Nickels and Mr. Walter need to test drive Navistar vehicles on U.S. roads to better understand product requirements in ''real world'' environments and verify results. Navistar believes that the requirements for a German commercial license ensure that operations under the exemption would likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

**DATES:** This exemption is effective November 21, 2019 and expires November 21, 2024.

**ADDRESSES:**

*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 Federal Docket Management System (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:** Ms. Pearlie Robinson, 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2018–0347 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from 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 also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments 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 reason for the granting or denial, and, if granted, the specific person or class of persons receiving the exemption and the regulatory provision or provisions from which the exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### III. Request for Exemption

Navistar has applied for an exemption for Mr. Thomas Nickels and Mr. Lukas Walter from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Both drivers are unable to obtain a CDL in any of the U.S. States due to their lack of residency in the United States. Copies of the exemption applications are included in the docket referenced at the beginning of this notice.

The exemption would allow these drivers to operate CMVs in interstate or intrastate commerce to help develop technology advancements in fuel economy and emissions reductions. Mr. Nickels and Mr. Walter need to drive Navistar vehicles on public roads to better understand product requirements for these systems in ''real world'' environments in the U.S. market. According to Navistar, both drivers will drive typically for no more than 8 hours per day for 2 consecutive days with 50 percent of the test driving on two-lane State highways and 50 percent on Interstate highways. The driving will consist of no more than 600 miles during a two-day period, at 300 miles per day. In all cases, drivers will be

accompanied by a U.S. CDL holder familiar with the routes to be traveled.

Mr. Nickels and Mr. Walter hold valid German commercial licenses and, as explained by Navistar in its exemption request, the requirements for that license ensure that, operating under the exemption, these drivers would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation. Furthermore, Navistar asserts that both drivers are familiar with the operation of CMVs worldwide. Navistar requests that the exemption cover the maximum allowable duration of 5 years.

**IV. Method To Ensure an Equivalent or Greater Level of Safety**

As for an equivalent level of safety, Navistar states that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. The Agency recently granted one of Navistar's drivers a similar exemption [April 15, 2019 (84 FR 15283)]. Since 2015, the Agency has granted Daimler drivers similar exemptions: [March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)]; July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742)]. The Agency has not received any information or reports indicating there have been safety performance problems with individuals holding German commercial licenses who operate CMVs on public roads in the United States.

**V. Public Comments**

On June 19, 2019, FMCSA published notice of this application and requested public comments (84 FR 28618). No comments were submitted to the docket.

**VI. FMCSA Decision**

Based upon the merits of this application, including Mr. Nickels' and Mr. Walter's extensive driving experience and safety records, FMCSA has concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

**VII. Terms and Conditions for the Exemption**

FMCSA grants Navistar, Mr. Thomas Nickels, and Mr. Lukas Walter an exemption from the CDL requirement in 49 CFR 383.23 to allow Mr. Nickels and Mr. Walter to drive CMVs in this country without a State-issued CDL, subject to the following terms and conditions:

(1) The drivers and carrier must comply with all other applicable provisions of the FMCSRs (49 CFR parts 350–399);

(2) The drivers must be in possession of the exemption document and a valid German commercial license;

(3) The drivers must be employed by and operate the CMV within the scope of duties for Navistar or its partner MAN;

(4) At all times while operating a CMV under this exemption, the drivers must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled;

(5) Navistar must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving these drivers; and

(6) Navistar must notify FMCSA in writing if these drivers are convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if:

(1) Mr. Nickels or Mr. Walter fails to comply with the terms and conditions of the exemption;

(2) the exemption results in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

**VIII. Preemption**

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: November 15, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25342 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0106]**

### Hours of Service of Drivers: Kimble Recycling & Disposal, Inc.; Application for Exemption

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to grant Kimble Recycling & Disposal, Inc.'s (KRD) request for an exemption from the 12-hour limit of the hours-of-service (HOS) short-haul exception. The exemption enables all KRD's drivers who operate commercial motor vehicles (CMVs) to collect waste and recycling materials to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours without losing their short-haul status. FMCSA has analyzed the application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** This exemption is effective November 21, 2019 and expires November 21, 2024.

**ADDRESSES:**

*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:** Ms. Pearlie Robinson, 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2019–0106 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 of the Agency 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 must specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

KRD seeks an exemption for approximately 320 drivers who operate CMVs to collect waste and recycling materials. These drivers qualify routinely for the short-haul exception in 49 CFR 395.1(e)(1); however, occasionally they cannot complete their duty day within 12 hours. KRD seeks an exemption to allow its drivers to continue to qualify for the short-haul exception up to the 14th hour after coming on duty.

KRD states that ELDs delay and distract its drivers working to collect waste and recycling materials because they require excessive interaction. The exemption application states that, because of frequent stops to pick up trash, its drivers are required to interact with the ELD ''hundreds if not thousands of times a day.'' KRD asserts that ELDs are not designed to accommodate operations such as theirs.

KRD notes that certain short-haul CMV drivers already operate up to 14 hours without forfeiting short-haul status. Drivers in the ready-mixed concrete industry enjoy a statutory exemption [49 CFR 395.1(e)(1)(ii)(B)], and FMCSA has granted an exemption for the asphalt-paving business [83 FR 3864, Jan. 26, 2018]. KRD asserts that its operations are similar to these industries as its drivers spend a significant portion of their days conducting non-driving duties.

## IV. Method To Ensure an Equivalent or Greater Level of Safety

In its application, KRD lists the following fatigue management programs and processes it would implement were the exemption granted: Observation Program; Routeware DriveCam Video Event Recorder Program; and the KRD Fatigued Driver Process. KRD noted that it incorporated elements of the North American Fatigue Management Program into its Fatigued Driver Process. Details of these plans are provided in KRD's application for exemption, available for review in the docket for this notice.

## V. Public Comments

On May 28, 2019, FMCSA published notice of this application and requested public comment [84 FR 24592]. The Agency received six comments. One commenter, Mr. Chuck Simmons, supported the exemption, writing that ''First and foremost, this is a company that takes Safety, and specifically fatigue management, very seriously. In fact, they 'get it' far more than many other motor carriers that I've encountered in my 17 years in this industry. It seems readily apparent that there would be no adverse safety impact by granting the requested exemption.''

Three commenters opposed the exemption; KRD wrote responses to those commenters. Mr. Michael Millard wrote, ''As local 100-air-mile radius drivers Kimble Recycling and Disposal, Inc., has no SMS data to determine HOS compliance.'' Mr. Millard asserted that KRD operated wholly in intrastate commerce and was not subject to the hours of service rules for interstate commerce. Mr. Millard concluded his comments by saying, ''Based on roadside inspection data I do not believe it is warranted for the FMCSA to issue an exemption as requested.''

In response to Mr. Millard's comments, KRD explained that it operates in interstate commerce and serves customers in both West Virginia and Ohio and that its SMS data is available on the internet. KRD indicated that it has no HOS violations.

The Commercial Vehicle Safety Alliance (CVSA) neither opposed nor supported the application. CVSA wrote that ''When considering this exemption request, FMCSA should consider its impacts on safety and the enforcement process.'' CVSA explained that exemptions have the potential to undermine safety while complicating the enforcement process. Additionally, CVSA said, ''If this exemption is granted, all drivers, managers, dispatchers and relevant staff should be required to complete the North American Fatigue Management Program training developed in partnership by FMCSA, Transport Canada and industry stakeholders as a comprehensive approach for managing fatigue. Required participation in the program will aid in mitigating any impact on safety additional exposure to fatigue causes.''

## VI. FMCSA Response and Decision

FMCSA has evaluated KRD's application and the public comments and decided to grant the exemption. The Agency believes that KRD's CMV drivers collecting waste and recycling materials who are exempted will likely achieve a level of safety that is equivalent to or greater than the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exemption will allow KRD's drivers to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours. The Agency has granted similar exemptions to the National Asphalt Pavement Association, Inc. [83 FR 3864, Jan. 26, 2018] and Waste Management Holdings, Inc. [83 FR 53940, Oct. 25, 2018]. FMCSA has no evidence that the safety of their operations has deteriorated.

Regarding the recommendation from CVSA for KRD's relevant staff to complete the North American Fatigue Management Program training, KRD reported in its application that it has reviewed and incorporated elements of the program into its Fatigued Driver Process.

The Agency emphasizes that this exemption does not allow any additional driving time during the work shift nor does it allow driving after the

14th hour from the beginning of the work shift. Drivers remain limited by the weekly limits and the employer must maintain accurate time records concerning the time the driver reports for work each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day. As KRD explained, drivers usually return to the work reporting location within 12 hours but the demands during certain periods necessitate work shifts going beyond 12 hours. Therefore, the exemption application should not be construed as a mechanism for the applicant to implement a new business model with all its drivers routinely extending their maximum work shifts from 12 to 14 hours. The exemption provides limited relief to the recordkeeping requirements for HOS for short-haul drivers who find it necessary to exceed the 12-hour limit, which impacts the type of HOS records required.

## VII. Terms and Conditions for the Exemption

- KRD drivers must have a copy of this notice in their possession while operating under the terms of the exemption. This notice serves as the exemption document and must be presented to law enforcement officials upon request.
- KRD drivers must return to the work reporting location and be released from work within 14 consecutive hours.

*Extent of the Exemption*

This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(ii)(A). KRD drivers must comply will all other applicable provisions of the FMCSRs.

*Preemption*

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

*Notification to FMCSA*

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

(a) Identity of the exemption: ''Kimble Recycling & Disposal, Inc;''

(b) Name of operating motor carrier;

(c) Date of the accident;

(d) City or town, and State, in which the accident occurred, or closest to the accident scene;

(e) Driver's name and license number;

(f) Vehicle number and State license number;

(g) Number of individuals suffering physical injury;

(h) Number of fatalities;

(i) The police-reported cause of the accident;

(j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

(k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

## VIII. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. Interested parties or organizations possessing information that would otherwise show that this motor carrier is not achieving the requisite statutory level of safety should immediately notify FMCSA. FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

Issued on: November 14, 2019.

**Jim Mullen,**

*Deputy Administrator.*

[FR Doc. 2019–25339 Filed 11–20–19; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2018–0082; Notice 2]**

### Yokohama Tire Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Yokohama Tire Corporation (YTC) has determined that certain Yokohama RY023 brand replacement commercial tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs) and Motorcycles.* YTC filed a noncompliance report dated July 12, 2018. YTC subsequently petitioned NHTSA on July 31, 2018, and submitted a supplemental petition on February 6, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of YTC's petition.

**FOR FURTHER INFORMATION CONTACT:** Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–3081.

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* YTC has determined that certain Yokohama brand RY023 replacement commercial tires do not fully comply with paragraph S6.5(d) and (j) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs) and Motorcycles* (49 CFR 571.119). YTC filed a noncompliance report dated July 12, 2018, pursuant to 49 CFR part 573, *Defects and Noncompliance Responsibility and Reports.* YTC subsequently petitioned NHTSA on July 31, 2018, and submitted a supplemental petition on February 6, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of YTC's petition was published with a 30-day public comment period, on June 21, 2019, in the **Federal Register** (84 FR 29280). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2018–0082.''

*II. Tires Involved:* Approximately 4,704 Yokohama RY023 size 11R22.5 16(LR H) 146/143L commercial tires, manufactured between February 2, 2018, and May 17, 2018, are potentially involved.

*III. Noncompliance:* YTC explains that the noncompliance was due to a mold error in which one sidewall, the serial sidewall, of subject tires incorrectly state the ply rating, load range and load capacity as required by paragraph S6.5 (d) and (j) of FMVSS No. 119.

Specifically, the tires were marked:

14 PR LOAD RANGE G
MAX. LOAD SINGLE 2800 kg (6175 lbs) at 720 kPa (105psi) COLD

MAX. LOAD DUAL 2650 kg (5840 lbs) at 720 kPa (105 psi) COLD

When they should have been marked:

16 PR LOAD RANGE H
MAX. LOAD SINGLE 3000 kg (6610 lbs) at 830 kPa (120 psi) COLD
MAX. LOAD DUAL 2725 kg (6005 lbs) at 830 kPa (120 psi) COLD

*IV. Rule Requirements:* Paragraph S6.5(d) and (j) of FMVSS No. 119, includes the requirements relevant to this petition:

• Except as specified in paragraph S6.5, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of paragraph S6.5.

• The maximum load rating and corresponding inflation pressure of the tire, shown as follows:

(Mark on tires rated for single and dual load): Max load single __kg (__lb) at __kPa (__psi) cold. Max load dual __kg (__lb) at __kPa (__psi) cold.

(Mark on tires rated for only for single load): Max load single __kg (__lb) at __kPa (__psi) cold.

• Markings must contain the letter designating the tire load range.

*V. Summary of Petition:* YTC described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, YTC submitted the following arguments:

1. This Petition concerns Yokohama 11R22.5 16PR RY023 commercial truck and bus replacement tires whose branding information incorrectly states the ply rating, load range and load capacity on one side (serial side) only, while the branding information on the other side (opposite serial side) is correct for the subject tires. Because of this mold branding error, these tires are not in compliance with the tire labeling requirement found in 49 CFR 571.119 S6.5(d) and (j), even though all of these tires were manufactured with the correct ply rating and load range.

2. YTC implemented verification countermeasures to prevent any recurrence of any incorrect tire markings. Further investigation determined that the suspect period ended when the incorrect mold had been removed from production on May 17, 2018, in the 19th production week of 2018. The 764 tires in containment will be repaired before they are sold.

3. Significantly, these tires were manufactured as designed and meet or exceed all applicable Federal motor vehicle safety performance standards. While the sidewall markings are correct on the opposite serial side, the sidewall markings on the serial side understate the construction and capacity of the subject tires. The misbranding of these tires is not a safety concern and also has no impact on the retreading, repairing and recycling industries. The affected tire mold has already been corrected and all future production will have the correct material shown on the sidewall.

4. NHTSA has studied the impact of tire labeling information on safety in the context of its rulemaking efforts under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. YTC stated that NHTSA's analysis concluded that tire construction information on a tire's sidewall is not relied upon by dealers and consumers in the selling or purchasing of tires and has an inconsequential impact on motor vehicle safety. In addition, YTC cited the following petitions that the agency has previously granted for similar noncompliances: *See* Sumitomo Rubber Industries, Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 13002 (March 26, 2018) and Goodyear Tire & Rubber Co., Grant of Petition for Decision for Inconsequential Noncompliance, 82 FR 18210 (April 17, 2017).

The Agency has studied the implications of tire labeling information on motor vehicle safety during the rulemaking process for the TREAD Act and the merits for a decision regarding the subject inconsequential noncompliance petition aligns with previous inconsequential petitions with similar noncompliances the agency has granted and as cited by YTC.

YTC concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

YTC's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

*VI. NHTSA's Analysis:* The purpose of the label stating the tire's load carrying capabilities as described in section S6.5(d), and the load range marking letter required by paragraph S6.5(j), is to inform tire purchasers and end-users about the load capacity of the tire. In the case of the subject tires, YTC explained that the information the load range letter is meant to convey understates the construction and capacity of the subject tire RY023 model and size 11R22.5. Specifically, the tires were marked with the load range ''G'' when in fact the correct load range is ''H.'' Because the tires were designed for the higher load capacity, ''H'' at 3000 kg for single load and 2725 kg for dual load, if a consumer followed the load range ''G'' as marked, indicating the tire was capable of withstanding a 2800 kg for single load and 2650 kg for dual load, they would be using the tire in a load-carrying capacity lower than the actual load-carrying capacity of the subject tires. On February 25, 2013, a similar petition for inconsequential noncompliance on was granted to Guizhou tyres with respect of a mismarking of a tire load range, in which was incorrectly marked as ''F'' when they should be tire load range ''G'' (see 78 FR 12828).

Because these subject tires have a greater load carrying capability than the marking load range ''G'' indicates, there is no risk of these tires being overloaded and thus, no risk to safety based on the incorrect label.

*VII. NHTSA's Decision:* In consideration of the foregoing, NHTSA finds that YTC has met its burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, YTC's petition is hereby granted and YTC is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that YTC no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after YTC notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2019–25223 Filed 11–20–19; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2019–0102]**

**RIN 2127–ZRIN**

### Advanced Driver Assistance Systems Draft Research Test Procedures

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for comments (RFC).

**SUMMARY:** NHTSA seeks public comment on a series of nine draft research test procedures developed by the agency to assess the performance of certain types of Advanced Driver Assistance Systems (ADAS) available to consumers. NHTSA is specifically requesting comment on whether these draft research test procedures adequately, objectively, and practically assess the system performance of the underlying ADAS in a test track environment. NHTSA intends to use these draft research test procedures to further its research goals by using the output from clearly defined test methods to help better understand system operation, performance, and potential limitations.

**DATES:** Comments must be received no later than January 21, 2020.

**ADDRESSES:**

*Documents:* The draft research test procedures described in this RFC are available for viewing in PDF format in Docket No. NHTSA–2019–0102.

*Comments:* You may submit comments, identified by Docket No. NHTSA–2019–0102, by any of the following methods:

- *Internet:* To submit comments electronically, go to the U.S. Government regulations website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* Written comments may be faxed to 202–493–2251.
- *Mail:* Send comments to 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:* If you submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- You may call Docket Management at 1–800–647–5527.

*Instructions:* For detailed instructions on submitting comments and additional information, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *https://www.transportation.gov/privacy.* To facilitate tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. All timely comments will be fully considered, regardless of whether commenters directly identify themselves. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**FOR FURTHER INFORMATION CONTACT:** *For research issues:* Mr. Garrick Forkenbrock, Research Engineer, Vehicle Research and Test Center, National Highway Traffic Safety Administration, 10820 SR 347, Bldg. 60, East Liberty, OH 43319. Telephone: 937–666–4511. Email: *garrick.forkenbrock@dot.gov. For legal issues:* Ms. Sara Bennett, Attorney-Advisor, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2992. Email: *sara.bennett@dot.gov.*

**SUPPLEMENTARY INFORMATION:** NHTSA seeks comment on the draft research test procedures listed below, which assess nine different ADAS technologies. As background, the agency develops different test procedures for different purposes. Most commonly, those test procedures are for rulemaking, New Car Assessment Program (NCAP), or research purposes. This RFC includes test procedures that have been developed for research purposes only. Research test procedures are used by the agency to evaluate a technology of interest and, when presented publicly, provide a basis from which gaps in test methodology or other specific deficiencies may be identified and resolved. In contrast, rulemaking test procedures are developed to support identified rulemaking efforts and, if a regulation is adopted, focus on ensuring that a technology meets the level of performance defined in the regulation and are used by the agency to determine compliance. Thus, the fact that NHTSA is researching a specific technology is not an indication that it will now or at any time initiate a rulemaking related to that technology or include that technology as part of NCAP. To the extent that research does inform future rulemaking efforts or revisions to NCAP, the agency will appropriately engage the public through public comment and other means during those processes.

NHTSA developed the draft test procedures made available today to research ways to objectively and practically assess the performance of ADAS technologies presently available to consumers on certain vehicles sold in the United States. NHTSA highlights that some of the research test procedures included in this RFC are in the early stages of development, while others are closer to being fully developed.

For light vehicles, these include:

- Active Parking Assist (APA) [1]
- Blind Spot Detection (BSD) [2]
- Blind Spot Intervention (BSI) [3]
- Intersection Safety Assist (ISA) [4]
- Opposing Traffic Safety Assist (OTSA) [5]
- Pedestrian Automatic Emergency Braking (PAEB) [6]

[1] National Highway Traffic Safety Administration (2019, August). *Active park assist system confirmation test* (DOT HS 812 714). Washington, DC: National Highway Traffic Safety Administration.

[2] National Highway Traffic Safety Administration (2018, June). *Blind spot detection system confirmation test (working draft).* Washington, DC: National Highway Traffic Safety Administration.

[3] National Highway Traffic Safety Administration (2019, July). *Blind spot intervention system confirmation test (working draft).* Washington, DC: National Highway Traffic Safety Administration.

[4] National Highway Traffic Safety Administration (2019, September). *Intersection safety assist system confirmation test (working draft).* Washington, DC: National Highway Traffic Safety Administration

[5] National Highway Traffic Safety Administration (2019, September). *Opposing traffic safety assist system confirmation test (working draft).* Washington, DC: National Highway Traffic Safety Administration.

[6] National Highway Traffic Safety Administration (2019, April). *Pedestrian automatic emergency brake system confirmation test (working draft).* Washington, DC: National Highway Traffic Safety Administration.

- Rear Automatic Braking [7]
- Traffic Jam Assist (TJA) [8]

For heavy vehicles, this includes:

- Forward Collision Warning (FCW) [9]
- Automatic Emergency Braking (AEB) [9]

Each draft procedure includes test scenarios designed to emulate real-world crash-imminent situations, all performed within the controlled confines of a test track. To ensure these tests are objective (*i.e.,* clear about exactly how they should be executed), and can be accurately and repeatedly performed, each draft procedure contains detailed specifications pertaining to test conduct including, but not limited to, the equipment, facilities, instructions, and tolerances needed to perform them in the most objective and consistent manner possible. While the procedures include draft evaluation criteria, there are no pass/fail assessments provided because they have been assembled for research purposes only.

NHTSA invites public comment on each of its draft research ADAS test procedures. Specifically, the agency seeks information related to the following areas of interest. In your responses, please clearly specify to which test procedure(s) your comments apply.

1. Can the test procedures be expected to assess adequately for the purposes of research, within practical limitations, the performance of the underlying ADAS technologies? If not, please provide specific reasons why, and suggestions for how they may be improved.

2. Do any of the draft research test procedures contain elements that may potentially confound the system operation and/or test results (*e.g.,* regarding test conduct)? If so, please indicate what those elements are and how they might be addressed and/or mitigated?

3. Are the draft research test procedures clearly written, understandable, and executable? If not, please provide specific areas for which clarification is necessary, and suggestions for how they may be improved.

4. Are the ranges of test speeds, speed combinations, and/or speed increments specified within each draft research test procedure reasonable? If not, please provide any data or evidence to support any claim of unreasonableness from a research perspective.

5. To reduce test burden for the assessment of some technologies for research purposes, the number of repeated trials per test condition is proposed to be less than or equal to seven based on our experience from past test procedure design work. Is this adequate, or should another number of repeated trials be performed for all technology/condition combinations to support an assessment of whether differences in the test results, for a given condition, are statistically significant?

6. Are there additional ADAS technologies NHTSA should be evaluating for research purposes? If so, please indicate what they are.

7. Are there existing, alternative test procedures for the ADAS technologies identified in this notice that NHTSA should consider? If so, please identify them and provide any comparisons/contrasts that might be useful to the agency.

**Public Participation**

*How can I be sure that my comments were received?*

If you submit comments by hard copy and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you submit comments electronically, your comments should appear automatically in Docket No. NHTSA–2019–0102 on *www.regulations.gov.* If they do not appear within two weeks of posting, NHTSA suggested that you call the Docket Management Facility at (202) 366–9826.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512)

*Will the agency consider late comments?*

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, at *www.regulations.gov,* identified by the docket number at the heading of this notice. Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the docket for new material.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.4.

**James Clayton Owens,**

*Acting Administrator.*

[FR Doc. 2019–25217 Filed 11–20–19; 8:45 am]

**BILLING CODE 4910–59–P**

[7] National Highway Traffic Safety Administration (2015, December). *Rear automatic braking feature confirmation test procedure).* Washington, DC: National Highway Traffic Safety Administration. *www.regulations.gov,* Docket No. NHTSA–2015–0119–0030.

[8] National Highway Traffic Safety Administration (2019, June). *Traffic jam assist system confirmation test (working draft).* Washington, DC: National Highway Traffic Safety Administration.

[9] National Highway Traffic Safety Administration (2019, March). *Test track procedures for heavy vehicle forward collision warning and automatic emergency braking systems.* Washington, DC: National Highway Traffic Safety Administration.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for [REG–106542–98] T.D. 9032

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Currently, the IRS is soliciting comments concerning REG–106542–98, T.D. 9032, Election to Treat Trust as Part of an Estate (§ 1.645–1).

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Election to Treat Trust as Part of an Estate.

*OMB Number:* 1545–1578.

*Regulation Project Number:* REG–106542–98, T.D. 9032

*Abstract:* This regulation describes the procedures and requirements for making an election to have certain revocable trusts treated and taxed as part of an estate. The Taxpayer Relief Act of 1997 added section 646 to the Internal Revenue Code to permit the election.

*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:* Individuals or households.

*Estimated Number of Respondents:* 10,000.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 5,000.

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: November 14, 2019.

**Philippe Thomas,**

*Senior IRS Supervisory Tax Analyst.*

[FR Doc. 2019–25242 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2011–34, Rules for Certain Rental Real Estate Activities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Revenue Procedure RP–125212–09, Rules for Certain Rental Real Estate Activities.

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke (202) 317–6009, at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Revenue Procedure 2011–34 Rules for Certain Rental Real Estate Activities.

*OMB Number:* 1545–2194.

*Abstract:* This Revenue Procedure Grants Relief Under Section 1.469–9(g) for Certain Taxpayers to Make Late Elections to Treat All Interests in Rental Real Estate as a Single Rental Real Estate Activity.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 2000.

*Estimated Total Annual Burden Hours:* 1,000.

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: November 15, 2019.

**Philippe Thomas,**

*Supervisory Tax Analyst.*

[FR Doc. 2019–25237 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Publication 1345

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Publication 1345, Handbook for Authorized IRS e-file Providers.

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Publication 1345, Handbook for Authorized IRS e-file Providers.

*OMB Number:* 1545–1708.

*Publication Number:* 1345.

*Abstract:* Publication 1345 informs those who participate in the IRS e-file Program for Individual Income Tax Returns of their obligations to the Internal Revenue Service, taxpayers, and other participants.

*Current Actions:* There are no changes being made to the publication at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200,000.

*Estimated Number of Responses:* 129,655,713.

*Estimated Time per Response:* 3 minutes.

*Estimated Total Annual Burden Hours:* 6,023,762.

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: November 14, 2019.

**Philippe Thomas,**

*Supervisory Tax Analyst.*

[FR Doc. 2019–25238 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8908

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8908, Energy Efficient Home Credit.

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Energy Efficient Home Credit.

*OMB Number:* 1545–1979.

*Form Number:* Form 8908.

*Abstract:* Congress passed Public Law 109–58, the Energy Policy Act of 2005, on August 8, 2005, enacting legislation providing a tax credit for contractors producing new energy efficient homes. We created Form 8908 to reflect new code section 45L which allows qualified contractors to claim a credit for each qualified energy-efficient home sold in tax years ending after December 31, 2005.

*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:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 198,000.

*Estimated Time per Respondent:* 2 hours 35 minutes.

*Estimated Total Annual Burden Hours:* 512,820.

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: November 14, 2019.

**Philippe Thomas,**

*Supervisory Tax Analyst.*

[FR Doc. 2019–25233 Filed 11–20–19; 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning proceeds of bonds used for reimbursement (§ 1.150–2(e)).

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Proceeds of Bonds Used for Reimbursement.

*OMB Number:* 1545–1226. Regulation Project Number: T.D. 8394.

*Abstract:* This regulation clarifies when the allocation of bond proceeds to reimburse expenditures previously made by an issuer of the bond is treated as an expenditure of the bond proceeds. The issuer must express a reasonable official intent, on or prior to the date of payment, to reimburse the expenditure in order to assure that the reimbursement is not a device to evade requirements imposed by the Internal Revenue Code with respect to tax exempt bonds.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments, and not-for-profit institutions.

*Estimated Number of Respondents:* 2,500.

*Estimated Time per Respondent:* 2 hours, 24 minutes.

*Estimated Total Annual Burden Hours:* 6,000.

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: November 14, 2019.

**Philippe Thomas,**

*Senior IRS Supervisory Tax Analyst.*

[FR Doc. 2019–25239 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8703

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8703, Annual Certification of a Residential Rental Project.

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Certification of a Residential Rental Project.

*OMB Number:* 1545–1038.

*Form Number:* 8703.

*Abstract:* Form 8703 is used by the operator of a residential rental project to provide annual information that the IRS will use to determine whether a project continues to be a qualified residential rental project under Internal Revenue Code section 142(d). If so, and certain other requirements are met, bonds issued in connection with the project are considered ''exempt facility bonds'' and the interest paid on them is not taxable to the recipient.

*Current Actions:* There is no change in the paperwork burden previously

approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 6,000.

*Estimated Time per Respondent:* 12 hours, 47 minutes.

*Estimated Total Annual Burden Hours:* 76,620.

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: November 6, 2019.

**Philippe Thomas,**

*Supervisory Tax Analyst.*

[FR Doc. 2019–25240 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Information Collection Tools

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

**DATES:** Written comments should be received on or before January 21, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, at 202–317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:** Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

*Title:* W–2 (Wage and Tax Statement), W–2c (Corrected Wage and Tax Statement). W–2AS (American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Wage and Tax Statements), W–3PR (Informe de Comprobantes de Retencio'n Transmittal of Withholding Statements, W–3c PR(TRANSMISION DE COMPROBANTES DE RETENCIO'N CORREGIDOS, Transmittal of Corrected Wage and Tax Statements), and W–3SS (Transmittal of Wage and Tax Statements).

*OMB Number:* 1545–0008.

*Form Numbers:* Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

*Abstract:* Employers report income and withholding information on Form W–2. Individuals use Form W–2 to prepare their income tax returns. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3, and W–3PR.

*Current Actions:* There are changes in the paperwork burden previously approved by OMB.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals, or households, not-for-profit institutions, farms, and Federal, state local or tribal governments.

*Estimated Number of Respondents:* 253,950,820.

*Estimated Time per Respondent:* varies.

*Estimated Total Annual Burden Hours:* 1.

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: November 6, 2019.

**Philippe Thomas,**

*Supervisory Tax Analyst.*

[FR Doc. 2019–25241 Filed 11–20–19; 8:45 am]

**BILLING CODE 4830–01–P**

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