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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 84 Friday,

No. 240 December 13, 2019

Pages 68019–68324

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2018–0026]

RIN 1557–AE48

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1621]

RIN 7100–AF15

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE90

Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule to revise the definition of ''high volatility commercial real estate (HVCRE) exposure'' in the regulatory capital rule. This final rule conforms this definition to the statutory definition of ''high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan,'' in accordance with section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The final rule also clarifies the capital treatment for loans that finance the development of land under the revised HVCRE exposure definition.

DATES: The final rule is effective on April 1, 2020.

FOR FURTHER INFORMATION CONTACT:

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Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan Climent, Manager, (202) 872–7526; Andrew Willis, Lead Financial Institutions Policy Analyst, (202) 912–4323; Matthew McQueeney, Senior Financial Institutions Policy Analyst, (202) 452–2942; Michael Ofori-Kuragu, Senior Financial Institutions Policy Analyst, (202) 475–6623, or Benjamin McDonough, Assistant General Counsel, (202) 452–2036; David Alexander, Senior Counsel, (202) 452–2877, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section; *bbosco@fdic.gov;* David Riley, Senior Policy Analyst, Capital Policy Section; *dariley@fdic.gov;* Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Beverlea S. Gardner, Senior Examination Specialist, *bgardner@fdic.gov,* Policy and Program Development; Michael Phillips, Counsel, *mphillips@fdic.gov,* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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I. Background

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) became law. Section 214 of EGRRCPA (section 214 of EGRRCPA) [1] added a new section, Section 51, to the Federal Deposit Insurance Act (FDI Act).[2] Section 51 of the FDI Act provides a statutory definition of high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan. Under section 51 of the FDI Act, the agencies may only require a depository institution to assign a heightened risk weight to a high volatility commercial real estate (HVCRE) exposure, as defined under the capital rule, if such exposure is an HVCRE ADC loan. Section 214 was effective upon enactment of EGRRCPA in May 2018.

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued an interagency statement on July 6, 2018 (interagency statement) that provided information on rules and associated reporting requirements that the agencies jointly administer and that EGRRCPA immediately affected, including the

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

[2] *See* 12 U.S.C. 1831bb.

HVCRE exposure definition in the capital rule (as affected by section 214 of EGRRCPA).[3] With respect to section 214 of EGRRCPA, the interagency statement provided that banking organizations could use available information to reasonably estimate and report only HVCRE ADC loans (as set forth in section 214 of EGRRCPA) for the purpose of reporting HVCRE exposures on Schedule RC–R, Part II of the Consolidated Reports of Condition and Income (Call Report)[4] and Schedule HC–R, Part II of FR Y–9C. The interagency statement further provided that banking organizations would be permitted to refine their estimates as they obtain additional information. The interagency statement also indicated that, alternatively, banking organizations would be permitted to continue to report and risk-weight HVCRE exposures in a manner consistent with the current capital rule and instructions to the Call Report or FR Y–9C until the agencies took further action.

On September 28, 2018, the agencies published an HVCRE notice of proposed rulemaking (HVCRE proposal) in the **Federal Register** to revise the HVCRE exposure definition in section 2 of the capital rule to conform to the statutory definition of an HVCRE ADC loan.[5] As part of the HVCRE proposal, to facilitate its consistent application, the agencies proposed to interpret certain terms in the revised definition of HVCRE exposure generally consistent with their usage in other relevant regulations or the instructions to the Call Report, where applicable, and requested comment on whether any other terms in the revised definition would also require interpretation. On July 23, 2019, the agencies proposed to clarify a portion of the HVCRE proposal by publishing in the **Federal Register** a subsequent proposal (Land Development proposal) that would have added a new paragraph to the proposed definition of HVCRE exposure.[6] The new paragraph would have provided that the exclusion for one- to four-family residential properties from the definition of HVCRE exposure does not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land, without any construction of one- to four-family residential structures.

In the HVCRE proposal, the agencies proposed to revise the definition of an HVCRE exposure for the purpose of calculating risk-weighted assets under both the standardized approach and the internal ratings-based approach (advanced approaches).[7] The proposal would have applied a 150 percent risk weight to loans that meet the revised definition of HVCRE exposure under the capital rule's standardized approach.[8] A banking organization that calculates its risk-weighted assets under the advanced approaches would have referred to the definition of an HVCRE exposure in section 2 of the capital rule for the purpose of identifying wholesale exposure categories.[9]

Consistent with section 214 of EGRRCPA, in the HVCRE proposal, the agencies proposed to exclude from the revised HVCRE exposure definition any loan made prior to January 1, 2015.[10] Unless a lower risk weight would have applied, banking organizations would have been permitted to apply a 100 percent risk weight to acquisition, development, or construction (ADC) loans originated prior to January 1, 2015, even if those loans were classified as HVCRE exposures under the superseded HVCRE exposure definition.[11]

As discussed further below, the agencies are adopting a final definition of HVCRE exposure with modifications based on comments received on the HVCRE and Land Development proposals. In adopting a final rule (final rule), the agencies made minor modifications to the proposed regulatory text by removing the separate paragraph describing the land development loans that qualify for the one- to four-family residential properties exclusion and including that same language in the part of the revised HVCRE exposure definition that allows for the exclusion of one- to four-family residential properties. By its terms, the statutory definition of an HVCRE ADC loan applies only to depository institutions. As stated in the HVCRE proposal, applying separate definitions of HVCRE ADC loan at the depository institution level and at the holding company level within an organization could result in undue burden without contributing meaningfully to any regulatory objective. Accordingly, the final rule applies the revised definition of an HVCRE exposure to all banking organizations that are subject to the agencies' capital rule, including bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations. Additionally, to facilitate the consistent application of the revised HVCRE exposure definition, the agencies are also clarifying the interpretation of certain terms in the revised HVCRE exposure definition generally to be consistent with their usage in other relevant regulations or the instructions to the Call Report and FR Y–9C, where applicable. The agencies plan to make conforming changes to the instructions of applicable regulatory reports (Schedule RC–R, Part II of the Call Report and Schedule HC–R, Part II of the FR Y–9C).[12]

The effective date of the final rule is April 1, 2020. Prior to the effective date of the final rule, banking organizations should refer to the interagency statement. On and after April 1, 2020, the final rule will supersede the HVCRE exposure section of the interagency statement, as well as the set of Frequently Asked Questions (FAQs) issued by the agencies pertaining to HVCRE exposures.[13] Accordingly, starting April 1, 2020, banking

[3] Board, FDIC, and OCC, *Interagency statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg 20180706a1.pdf.*

[4] OMB Control Nos.: OCC, 1557–0081; Board, 7100–0036; and FDIC, 3064–0052.

[5] *See* 83 FR 48990 (September 28, 2018). Section 214 of EGRRCPA generally defines an HVCRE ADC loan as a credit facility secured by land or improved real property that, primarily finances, has financed, or refinances the acquisition, development, or construction of real property; has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility. Additionally, in light of section 214 of EGRRCPA, in the HVCRE proposal the agencies stated that they will take no further action regarding the HVADC aspect of the October 27, 2017 proposal titled, Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996. 82 FR 49984 (October 27, 2017).

[6] *See* 84 FR 35344 (July 23, 2019).

[7] *See* 12 CFR part 217, subparts D and E (Board); 12 CFR part 3, subparts D and E (OCC); 12 CFR part 324, subparts D and E (FDIC).

[8] *See* 12 CFR 217.32(j) (Board); 12 CFR 3.32(j) (OCC); 12 CFR 324.32(j) (FDIC).

[9] *See* 12 CFR 217.131 (Board); 12 CFR 3.131 (OCC); 12 CFR 324.131 (FDIC).

[10] On January 1, 2015, the heightened risk weight for HVCRE exposures became effective for all banking organizations.

[11] The agencies did not propose to amend the treatment of past due exposures. Therefore, even if an exposure would no longer be considered an HVCRE exposure, it still could be subject to a heightened risk weight if it is 90 days or more past due or reported as nonaccrual.

[12] *See* 84 FR 4131 (February 14, 2019).

[13] ''Frequently Asked Questions on the Regulatory Capital Rule,'' OCC Bulletin 2015–23 (April 6, 2016), *available at: https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23.html.* ''SR 15–6: Interagency Frequently Asked Questions (FAQs) on the Regulatory Capital Rules'' (April 5, 2015), *available at: https://www.federalreserve.gov/supervisionreg/srletters/sr1506.htm;* FDIC FIL 16–2015, *available at https://www.fdic.gov/news/news/financial/2015/fil15016.html.*

organizations subject to the capital rule must evaluate ADC credit facilities in accordance with the revised definition of HVCRE exposure in this final rule.

II. Summary of the Proposals, Comments Received, and the Final Rule

In response to the HVCRE proposal, the agencies received 54 comment letters, and, in response to the Land Development proposal, the agencies received 9 comment letters. Numerous commenters supported revising the definition of HVCRE exposure in accordance with section 214 of EGRRCPA, though commenters were less supportive of the Land Development proposal. Many commenters offered suggestions on how the agencies should interpret several of the terms used in section 214 of EGRRCPA and in the revised definition of HVCRE exposure. Several commenters observed that the revised HVCRE exposure definition would be narrower than the previous regulatory definition of HVCRE exposure, and, that the revised definition would apply only to a relatively small number of exposures. These commenters suggested that the agencies should therefore remove the distinction between HVCRE and other ADC exposures under the capital rule's standardized approach and apply a flat 100 percent risk weight to all ADC loans. One commenter recommended eliminating the distinction between HVCRE and other ADC exposures only for banking organizations with less than $50 billion in total assets. One commenter, by contrast, opposed the proposal and indicated that it could lead to increased risk taking by banking organizations.

ADC loans, which are a subset of all commercial real estate exposures, generally exhibit heightened risks relative to other commercial real estate exposures. The revised HVCRE exposure definition is intended to capture those ADC exposures that have increased risk characteristics. These risks apply regardless of the size of the institution that has the exposure, and, therefore, the final rule applies the same HVCRE exposure definition to all banking organizations subject to risk-based capital requirements. The agencies have decided to maintain, as proposed, the 150 percent risk weight under the standardized approach for any loan that meets the revised definition of an HVCRE exposure. A banking organization that calculates its risk-weighted assets under the advanced approaches also would refer to the definition of an HVCRE exposure in section 2 of the capital rule for the purpose of identifying the appropriate wholesale exposure category for its ADC exposures.[14]

A. Evaluation of ADC Loans Originated After January 1, 2015

In the HVCRE proposal, the agencies invited comment on whether banking organizations should be required to reevaluate all ADC loans originated on or after January 1, 2015, under the revised HVCRE exposure definition. Several commenters stated that the agencies should clarify how a banking organization would apply the new definition to ADC loans originated after January 1, 2015, but before the effective date of the final rule. These commenters stated that banking organizations should be allowed, but not required, to reevaluate existing loans to determine whether they are HVCRE exposures under the revised definition.

In response to the comments, the final rule amends the HVCRE exposure definition to provide banking organizations with the option to maintain their current capital treatment for ADC loans originated between January 1, 2015, and the effective date of this final rule. Consistent with the interagency statement, a banking organization also will have the option to reevaluate any or all of its ADC loans originated on or after January 1, 2015, but before the effective date of the final rule, using the revised HVCRE exposure definition. Loans originated after the effective date of this final rule must be risk-weighted using the revised HVCRE exposure definition. If a loan is an HVCRE exposure, the loan will remain an HVCRE exposure until reclassified by the banking organization as a non-HVCRE exposure. Therefore, with respect to ADC loans originated between January 1, 2015, and prior to the effective date of the final rule that have been classified as non-HVCRE exposures, the agencies are not requiring banking organizations to reevaluate those exposures using the revised HVCRE exposure definition. In the case of a banking organization that modifies a loan or when the project is altered in a manner that materially changes the underwriting of the credit facility (such as increases to the loan amount, changes to the size and scope of the project, or removing all or part of the 15 percent minimum capital contribution in a project), the banking organization should treat the loan as a new ADC exposure and reevaluate the exposure to determine whether or not it is an HVCRE exposure.

B. Revised Scope of HVCRE Exposure Definition

In the HVCRE proposal, consistent with section 214 of EGRRCPA, the agencies proposed to require that a credit facility meet the following three-prong criteria in order to be classified as an HVCRE exposure. First, the credit facility must primarily finance or refinance the acquisition, development, or construction of real property. Second, the purpose of the credit facility must be to provide financing to acquire, develop, or improve such real property into income-producing real property. Finally, the repayment of the credit facility must depend upon the future income or sales proceeds from, or refinancing of, such real property.

The agencies received several comments on these three criteria. One commenter stated that the agencies should provide banking organizations more flexibility to interpret the statutory term ''primarily finances.'' This commenter stated that there may be instances where a credit facility should not be considered to ''primarily finance'' ADC activities, even where more than 50 percent of the proposed use of the funds is for ADC activities. Another commenter asked the agencies to state that a loan secured by an owner-occupied property does not ''primarily finance'' ADC activities because the financed property is not ''income producing.'' Another commenter asked the agencies to clarify the meaning of the statutory term ''income-producing real property'' and specify whether the term applies to hotel properties or real estate that are primarily occupied by a small business, but are leased in part.

In accordance with section 214 of EGRRCPA, the agencies also proposed to define HVCRE exposure as ''a credit facility secured by land or improved real property.'' The agencies stated in the HVCRE proposal that this statutory term should be applied consistently with the current Call Report definition for ''a loan secured by real estate.'' Under the Call Report and FR Y–9C instructions, ''a loan is secured by real estate'' if the estimated value of the real estate collateral at origination (after deducting all senior liens held by others) is greater than 50 percent of the principal amount of the loan at origination.[15] Therefore, for purposes of the revised HVCRE exposure definition, the HVCRE proposal would have clarified that a ''credit facility secured

[14] *See* 12 CFR 217.131 (Board); 12 CFR 3.131 (OCC); 12 CFR 324.131 (FDIC).

[15] *See* Federal Financial Institutions Examination Council, Instructions for Preparation of Consolidated Reports of Condition and Income: FFIEC 031 and FFIEC 041, GLOSSARY A–58 (2018); and FFIEC 051, GLOSSARY A–74 (2018).

by land or improved real property'' referred to a credit facility that meets this collateral criterion. Commenters generally supported using the Call Report instructions for determining whether a loan is secured by real estate and agreed that this clarification is consistent with the reference in section 214 of EGRRCPA to a ''credit facility secured by land or improved real property.''

For purposes of the final rule, consistent with the HVCRE proposal, the statutory term ''credit facility secured by land or improved real property,'' as it is used in the revised definition of HVCRE exposure, should be interpreted in a manner that is consistent with the current definition for ''a loan secured by real estate'' in the Call Report and FR Y–9C instructions. For clarity, the agencies refer to the following example, which is also contained in the glossary of the Call Report and FR Y–9C under the term, ''loan secured by real estate.'' Assume a banking organization loans $700,000 to a dental group to construct and equip a building that will be used as the dental group's office. The loan will be secured by both the real estate and the dental equipment. At origination, the estimated values of the building, upon completion, and the equipment are $400,000 and $350,000, respectively. The loan should be reported as a loan secured by real estate given that the value of the real estate collateral represents 57 percent of the loan amount. In contrast, if the estimated values of the building and equipment at origination are $340,000 and $410,000, respectively, the loan should not be reported as a loan secured by real estate as the real estate collateral only represents 48 percent of the loan amount.

In response to comments, the agencies also are clarifying that for purposes of the final rule, consistent with the reporting requirements, loans reported as ''Loans secured by nonfarm nonresidential properties'' in item 1.e of Schedules RC–C, Part I and HC–C of the Call Report and FR Y–9C, generally would not meet the criteria to be HVCRE exposures because such loans are not dependent upon future income or sales proceeds from, or refinancing of, the real property being financed for repayment. However, loans that finance nonfarm, nonresidential property construction or land development projects, as well as loans secured by vacant lots, generally would meet the three-prong scoping criteria for HVCRE exposures under the final rule.

Under both the HVCRE and Land Development proposals, ''other land loans'' (generally loans secured by vacant land, except land known to be used for agricultural purposes) were included within the scope of the revised HVCRE exposure definition. Several commenters expressed the view that loans to purchase vacant land should not automatically be considered HVCRE exposures, as these loans may not have the purpose of providing financing to develop the land or improve it into income-producing real property. These commenters requested that the HVCRE exposure definition apply only to a loan secured by vacant land if the loan is extended for the purpose of developing or improving the real property and repayment of the loan depends on the future income, sales proceeds, or refinancing of the developed or improved land. Multiple commenters stated that requiring a heightened risk weight for all loans secured by vacant land could discourage investments made for the purpose of future development.

For purposes of the final rule, the agencies are clarifying that under the final rule ''other land loans'' are not automatically included as an HVCRE exposure. Such loans would be included in the scope of the revised HVCRE exposure definition if they meet the three-prong criteria of an HVCRE exposure. For example, if a loan is made to acquire or refinance raw or developed land, and the source of repayment is dependent upon the income produced from resale or refinance of the land, then the loan meets all three prongs of the criteria. This would be consistent with the statutory definition and with the risks posed by such loans. The inclusion of such land loans in the scope of the revised HVCRE exposure definition is also consistent with the Call Report's and FR Y–9C's inclusion of ''other land loans'' with construction and development loans. Furthermore, treating such loans as HVCRE exposures is consistent with the Interagency Guidelines on Real Estate Lending Policies (referred to as ''interagency real estate guidelines''), which recognize the heightened risk profile of ''raw land'' loans, through the supervisory loan-to-value ratio assigned to such loans.[16] Aligning the treatment of loans secured by vacant land under the regulatory reporting requirements, the interagency real estate guidelines, and the regulatory capital requirements should promote a simpler framework that reflects the elevated risks generally posed by these exposures. In certain cases, land loans could still qualify for one of the exclusions under the revised HVCRE exposure definition. For example, if the repayment of a loan secured by vacant land is not dependent on income to be produced from the property, or on the future sale of the financed property, the banking organization may be able to exclude the loan from the HCVRE exposure category if the loan were made in accordance with the banking organization's loan underwriting standards for permanent financings and classified accordingly. Therefore, the agencies are clarifying for purposes of the final rule that ''other land loans'' or ''raw land'' loans that meet a banking organization's loan underwriting standards for permanent financings generally would not meet the three-prong criteria of an HVCRE exposure as a permanent financing would generally not be dependent upon future income or sales proceeds from, or refinancing of, the real property being financed for the repayment of such credit facility.

C. Exclusions From the Revised HVCRE Exposure Definition

Under the HVCRE proposal, the exposures described in the following paragraphs would have been excluded from the definition of HVCRE exposure:

1. One- to Four-Family Residential Properties

Consistent with section 214 of EGRRCPA, the HVCRE proposal would have excluded from the definition of HVCRE exposure, credit facilities that finance the acquisition, development, or construction of one- to four-family residential properties. In the HVCRE proposal, the agencies stated that the scope of the one- to four-family residential properties exclusion should be consistent with the definition of one- to four-family residential property set forth in the interagency real estate lending guidelines. The interagency real estate lending guidelines define a one- to four-family residential property as a property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under state law). The interagency real estate lending guidelines further state that the construction of condominiums and cooperatives should be considered multifamily construction for risk-management purposes, including for the purpose of determining the appropriate loan-to-value ratio. Accordingly, the HVCRE proposal stated that loans that finance the construction of

[16] *See* Board, OCC, and FDIC, *Interagency Guidelines For Real Estate Lending Policies:* 12 CFR part 208 Appendix C (Board); 12 CFR part 34 Appendix A (OCC); 12 CFR part 365 Appendix A (FDIC).

condominiums and cooperatives generally should not qualify for exclusion from the HVCRE exposure treatment as one- to four-family residential properties. Additionally, in order to qualify for this exclusion, the HVCRE proposal stated that credit facilities extended for the purpose of the acquisition, development, or construction of properties that are one- to four-family residential properties would include both loans to construct one- to four-family residential structures and loans that finance both the acquisition of the land and the development or construction of one- to four-family residential structures, including lot development loans. However, loans used solely to acquire undeveloped land would fall outside the scope of the one- to four-family residential properties exclusion regardless of how the land is zoned.

In response to the HVCRE proposal, the agencies received several comments on the scope of the proposed exclusion for one- to four-family residential properties from the HVCRE exposure definition. Many commenters stated that the HVCRE exposure definition should exclude loans to finance any development where the units are rentals or owner-occupied. Several commenters requested that the agencies align the one- to four-family residential properties exclusion with the reporting instructions for one- to four-family residential construction loans in the Call Report and FR Y–9C. Several commenters stated that if the agencies aligned the exclusion criteria with the regulatory reporting instructions, one- to four-unit condominium residential properties would qualify for the one- to four-family residential properties exclusion, as the loans are secured and reported as one- to four-family residential properties. These commenters also stated that if the agencies follow the definition of one- to four-family residential property loans set forth in the interagency real estate lending guidelines, the Call Report and FR Y–9C instructions should be amended to align with the revised HVCRE exposure definition.

After considering the comments on the HVCRE proposal, the agencies have decided to align the exclusion of loans that finance one- to four-family residential properties with the definition and reporting of one- to four-family residential property loans set forth in the Call Report and FR Y–9C, rather than the definition set forth in the interagency real estate lending guidelines. Allowing banking organizations to apply a consistent definition of one- to four-family residential property construction loans in this manner should simplify reporting requirements. Under the final rule, one- to four-family residential property construction loans reported in the Call Report and FR Y–9C (in item 1.a. (1) of Schedules RC–C, Part I and HC–C) will qualify for the one- to four-family residential property exclusion.[17] Construction loans secured by single-family dwelling units, duplex units, and townhouses are reported in the Call Report and FR Y–9C (in item 1.a. (1) of Schedules RC–C, Part I and HC–C) and therefore these types of loans will qualify for the one- to four-family residential property exclusion. Condominium and cooperative construction loans will also qualify for the one- to four-family residential property exclusion, even if the loan is financing the construction of a building with five or more dwelling units as long as the repayment of the loan comes from the sale of individual condominium dwelling units or individual cooperative housing units. This treatment is consistent with the definition and reporting of one- to four-family residential property loans set forth in the Call Report and FR Y–9C.

The agencies are also clarifying for purposes of the final rule that loans for multifamily residential property construction and land development purposes and loans secured by vacant lots in established multifamily residential sections would not qualify for the one- to four-family residential properties exclusion. The construction of rental apartment buildings with 5 or more dwelling units are reported in the Call Report and FR Y–9C (in item 1.a.(2) of Schedules RC–C, Part I and HC–C). The agencies also note that in instances where a credit facility's underwriting materially changes, which may occur when a project changes from relying on the sale of individual condominium dwelling units for repayment to relying instead on apartment rental income for repayment, the banking organization should reevaluate the exposure to determine whether or not it is an HVCRE exposure.

a. Land Development

Commenters on the HVCRE proposal indicated that it remained unclear whether a facility that finances the purchase of land to be developed into lots but does not finance the construction of dwellings would be considered one- to four-family residential property financing and excluded from the definition of HVCRE exposure. After reviewing the comments on the HVCRE proposal related to the one- to four-family residential property exclusion, the agencies determined that the regulatory capital treatment for lot development loans warranted further consideration and clarification. Therefore, the agencies issued the Land Development proposal, which proposed to add a new paragraph to the definition of HVCRE exposure providing that the exclusion for one- to four-family residential properties would not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land, without any construction of one- to four-family residential structures.

In order for a loan to be eligible for this exclusion, the Land Development proposal provided that the credit facility would be required to include financing for construction of one- to four-family residential structures. Therefore, a credit facility that combines the financing of land development and the construction of one- to four-family residential structures would qualify for the one- to four-family residential properties exclusion. However, a facility that solely finances land development generally would have met the three-prong criteria of an HVCRE exposure.

In response to the Land Development proposal, multiple commenters stated that treating land development loans as HVCRE exposures and thus applying heightened capital requirements to them could lead to increases in fees, costs, and interest rates for consumers who will purchase the completed one- to four-family residences. Another commenter stated that treating land development loans as HVCRE exposures could create undue barriers to the development of new housing, including affordable housing.

Several commenters acknowledged the heightened risk that land development and lot development loans pose to banking organizations and stated that such loans warrant heightened scrutiny. However, these commenters further stated that a banking organization's management of such risk should be assessed as part of the supervisory process and not addressed through a one-size-fits-all capital requirement.

Multiple commenters stated that for a variety of financial, tax, and liability reasons, standard practice is to establish one entity to develop lots and a separate entity to erect structures on the land. Commenters described that under the proposal, a loan to the first entity would

[17] *See* Federal Financial Institutions Examination Council, Instructions for Preparation of Consolidated Reports of Condition and Income: FFIEC 031 and FFIEC 041, RC–C–4 (2018); and FFIEC 051, RC–C–6 (2018).

be considered an HVCRE exposure, while a loan to the second entity would qualify for the exclusion. Another commenter stated that land development financing structures would prevent many loans from qualifying for the contributed capital exclusion because profits are normally and customarily distributed to investors throughout the project as lots are sold, rather than retained until the loan is paid off. Several commenters also stated that they believed the Land Development proposal was inconsistent with their interpretation of the statutory definition of HVCRE ADC.

One commenter on the Land Development proposal requested clarification on whether two loans originated simultaneously—a land acquisition and development loan and a loan for the construction of one- to four-family properties—would be eligible for the one- to four-family residential properties exclusion. The same commenter asked for clarification on whether a land development loan originated prior to the origination of the construction loan would cease to be an HVCRE exposure upon origination of the construction loan for one- to four-family properties.

After reviewing the comments to the Land Development proposal, the agencies believe that the proposed treatment of lot development loans for the purpose of the one- to four-family residential properties exclusion is more risk-sensitive and promotes safety and soundness, and therefore, the final rule includes the proposed treatment of these exposures. Under the final rule, this treatment would be consistent with the reporting instructions for such loans in the Call Report and FR Y–9C. Loans for the development of building lots and loans secured by vacant land are reported in item 1.a.(2), ''Other construction loans and all land development and other land loans'', of Schedules RC–C, Part I and HC–C unless the loan also finances the construction of one- to four-family residential properties. The final rule provides that loans used solely to acquire undeveloped land would not be within the scope of the one- to four-family residential properties exclusion, regardless of how the land is zoned. A credit facility should not be eligible for the one- to four-family residential properties exclusion if it does not finance the construction of one- to four-family residential structures.

The agencies do not anticipate that the final rule will have a negative impact on the financing of affordable housing. This is because credit facilities that finance the acquisition, development, or construction of real property projects for which the primary purpose is community development will continue to be excluded from the definition of HVCRE exposure. The exclusion for community development projects is described in more detail in the following section.

While several commenters stated that the risk associated with land development loans should be addressed through the supervisory process, rather than capital requirements, the agencies believe that including such loans in the revised HVCRE exposure definition is appropriate given that the agencies have long considered land development loans to be relatively riskier than construction loans. For example, consistent with this view, the interagency real estate lending guidelines require more stringent supervisory loan-to-value ratios for land development loans (75 percent) than for construction loans (80 or 85 percent depending on property type) because of elevated credit risk.[18] Furthermore, in some cases, land development loans may be made for speculative purposes, generate no cash flow prior to resale, and require other sources of cash to service the debt. For these reasons, the agencies believe that it is important to address the risk of these exposures through both the normal supervisory process and the regulatory capital standards.

In addition, the clarification of the treatment of land development loans in the revised HVCRE exposure definition is consistent with the statutory definition. As stated in the Land Development proposal, this revision would generally align with the instructions set forth in the Call Report and FR Y–9C in item 1.a.(1) of Schedules RC–C, Part I and HC–C. Exposures reported in this line item finance the construction of one- to four-family residential structures or dwelling units as other construction loans and all land development and other land loans are reported in item 1.a.(2) of Schedules RC–C, Part I and HC–C. Including specific language in the revised HVCRE exposure definition to clarify that loans that solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, will not qualify for the one- to four-family residential properties exclusion is intended to help banking organizations apply the definition consistently and promote uniform application of the capital rule.

[18] *See* Board, OCC, and FDIC, *Interagency Guidelines For Real Estate Lending Policies:* 12 CFR part 208 Appendix C (Board); 12 CFR part 34 Appendix A (OCC); 12 CFR part 365 Appendix A (FDIC).

In response to comments received on both proposals, the agencies are clarifying for purposes of the final rule that a facility that finances the purchase of land to be developed into lots, but does not include the construction of dwellings, does not qualify for the one- to four-family residential properties exclusion. Based on the risks arising from land development loans, the agencies believe it would be imprudent to exclude from heightened capital requirements loans that solely finance the preparation of land for the construction of new structures, but do not actually finance the construction of one- to four-family residential structures.

Under the final rule, combination land acquisition, lot development, and construction loans that finance the construction of one- to four-family residential structures qualify for the one- to four-family residential property exclusion, as these exposures are reported in the Call Report and FR Y–9C in item 1.a.(1) of Schedules RC–C, Part I and HC–C. Such combination loans that finance land development and one- to four-family residential structures generally pose less risk than loans that solely finance land acquisition or lot development. Applying the exclusion for the financing of one- to four-family residential properties in a manner consistent with the Call Report and FR Y–9C reporting requirements will simplify the reporting requirements for these exposures and provide greater consistency in the risk-based capital treatment of these exposures across banking organizations.

The agencies are also clarifying for purposes of the final rule that when a land acquisition and development loan and a loan to construct one- to four-family dwellings are originated simultaneously, the individual exposures must be evaluated separately to determine whether each loan on its own qualifies for an exclusion under the revised HVCRE exposure definition. Similarly, for a land loan that is originated prior to the origination of the construction loan, the land loan and the construction loan must be evaluated individually to determine whether either or both loans could be classified as a non-HVCRE exposure. Banking organizations should refer to the requirements for reclassifying an exposure as a non-HVCRE exposure, which are contained in the revised HVCRE exposure definition and described in more detail later in this **SUPPLEMENTARY INFORMATION.**

For the reasons stated above, the agencies are adopting the Land Development proposal as proposed.

Therefore, under the final rule, a facility that solely finances land development will be categorized as an HVCRE exposure, unless the exposure meets an exclusion criterion from the revised HVCRE exposure definition.

2. Community Development

Consistent with section 214 of EGRRCPA, the HVCRE proposal would have excluded from the revised HVCRE exposure definition credit facilities that finance the acquisition, development, or construction of real property projects for which the primary purpose is community development, as defined by the agencies' Community Reinvestment Act (CRA) regulations.[19] Generally, these types of projects include affordable housing, community services targeted to low- and moderate-income individuals, economic development through the financing of small farms and small businesses that meet a size and purpose test, and activities that revitalize and stabilize certain designated geographical areas.

As stated in the HVCRE proposal, under the agencies' CRA regulations, loans must be evaluated to determine whether they meet the criteria for community development projects. As an example, the agencies stated that an ADC loan conditionally taken out with U.S. Small Business Administration (SBA) section 504 financing would have to be evaluated under the criteria for community development projects in the agencies' CRA regulations in order to determine if the loan would qualify for this exclusion.

The agencies received numerous comments on the community development exclusion. A few commenters supported linking the exemption for community development loans to the CRA regulations and stated the proposed approach was clear and did not need further clarification. However, other commenters raised operational concerns with the exclusion. Multiple commenters objected to the proposal's requirement that loans conditionally taken out with SBA section 504 financing would have to be evaluated against the agencies' CRA regulations to determine whether such exposures could be excluded from the HVCRE exposure definition. These commenters stated that all SBA section 504 loans should be excluded from the definition of HVCRE exposure, regardless of whether they qualify as community development investments under the agencies' CRA regulations. Other commenters stated that the exclusion for community development exposures should apply, without exception, to all real estate loans, including interim lender loans and third-party lender loans, made in connection with either the SBA 7(a) or 504 loan program.

Notwithstanding the comments in favor of broadening the exclusion, the agencies are adopting the proposed community development exclusion in the final rule without modification. Referring to the CRA regulations[20] to determine whether an exposure qualifies for the community development exclusion in the revised definition of HVCRE exposure is consistent with the agencies' practice of looking to the same or substantially similar terms in other regulations or regulatory reporting instructions to clarify the interpretation of the statutory definition of an HVCRE ADC loan.

The agencies note that it is possible that some loans extended in connection with SBA guarantees or participations may not meet the criteria for community development under the agencies' CRA regulations. The final rule does not contain a broad exclusion from the HVCRE exposure definition for all loans made in connection with SBA programs. An ADC loan that is not conditionally guaranteed by a U.S. government agency or does not qualify for the community development exclusion should be categorized as an HVCRE exposure, unless the exposure meets another exclusion criterion in the final rule. While no broad exemption for loans made in connection with SBA programs exists under the final rule, the agencies generally view the SBA 7(a) guaranty to the lender as ''conditional,'' based on the lender following certain requirements established by the program. As permitted by the capital rule, the portion of a loan conditionally guaranteed by a U.S. government agency receives a 20 percent risk weighting under the standardized approach in the capital rule.

Additionally, the agencies are clarifying for purposes of the final rule that some interim-lender loans and third-party lender loans, made in connection with the SBA 504 loan program, may be considered in certain instances to be bridge loans. Bridge loans generally do not qualify as permanent financing because the cash flow being generated by the real property usually is insufficient to support the debt service and expenses of the real property. Bridge loans that finance ADC projects often pose greater credit risk than permanent loans, and, therefore, should be subject to a higher risk weight. However, if an interim-lender loan or third-party lender loan made in connection with the SBA 504 loan program meets the criteria for community development under the agencies' CRA regulations, the exposure could be excluded from the HVCRE exposure definition.

3. Agricultural Land

In the HVCRE proposal, the agencies proposed to exclude from the revised HVCRE exposure definition credit facilities financing the acquisition, development, or construction of agricultural land. The **SUPPLEMENTARY INFORMATION** to the HVCRE proposal stated that ''agricultural land,'' for the purpose of the revised HVCRE exposure definition, should have the same meaning as ''farmland,'' as used in the Call Report and FR Y–9C instructions.[21] In these instructions, the term ''farmland'' includes all land known to be used or usable for agricultural purposes but excludes loans for farm property construction and land development purposes.

Two commenters stated that the proposed exemption for agricultural land was clear and did not need further clarification. Accordingly, the agencies are adopting this proposed exclusion from the definition of HVCRE exposure without change.

4. Loans on Existing Income-Producing Properties That Qualify as Permanent Financings

The revised definition of HVCRE exposure in the HVCRE proposal would have excluded credit facilities that finance the acquisition or refinancing of existing income-producing real property secured by a mortgage on such property, so long as the cash flow generated by the real property covers the debt service and expenses of the property in accordance with the lender's underwriting criteria for permanent loans. The agencies also proposed to exclude credit facilities financing improvements to existing real property secured by a mortgage on such property.

Commenters generally supported this aspect of the HVCRE proposal. The agencies note that they may review the reasonableness of a supervised entity's underwriting criteria for permanent loans through the supervisory process to

[19] 12 CFR part 24 (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC).

[20] 12 CFR part 24 (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC). See also Interagency Questions and Answers Regarding Community Reinvestment, which provide guidance to financial institutions and the public on the agencies' CRA regulations. 78 FR 69671 (November 20, 2013).

[21] For the definition of loans secured by farmland, see the Call Report Instructions for Schedule RC–C, Part I, Item 1.b, and the FR Y–9C Instructions for Schedule HC–C, Part I, Item 1.b.

ensure the real estate lending policies are consistent with safe and sound banking practices. The agencies are adopting this exclusion from the proposed definition of HVCRE exposure without modification.

5. Certain Commercial Real Property Projects

The HVCRE proposal would have excluded from the revised HVCRE exposure definition credit facilities for certain commercial real property projects that are underwritten in a safe-and-sound manner in accordance with the interagency real estate lending guidelines and where the borrower has contributed a specified amount of capital to the project. The HVCRE proposal provided that a credit facility financing a commercial real property project would be required to meet four criteria to qualify for this exclusion from the revised HVCRE exposure definition. First, the loan-to-value ratio must be less than or equal to the applicable supervisory loan-to-value ratio in the interagency real estate lending guidelines. Second, the borrower must have contributed capital to the project of at least 15 percent of the real property's appraised ''as completed'' value. Third, the required capital must be contributed prior to the banking organization's advancement of funds, except for nominal sums meant to secure the banking organization's lien on the real property. Fourth, the 15 percent capital contribution must be contractually required to remain in the project until the loan can be reclassified as a non-HVCRE exposure.

a. Contributed Capital

As proposed, the HVCRE exposure definition provided that cash, unencumbered readily marketable assets, development expenses paid out-of-pocket, and contributed real property or improvements could count as forms of contributed capital. The agencies stated that a banking organization could consider costs incurred by the project and paid by the borrower, prior to the advancement of funds by the banking organization, as out-of-pocket, development expenses paid by the borrower.

The HVCRE proposal provided that the value of contributed real property means the appraised value of real property contributed by the borrower as determined under the appraisal standards prescribed by section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339). The agencies further stated that the value of the real property that could count toward the 15 percent contributed capital requirement would be reduced by the aggregate amount of any liens on the real property securing the HVCRE exposure.

Several commenters agreed with this aspect of the proposal, noting that it is generally consistent with industry practice. A few commenters asked the agencies to clarify whether funds borrowed from a third party (such as another banking organization, an owner or parent organization, or a related party) could be included in a borrower's capital contribution. One commenter also asked the agencies to clarify if other real estate outside of the project that has been pledged toward the loan could count toward the 15 percent contributed capital requirement.

A few commenters asked the agencies to clarify how a borrower could contribute readily marketable assets (such as securities) to a project for the purpose of this exclusion. These commenters noted that the agencies previously have not allowed for pledged assets to count as borrower-contributed capital. The commenters stated that requiring a borrower to sell such assets and contribute the cash proceeds would render this provision of the statutory language meaningless, since borrower-contributed capital in the form of cash is addressed separately.

In response to the questions about borrowed funds as a form of capital contribution, the agencies are clarifying for purposes of the final rule that any such borrowed funds should not be derived from, related to, or encumber the project that the credit facility is financing or encumber any collateral that has been contributed to the project to ensure that tangible equity is invested in the project. Additionally, the recognition of any contribution of funds to a project must be done so in conformance with safe and sound lending practices and should be in accordance with the banking organization's underwriting criteria and its internal policies.

In addition, for purposes of the final rule, contributed real property or improvements should be directly related to the project to be eligible to count toward the 15 percent contributed capital requirement. Real estate not developed as part of the project should not be counted toward the contributed capital requirement under the revised HVCRE exposure definition.

For purposes of the final rule, the agencies are clarifying that they would interpret the statutory term ''unencumbered readily marketable assets'' for the purpose of the revised HVCRE exposure definition consistent with the definition and treatment of readily marketable collateral contained within the interagency real estate lending guidelines. Consistent with the interagency real estate lending guidelines, readily marketable collateral means insured deposits, financial instruments, and bullion in which the lender has a perfected interest. For collateral to be considered ''readily marketable'' by a lender, the lender's expectation would be that the financial instrument and bullion would be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral. The agencies note that the reasonableness of a lender's underwriting criteria may be reviewed through the supervisory process to ensure the real estate lending policies are consistent with safe and sound banking practices. With the aforementioned clarifications, the agencies are finalizing this aspect of the proposal without change.

b. ''As Completed'' Value Appraisal

The HVCRE proposal would have required that the 15 percent capital contribution be calculated using the real property's appraised ''as completed'' value. In the proposal, the agencies stated that they would permit the use of an ''as is'' appraisal in instances where an ''as completed'' value appraisal was not available, such as in the case of purchasing raw land without plans for development in the near term. In addition, the agencies stated they would allow the use of an evaluation of the real property instead of an appraisal to determine the ''as completed'' appraised value, for purposes of the revised HVCRE exposure definition, where the agencies' appraisal regulations [22] permit evaluations to be used in lieu of appraisals.

A few commenters asked the agencies to allow greater flexibility in applying the appraisal requirement. The commenters stated that measuring the capital contribution relative to an appraised ''as stabilized'' value may be appropriate for certain projects. Another commenter suggested allowing the lower of cost or appraised value for the purpose of calculating the ''as completed'' value. Section 214 of

[22] *See* OCC: 12 CFR part 34, subpart C; Board: 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G; and FDIC: 12 CFR part 323.

EGRRCPA specifically requires an appraised ''as completed'' value for the contributed capital exclusion from the statutory definition of HVCRE ADC loan. Therefore, other than the clarifications contained in this **SUPPLEMENTARY INFORMATION** pertaining to ''as is'' appraisals for raw land loans and evaluations for loans in amounts under certain specified thresholds, the agencies are adopting this aspect of the proposal without change.

c. Project

In the HVCRE proposal, the agencies stated that the 15 percent capital contribution and the ''as completed'' value appraisal would be measured in relation to a ''project.'' The agencies noted that some credit facilities for the acquisition, development, or construction of real property may have multiple phases as part of a larger construction or development project. The agencies stated that in the case of a project with multiple phases, in order for a loan financing a phase to be eligible for the contributed capital exclusion, the phase must have its own appraised ''as completed'' value or an appropriate evaluation in order for it to be deemed a separate ''project'' for the purpose of the 15 percent capital contribution calculation.

A few commenters asked the agencies to clarify whether individual phase-level appraisals would always be required. Another commenter asked whether it would be possible to value all the phases of a multiphase project as one project, stating that obtaining individual phase-level appraisals may not always be necessary or appropriate.

The agencies are adopting this aspect of the rule as proposed. For purposes of the final rule, the agencies expect that each project phase being financed by a credit facility have a proper appraisal or evaluation with an associated ''as completed'' value. Where appropriate and in accordance with the banking organization's applicable underwriting standards, a banking organization may look at a multiphase project as a complete project rather than as individual phases.

6. Reclassification as a Non-HVCRE Exposure

Consistent with section 214 of EGRRCPA, for purposes of the HVCRE proposal, the agencies stated that a banking organization would have been allowed to reclassify an HVCRE exposure as a non-HVCRE exposure when the substantial completion of the development or construction on the real property has occurred and the cash flow generated by the property covered the debt service and expenses on the property in accordance with the banking organization's loan underwriting standards for permanent financings. Commenters generally supported allowing a banking organization to reclassify an HVCRE exposure as a non-HVCRE exposure once the exposure meets the statutory criteria for such reclassification as a non-HVCRE exposure. One commenter requested that the agencies provide more specificity with regard to the terms that agencies would expect to be included in a lender's underwriting standards for permanent financing.

The agencies are clarifying for purposes of the final rule that the reclassification criteria from an HVCRE exposure to a non-HVCRE exposure relies on the banking organization's loan underwriting standards for permanent financings. The agencies expect a banking organization to have prudent, clear, and measurable underwriting standards. The reasonableness of a banking organization's underwriting criteria for permanent loans may be reviewed through the supervisory process. The agencies are adopting this aspect of the proposal without change.

7. Related Interagency Guidance

On April 6, 2015, the agencies published FAQs on the capital rule, including FAQs on HVCRE exposures.[23] In the HVCRE proposal, the agencies invited comment on the potential advantages and disadvantages of incorporating the agencies' interpretations of the terms used in the revised HVCRE exposure definition into the rule text or in another published format (such as guidance or another FAQ document). A few commenters addressed this aspect of the proposal and stated that the agencies should rescind or withdraw any existing FAQs that are no longer in effect. Some commenters stated that the agencies should publish new FAQs as necessary and issue new interpretations of the revised definition of HVCRE exposure only after first publishing them for notice and public comment. One commenter stated that the Interagency Guidance on CRE Concentration Risk Management[24] should be adjusted to reflect the revised HVCRE exposure definition. Two commenters stated that the agencies should sponsor periodic industry forums to monitor the application and administration of rules pertaining to commercial real estate markets. According to the commenters, these forums would allow stakeholders to provide transparent feedback to the agencies on the implementation of the capital rule.

After reviewing the comments received, the agencies have decided to rescind all outstanding HVCRE exposure-related FAQs upon the effective date of the final rule. FAQs related to topics other than the superseded definition of HVCRE exposure will not be rescinded. Banking organizations that have questions about the final rule should contact their primary federal supervisor. In addition, upon the effective date of the final rule, the HVCRE exposure section of the interagency statement will no longer be applicable. Banking organizations must thereafter evaluate ADC credit facilities in accordance with the revised definition of HVCRE exposure in this final rule.

III. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections relate to the regulatory capital rules for each agency. However, the agencies expect that these information collections will not be affected by this final rule and therefore no submissions will be made under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part

[23] ''Frequently Asked Questions on the Regulatory Capital Rule,'' OCC Bulletin 2015–23 (April 6, 2016), *available at: https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23.html.* ''SR 15–6: Interagency Frequently Asked Questions (FAQs) on the Regulatory Capital Rules'' (April 5, 2015), *available at: https://www.federalreserve.gov/supervisionreg/srletters/sr1506.htm;* FDIC FIL 16–2015, *available at https://www.fdic.gov/news/news/financial/2015/fil15016.html.*

[24] ''Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices: Interagency Guidance on CRE Concentration Risk Management,'' OCC Bulletin 2006–46 (December 6, 2006), *available at: https://www.occ.gov/news-issuances/bulletins/2006/bulletin-2006-46.html.* ''SR 07–1: Interagency Guidance on Concentrations in Commercial Real Estate'' (January 4, 2007), *available at: https://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* FDIC FIL 104–2006, *available at https://www.fdic.gov/news/news/financial/2006/fil06104.html.*

1320) for each of the agencies' regulatory capital rules.[25]

The final rule also requires changes to the Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052 (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)), and Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), which will be addressed in separate **Federal Register** notices.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a final rule, to prepare a final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the 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 final rule would not have a significant economic impact on a substantial number of small entities.

As of December 31, 2018, the OCC supervises 782 small entities.[26]

The final rule applies to all OCC-supervised depository institutions, except for qualifying community banking organizations electing to use the Community Banking Leverage Ratio Framework. Two hundred and eleven small OCC-supervised institutions report HVCRE exposures. Therefore, the rule will affect a substantial number of small entities. However, the OCC does not find that the impact of this final rule will be economically significant.

Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

The final rule impacts three principal areas: (1) The impact associated with implementing revisions to the capital rule to make the definition of an HVCRE exposure consistent with the new statutory definition; (2) the capital impact associated with implementing revisions to the one- to four-family residential properties exclusion in the revised HVCRE exposure definition and, (3) the impact associated with the time required to update policies and procedures.

As described in the Supplementary Information section in the preamble to this final rule, the OCC believes the change to the definition of HVCRE exposure will result in fewer loans being deemed HVCRE exposures. Therefore, the amount of capital required will decrease for impacted OCC-supervised entities. Further, the OCC believes no currently reported non-HVCRE acquisition, development, or construction (ADC) exposures will be reclassified as HVCRE exposures, and thus there will be no additional compliance burden to OCC-supervised entities for the non-HVCRE component of their ADC portfolios. The final rule will not require OCC-supervised entities to amend previously filed reports as OCC-supervised entities adjust their estimates of existing HVCRE exposures. This will serve to minimize the compliance burden for OCC-supervised entities.

Compliance burdens that OCC-supervised entities may face include: (1) Updating policies and procedures to classify newly issued HVCRE loans; and (2) time spent reevaluating existing HVCRE exposures in order to determine if any are eligible to be reclassified and thus receive a lower risk-weight of 100 percent; and (3) updating policies and procedures to identify whether or not a newly issued land development loan is eligible for the one- to four-family residential properties exclusion in the revised HVCRE exposure definition.

Based on the OCC's supervisory experience, OCC staff estimates that it would take an OCC-supervised institution, on average, a one-time investment of one business week, or 40 hours, to update policies and procedures to classify newly issued HVCRE loans and to re-evaluate existing HVCRE exposures, and a one-time investment of one business day, or 8 hours, to update policies and procedures to classify newly issued land development loans.

The OCC's threshold for a significant effect is whether cost increases associated with a rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of a small bank's total non-interest expense. Institutions that do not report HVCRE exposures will incur an estimated one-time compliance cost of $2,280 per institution (20 hours × $114 per hour), while those that report HVCRE exposures will incur an estimated one-time compliance cost of $4,560 per institution (40 hours × $114 per hour). Additionally, updating policies and procedures regarding classifying land development loans will result in an estimated one-time compliance cost of $912 per institution (8 hours × $114 per hour). OCC staff finds that the cost of complying with the final rule will not exceed either of the thresholds for a significant impact on any OCC-supervised small entities.

For this reason, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 603(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA. The RFA requires an agency to prepare a final regulatory flexibility analysis unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $600 million or less (small banking organization).[27] As of June 30, 2019, there were approximately 2,976 small bank holding companies,

[25] The OCC and FDIC submitted their information collections to OMB at the proposed rule stage. However, these submissions were done solely in an effort to apply a conforming methodology for calculating the burden estimates and not due to the proposed rule change in the definition of HVCRE exposure. In particular, the change to the definition of HVAC exposure at the proposed stage, and now at the final rule stage, does not result in a change in the current burden. OMB filed comments requesting that the agencies examine public comment in response to the proposed rule and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. The agencies received no comments on the information collection requirements. Since the proposed rule stage, the agencies have conformed their respective methodologies in a separate final rulemaking titled, *Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations,* 84 FR 4222 (February 14, 2019), and have had their submissions approved through OMB. As a result, the agencies information collections related to the regulatory capital rules are currently aligned and therefore no submission will be made to OMB.

[26] The OCC calculated the number of small entities using 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 counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

[27] *See* 13 CFR 121.201. Effective August 19, 2019, the SBA revised the size standards for banking organizations to $600 million in assets from $550 million in assets. 84 FR 34261 (July 18, 2019).

133 small savings and loan holding companies, and 537 small SMBs.

The Board has considered the potential impact of the final rule on small entities in accordance with the RFA and has prepared a final RFA analysis detailed below. Based on the Board's analysis, and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial of number of small entities.

As discussed in this Supplementary Information, the final rule would revise the definition of HVCRE exposure to conform to the statutory definition of ''high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan,'' in accordance with section 214 of EGRRCPA. The final rule would also clarify that certain land development loans as defined in the Call Report and FR Y–9C instructions are included in the revised definition of HVCRE exposure.

For purposes of the standardized approach, loans that meet the revised definition of an HVCRE exposure would receive a 150 percent risk weight under the capital rule's standardized approach. A banking organization that calculates its risk-weighted assets under the advanced approaches of the capital rule would refer to the definition of an HVCRE exposure in section 2 of the capital rule for purposes of identifying wholesale exposure categories and wholesale exposure subcategories. Based upon data reported on the FR Y–9C and on Call Report information, as of June 30, 2019, about 19 percent of state member banks, bank holding companies, and savings and loan holding companies report holdings of HVCRE exposures.

The final rule would apply to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's capital rule. Certain bank holding companies, and savings and loan holding companies are excluded from the application of the Board's capital rule. In general, the Board's capital rule only applies to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding Company and Small Savings and Loan Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than $3 billion in total assets that also meet certain additional criteria.[28] Thus, most bank holding companies and savings and loan holding companies that would be subject to the final rule exceed the $600 million asset threshold at which a banking organization would qualify as a small banking organization.

In assessing whether the final rule would have a significant impact on a substantial number of small entities, the Board has considered the final rule's capital impact as well as its compliance, administrative, and other costs. As of June 30, 2019, there were 157 small state member banks and three small bank or savings and loan holding companies that reported combined HVCRE exposures totaling $670 million and one- to four family residential construction loans totaling $1.2 billion. To estimate the capital impact of the final rule, the Board assumed a range of 75 to 95 percent of one- to four family residential construction loans would remain exempt from the revised definition of HVCRE exposure. Based on this assumption, the difference in required capital would be in the range of $7 million to $36 million for small banking organizations supervised by the Board.

In addition to capital impact, the Board has considered the compliance, administrative, and other costs associated with the final rule. Given that the final rule does not impact the recordkeeping and reporting requirements that affected small banking organizations are currently subject to, there would be no change to the information that small banking organizations must track and report. Some small banking organizations may incur costs associated with updating internal policies to reflect the revised definition of HVCRE exposure, including the treatment of land development loans. However, because the final rule would clarify the treatment of HVCRE exposure and land development loans that may currently be in effect at many small banking organizations, the Board does not anticipate that a substantial number of small banking organizations will incur significant costs to update internal systems or policies to reflect the revised HVCRE exposure definition. The agencies separately are updating relevant reporting forms to the extent necessary to align with the capital rule.

The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there are no significant alternatives to the final rule. In light of the foregoing, the Board does not believe that the final rule will have a significant economic impact on a substantial number of small entities.

FDIC: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rule on small entities.[29] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[30] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2019, the FDIC supervised 3,424 depository institutions,[31] of which 2,665 were considered small entities for the purposes of RFA. As of that date, 2,081 small, FDIC-supervised institutions reported a positive value on Call Report schedule RC–C 1.a(2) (other construction loans and all land development loans and other land loans), 680 reported holding some volume of HVCRE loans, and 2,091 reported some volume of HVCRE or report a positive value on RC–C 1.a(2). The rule revises the capital treatment of HVCRE and certain land development loans. Therefore, the FDIC estimates that the rule is likely to affect a substantial

[28] *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

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

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

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

number, 2,091 (78.5 percent), of small, FDIC-supervised institutions.[32]

This rule removes certain loans from the definition of an HVCRE exposure and therefore, reduces the risk weight from 150 percent to 100 percent on some of the HVCRE loans held in portfolio by small, FDIC-supervised institutions, resulting in a reduction in their risk-based capital requirements. Institutions are permitted, but not required, to reclassify HVCRE loans that they currently hold to take advantage of the lower risk weight. The rule also clarifies that land development loans for one- to four family residential properties should be considered HVCRE, and therefore should receive a 150 percent risk weight, going forward unless such loans would qualify for a different exclusion. Institutions are not required to reclassify as HVCRE any land development loans they currently hold that would, under the rule, receive a 150 percent risk weight. Instead, they may continue to assign a 100 percent risk weight to such loans.

For purposes of this analysis, the FDIC assumes that no current land development loans receiving a 100 percent risk weight would be reclassified as HVCRE at a 150 risk-weight, and that some or all current HVCRE loans eligible for exclusion from the HVCRE category as a result of the rule would be reclassified at a 100 percent risk weight. There would thus be some reduction in risk-based capital requirements among the 680 small institutions reporting some HVCRE. The amount of the reduction would depend on the amount of each institution's current HVCRE that is newly eligible to be excluded from that category, and whether each institution views such reclassification as being worth the effort. The FDIC does not have access to sufficiently granular data to determine which HVCRE loans would qualify for a lower risk weight, nor to determine the portion of loans eligible to be reclassified that actually would be reclassified.

Going forward, new loans that would have been classified as HVCRE but for this rule would receive a 100 percent risk weight instead of a 150 percent risk weight. New land development loans for one-to-four family residential properties would receive a 150 percent risk weight instead of a 100 percent risk weight. Future effects on risk-based capital requirements would depend on the volume of land development loans that small institutions issue in the future, and the volume of loans that otherwise would have been categorized as HVCRE in their loan portfolios that would be eligible for a lower risk weight as a result of this rule.

The FDIC believes that the overall impact of this rule on the risk-based capital requirements of small institutions, now and going forward, will be small. The FDIC considered the maximum reduction in risk-based capital for the affected small institutions under the assumption that *all* of their current HVCRE loans are reclassified from a 150 percent risk weight to a 100 percent risk weight, that their current loan portfolios are representative of their future loan portfolios, and that institutions would maintain the same ratio of risk-based capital to risk-weighted assets before and after this rule becomes effective. Under these assumptions, more than 98 percent of the 680 institutions currently reporting HVCRE would reduce their risk-based capital by less than five percent.[33] The actual amount and frequency of reductions in risk-based capital would be expected to be even less, since some portion of current and future loans would likely still be categorized as HVCRE.

As stated previously, covered institutions are not required to reclassify as HVCRE any land development loans they currently hold that would, under the rule, receive a 150 percent risk weight, therefore this aspect of the final rule will not have any immediate effects on small, FDIC-supervised institutions. To assess the maximum possible future effect of this aspect of the final rule the FDIC also considered the maximum increase in risk-based capital requirements for the affected small institutions under the assumption that *all* current acquisition, development and construction loans currently reported in Call Report item RC–C–1.a(2) are land development loans for one-to-four family residential properties, that all would be reclassified to 150 percent risk weights even though this is not required, that current loan portfolios are representative of future loan portfolios for these institutions, and that institutions would maintain the same ratio of risk-based capital to risk-weighted assets before and after this rule becomes effective. Under these assumptions, more than 93 percent of the 2,081 small institutions currently reporting loans in this category would experience an increase in risk-based capital of less than five percent. Specifically, there were 137 small institutions that would experience an increase in risk-based capital of five percent or more under the highly unlikely assumptions that *all* their loans reported in Call Report item RC–C–1(a)(2) were land development loans for one-to-four family residential property, that current loan portfolios are representative of future loan portfolios for these institutions, and that institutions would maintain the same ratio of risk-based capital to risk-weighted assets before and after this rule becomes effective. Since this Call Report item includes all commercial construction loans and all land development loans for multifamily and commercial real estate, far fewer than 137 small institutions would likely experience increases in risk-based capital of five percent or greater.

The rule could pose some administrative costs for covered institutions. The rule gives covered institutions the option to review any loans held in portfolio that were originated after January 1, 2015 to determine if those loans meet the criteria to receive a risk weight of 100 percent rather than 150 percent. It is difficult to accurately estimate the costs that each institution will incur in order to conduct reviews since it depends on each institution's volume of loans categorized as HVCRE. The FDIC assumes that each institution will require 40 hours of labor annually, on average, in order to conduct such reviews. Assuming an hourly cost of $83.61,[34] that amounts to $3,344.40 per institution or $2,274,192 for all small, FDIC-supervised institutions that have some volume of loans classified as HVCRE as of the most recent reporting date. These administrative costs amount to less than two percent of annualized salary expense, and less than one percent of annualized noninterest expense, for all small, FDIC-supervised institutions directly affected by the rule.[35]

As noted earlier, the rule is likely to reduce capital requirements for some loans currently classified as an HVCRE exposure and to increase capital requirements for certain future lot development loans. The revised capital

[32] *Id.*

[33] 669 of the 680 small institutions would experience a less than five percent decrease in risk-based capital under the stated assumptions.

[34] Estimated total hourly compensation of Financial Analysts in the Depository Credit Intermediation sector as of June 2019. The estimate includes the May 2018 75th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2018 and June 2019 (1.86 percent) and grossed up by 51.06 percent to account for non-monetary compensation as reported by the June 2019 Employer Costs for Employee Compensation Data.

[35] FDIC Call Report, June 30th, 2019.

treatment in this rule could change the volume of lending, or the types of loans issued, by small, FDIC-supervised institutions. As described in the preceding analysis, the FDIC believes that this effect will likely be small given that the amendments only affect a subset of HVCRE loans and a subset of land development loans. Finally, changes in required capital could affect the resiliency of institutions in the event of an economically stressful scenario. Since the changes affect only a narrowly defined segment of institutions' loan portfolios, the FDIC believes any increase in risk resulting from the changes is unlikely to be material.

Based on this supporting information, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [36] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

D. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the 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 OCC has determined that this rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this final rule.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[37] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency 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 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.[38]

In accordance with these provisions of RCDRIA, the agencies considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. This final rule revises the definition of HVCRE exposure in the capital rule to conform to the statutory definition of HVCRE ADC loan in section 214 of EGRRCPA. In conjunction with the requirements of RCDRIA, the final rule is effective on April 1, 2020.

F. The Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[39] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[40]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[41] As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset Risk-weighting methodologies, Reporting and recordkeeping requirements, National banks, Federal savings associations, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset Risk-weighting methodologies, Reporting and recordkeeping requirements, Holding companies, State member banks, Risk.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset Risk-weighting methodologies, Reporting and recordkeeping requirements, State savings associations, State non-member banks, Risk.

Office of the Comptroller of the Currency

For the reasons set out in the **SUPPLEMENTARY INFORMATION**, the OCC is amending 12 CFR part 3 as follows.

PART 3—CAPITAL ADEQUACY STANDARDS

■ 1. The authority citation for Part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831bb, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Amend § 3.2 by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 3.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the depository institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or

[36] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[37] 12 U.S.C. 4802(a).

[38] *Id.*

[39] 5 U.S.C. 801 *et seq.*

[40] 5 U.S.C. 801(a)(3).

[41] 5 U.S.C. 804(2).

improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility;

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the OCC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the national bank or Federal savings association advances funds (other than the advance of a nominal sum made in order to secure the national bank's or Federal savings association's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the national bank or Federal savings association as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015; and

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution shall be the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and a national bank or Federal savings association, a national bank or Federal savings association may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, a national bank or Federal savings association is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

* * * * *

Board of Governors of the Federal Reserve System

For the reasons set out in the **SUPPLEMENTARY INFORMATION**, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 3. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909,4808, 5365, 5368, 5371; Pub. L. 115–174, 132 Stat. 1296.

Subpart A—General Provisions

■ 4. Section 217.2 is amended by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 217.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the Board-regulated institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the Board;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the Board-regulated institution advances funds (other than the advance of a nominal sum made in order to secure the Board-regulated institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the Board-regulated institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value of contributed real property: For the purposes of this definition of HVCRE exposure, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this definition of HVCRE exposure and with respect to a credit facility and a Board-regulated institution, a Board-regulated institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, a Board-regulated institution is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

* * * * *

12 CFR Part 324

FEDERAL DEPOSIT INSURANCE CORPORATION

For the reasons set out in the **SUPPLEMENTARY INFORMATION**, the FDIC proposes to amend 12 CFR part 324 as follows.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1831bb, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174, 132 Stat. 1296.

Subpart A—General Provisions

■ 6. Section 324.2 is amended by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 324.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the FDIC-supervised institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the FDIC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the FDIC-supervised institution advances funds (other than the advance of a nominal sum made in order to secure the FDIC-supervised institution's lien against the real property) under the credit facility, and

such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the FDIC-supervised institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value Of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and an FDIC-supervised institution, an FDIC-supervised institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, an FDIC-supervised institution is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

* * * * *

Dated: November 18, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 19, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 19, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–26544 Filed 12–12–19; 8:45 am]

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0604; Product Identifier 2019–NM–072–AD; Amendment 39–19812; AD 2019–23–18]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. This AD was prompted by a report that the Dassault maintenance planning document (MPD) of the related Dassault aircraft maintenance manual (AMM) states that the ''combined service/storage life'' of the fire extinguisher percussion cartridges is longer than it should be, and could have a safety impact in case of fire. This AD requires replacing the fire extinguisher percussion cartridges with serviceable parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2020.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

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–2019–0604; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0084, dated April 17, 2019 (''EASA AD 2019–0084'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on August 13, 2019 (84 FR 39991). The NPRM was prompted by a report that the Dassault MPD of the related Dassault AMM states that the ''combined service/storage life'' of the fire extinguisher percussion cartridges is longer than it should be, and could have a safety impact in case of fire. The NPRM proposed to require replacing the fire extinguisher percussion cartridges with serviceable parts. The FAA is issuing this AD to address the total life limit of the fire extinguisher percussion cartridges, which if not corrected, could prevent extinguishing a fire and possibly result in damage to the airplane

and injury to occupants. See the MCAI for additional background information.

Comments

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

Request To Add Certain Language to the Proposed AD

NetJets, Inc., requested that certain language be added to the proposed AD that allows using a logbook entry to determine the manufacturer date of the fire extinguisher percussion cartridge.

The FAA agrees to clarify. The FAA agrees that a review of the logbook entry is one acceptable method to verify the manufacturer date of the fire extinguisher percussion cartridge, provided that the manufacture date can be conclusively determined from that review. However, the FAA notes that this AD does not require using a specific method to determine the manufacturer date of the fire extinguisher percussion cartridge. Therefore, the FAA has not revised this AD in this regard.

Change to Figure 1 to Paragraph (i) of This AD

In the proposed AD, the FAA inadvertently omitted one AMM task in figure 1 to paragraph (i) of this AD, which specifies AMM tasks that provide guidance for the replacement required by paragraph (h) of this AD. The FAA has revised figure 1 to paragraph (i) of this AD to include the omitted AMM task for the auxiliary power unit (APU) on Model FALCON 2000 and FALCON 2000EX airplanes.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

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

Costs of Compliance

The FAA estimates that this AD affects 1,013 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$1,145	$1,655	$1,676,515

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–23–18 Dassault Aviation: Amendment 39–19812; Docket No. FAA–2019–0604; Product Identifier 2019–NM–072–AD.

(a) Effective Date

This AD is effective January 17, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by a report that the Dassault maintenance planning document (MPD) of the related Dassault aircraft maintenance manual (AMM) mentions that

the ''combined service/storage life'' of the fire extinguisher percussion cartridges is 12 years, whereas it should be 10 years, and could have a safety impact in case of fire. The FAA is issuing this AD to address the total life limit of the fire extinguisher percussion cartridges, which if not corrected, could prevent extinguishing a fire and possibly result in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Definitions

For the purpose of this AD, the definitions specified in paragraphs (g)(1) through (4) apply to this AD.

(1) An affected part is a fire extinguisher percussion cartridge having part number (P/N) 862700–00 or P/N 862710–00.

(2) Total life is time since the manufacturing date, which includes both the time installed on an airplane and time in storage.

(3) A serviceable part is an affected part that has not exceeded 10 years of total life, or a fire extinguisher percussion cartridge that is not an affected part.

(4) Group 1 airplanes are those that have an affected part installed. Group 2 airplanes are those that do not have an affected part installed.

(h) Total Life Limit Implementation

For Group 1 airplanes, except as specified in paragraph (j) of this AD: Before a fire extinguisher percussion cartridge exceeds 10 years of total life, remove the affected part and replace it with a serviceable part in accordance with the procedures specified in paragraph (l)(2) of this AD.

(i) Guidance for Replacement Required by Paragraph (h) of This AD

Guidance for the replacement required by paragraph (h) of this AD can be found in the applicable Dassault AMM task specified in figure 1 to paragraph (i) of this AD.

FIGURE 1 TO PARAGRAPH (i)—AMM TASKS

Airplane model	Location	AMM task
MYSTERE FALCON 50 airplanes	Engine 1 first shoot	26–20–13–960–801–01
	Engine 2 first shoot	26–20–13–960–801–02
	Engine 3 first shoot	26–20–13–960–801–03
	Engine 1 second shoot	26–20–13–960–801–04
	Engine 2 second shoot	26–20–13–960–801–05
	Engine 3 second shoot	26–20–13–960–801–06
FALCON 2000 and FALCON 2000EX airplanes	Engine 1 first shoot	26–20–13–960–801–01
	Engine 1 second shoot	26–20–13–960–801–02
	Engine 2 second shoot	26–20–13–960–801–03
	Engine 2 first shoot	26–20–13–960–801–04
	Auxiliary Power Unit (APU)	26–20–13–960–801–05
MYSTERE FALCON 900 and FALCON 900EX airplanes	Engine 1 first shoot	26–20–13–960–801–01
	Engine 3 first shoot	26–20–13–960–801–02
	Engine 2 second shoot left-hand side	26–20–13–960–801–03
	Engine 2 second shoot right-hand side	26–20–13–960–801–04
	Engine 1 second shoot	26–20–13–960–801–05
	Engine 3 second shoot	26–20–13–960–801–06
	Engine 2 first shoot left-hand side	26–20–13–960–801–07
	Engine 2 first shoot right-hand side	26–20–13–960–801–08
	APU	26–20–13–960–801–09
	Baggage compartment	26–20–13–960–801–10
	Mechanic's Servicing Compartment	26–20–13–960–801–11

(j) Grace Period for Initial Replacement

For Group 1 airplanes: For a fire extinguisher percussion cartridge that, on the effective date of this AD, has a total life of 9 years 6 months or more, the replacement required by paragraph (h) of this AD can be deferred up to 6 months after the effective date of this AD.

(k) Parts Installation Limitations

For Group 1 and Group 2 airplanes: As of the effective date of this AD, no person may install, on any airplane, a fire extinguisher percussion cartridge, unless the part is a serviceable part as specified in this AD, and that, following installation, the affected part is replaced as required by paragraph (h) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0084, dated April 17, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD that is not incorporated by reference, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(n) Material Incorporated by Reference

None.

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–26676 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0960; Product Identifier 2019–CE–049–AD; Amendment 39–19805; AD 2019–23–11]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation (Gulfstream) Model GVI airplanes. This AD requires revising the airplane flight manual (AFM) for your airplane by adding an airplane flight manual supplement (AFMS), which contains operating limitations and abnormal procedures for loss of rudder or yaw damper. This AD was prompted by a report of an inflight rudder surface shutdown that resulted in lateral-directional oscillations of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 30, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 30, 2019.

The FAA must receive comments on this AD by January 27, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone: (800) 810–4853; fax: (912) 965–3520; email: *pubs@gulfstream.com;* internet: *https://www.gulfstream.com/customer-support.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0960.

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–2019–0960; 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 the Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alex Armas, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5538; fax: (404) 474–5605; email: *alex.armas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On October 1, 2019, the FAA received a report from Gulfstream of an inflight rudder surface shutdown that resulted in lateral-directional oscillations on a Model GVI airplane. The flight crew experienced an amber ''Rudder Fail'' crew alerting system message at flight level 340 and was unable to command any movement of the rudder. The flight crew attempted a Flight Control Reset, but the condition remained. Following the rudder shutdown, the airplane experienced sustained lateral-directional oscillations, which persisted for eight minutes before the flight crew was able to stop the oscillations. The flight crew made an emergency landing of the airplane with no rudder authority.

The investigation of this inflight event revealed the root cause as an unstable rudder hinge moment when the aircraft is in a sideslip condition, combined with a rudder surface shutdown, which is inherent to the GVI aircraft type design.

A rudder ''shutdown'' occurs when the flight control computer detects a rudder control anomaly and commands the rudder hydraulic actuators into damped bypass mode. When this happens, the rudder becomes unusable and ''floats'' at the aerodynamic neutral position. After a rudder shutdown, the combination of the unstable rudder hinge movement with an airplane sideslip could lead to uncontrollable lateral-directional oscillations of the airplane when operated within the flight envelope at high altitude and high speed.

This condition, if not addressed, could result in catastrophic structural damage or loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Gulfstream Aerospace G650 Airplane Flight Manual Supplement No. G650–2019–03, dated November 4, 2019; and Gulfstream Aerospace G650ER Airplane Flight Manual Supplement No. G650ER–2019–03, dated November 4, 2019. For the applicable airplane designations, the AFMSs contain new altitude limitations, revised airspeed limitations, and revised abnormal procedures for loss of rudder or yaw damper. These limitations prevent the airplane from operating in the portion of the flight envelope where instability has occurred. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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 revising the AFM for your airplane by adding the applicable AFMS, which contains limitations to the operating envelope of the airplane and revised abnormal procedures for loss of rudder or yaw damper.

Differences Between the AD and the Service Information

The AFMSs apply to Model GVI airplanes that do not incorporate aircraft service change (ASC) 134. However, this

AD applies to all Model GVI airplanes, regardless of whether the airplane has ASC 134. Gulfstream plans to develop a modification, tentatively identified as ASC 134, to correct the unsafe condition and terminate the operating limitations and abnormal procedures in the AFMS.

Interim Action

The FAA considers this AD interim action. Gulfstream is analyzing the airplane lateral-directional oscillations and developing a terminating action that will address the unsafe condition identified in this AD. Once this action is developed, approved, and available, the FAA may consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a rudder shutdown during high altitude and high speed could produce uncontrollable lateral-directional oscillations of the airplane and result in catastrophic structural damage or loss of control of the airplane. Based on data from Gulfstream, the FAA determined that corrective action within 15 days was necessary because of the probability that a recurrence of this event could lead to loss of control of the airplane or catastrophic structural damage. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and 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 Docket Number FAA–2019–0960 and Product Identifier 2019–CE–049–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 it receives, 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 it receives about this final rule.

Costs of Compliance

The FAA estimates that this AD affects 262 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
Revise the AFM	1 work-hour × $85 per hour = $85	Not applicable	$85	$22,270

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 small airplanes, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–23–11 Gulfstream Aerospace Corporation: Amendment 39–19805; Docket No. FAA–2019–0960; Product Identifier 2019–CE–049–AD.

(a) Effective Date

This AD is effective December 30, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GVI airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report of an inflight rudder surface shutdown that resulted in sustained lateral-directional oscillations of the airplane. The FAA is issuing this AD to provide operating limitations and flight crew procedures in the event of an inflight loss of rudder or yaw damper. The unsafe condition, if not addressed, could result in catastrophic structural damage or loss of control of the airplane.

(f) Compliance

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

(g) Revise the Airplane Flight Manual

Within 15 days after December 30, 2019 (the effective date of this AD), revise the airplane flight manual for your airplane by adding the applicable airplane flight manual supplement specified below:

(1) Gulfstream Aerospace G650 Airplane Flight Manual Supplement No. G650–2019–03, dated November 4, 2019; or

(2) Gulfstream Aerospace G650ER Airplane Flight Manual Supplement No. G650ER–2019–03, dated November 4, 2019.

(h) Alternative Methods of Compliance (AMOCs)

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

(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 Alex Armas, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5538; fax: (404) 474–5605; email: *alex.armas@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Gulfstream Aerospace G650 Airplane Flight Manual Supplement No. G650–2019–03, dated November 4, 2019.

(ii) Gulfstream Aerospace G650ER Airplane Flight Manual Supplement No. G650ER–2019–03, dated November 4, 2019.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone: (800) 810–4853; fax: (912) 965–3520; email: *pubs@gulfstream.com;* internet: *https://www.gulfstream.com/customer-support.*

(4) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on December 4, 2019.

Patrick R. Mullen,

Aircraft Certification Service, Manager, Small Airplane Standards Branch, AIR–690.

[FR Doc. 2019–26849 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0591; Airspace Docket No. 19–ASO–15]

RIN 2120–AA66

Establishment of Class E Airspace, St. Simons, GA, and Brunswick, GA; Revocation of Class E Airspace, Brunswick, GA; and, Amendment of Class E Airspace, Brunswick, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface airspace for St. Simons Island Airport, St. Simons, GA, and for Brunswick Golden Isles Airport, Brunswick, GA, and amends Class E airspace extending upward from 700 feet above the surface in Brunswick, GA, to accommodate airspace reconfiguration due to the airport's names and cities requiring updates. Also, this action removes Class E surface airspace listed as Brunswick Glynco Jetport, GA, and Brunswick Malcolm-McKinnon Airport, GA in the FAA's 7400.11D. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at these airports. This action also updates the geographic coordinates of St. Simons Island Airport, (formally Brunswick Malcolm-McKinnon Airport). In addition, this action amends Class E airspace extending upward from 700 feet above the surface in the Brunswick area by updating the name and geographic coordinates of St. Simons Island Airport and Brunswick Golden Isles Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

scope of that authority as it establishes Class E airspace at St. Simons Island Airport, St. Simons, GA, and Brunswick Golden Isles Airport, Brunswick, GA, as well as amend Class E airspace in Brunswick, GA to support IFR operations in the area. Also, this action removes outdated airspace in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 40301, August 14, 2019) for Docket No. FAA–2019–0591 to establish Class E surface airspace at St. Simons Island Airport, St. Simons, GA, and Brunswick Golden Isle Airport, Brunswick, GA, and amend Class E airspace extending upward from 700 feet or more above the surface at Brunswick, GA, by updating the airport names to St. Simons Island Airport (formerly Brunswick/Malcolm-McKinnon Airport), and Brunswick Golden Isles Airport (formerly Glynco Jetport Airport), and updating the geographic coordinates of St. Simons Island Airport to coincide with the FAA's aeronautical database.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment supporting the action was received.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes Class E surface airspace at St. Simons Island Airport, St. Simons, GA, and Brunswick Golden Isle Airport, Brunswick, GA. Also, this action amends Class E airspace extending upward from 700 feet or more above the surface at Brunswick, GA, by updating the airport names to St. Simons Island Airport (formerly Brunswick/Malcolm-McKinnon Airport), and Brunswick Golden Isles Airport (previously Glynco Jetport Airport). Also, the geographic coordinates of St. Simons Island Airport are adjusted to coincide with the FAA's aeronautical database.

These changes are necessary for continued safety and management of IFR operations at this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO GA E2 St. Simons, GA [New]

St. Simons Island Airport, GA
(Lat. 31°09′07″ N, long. 81°23′28″ W)

That airspace extending upward from the surface within a 4.1-mile radius of St. Simons Island Airport.

* * * * *

ASO GA E2 Brunswick, GA [New]

Brunswick Golden Isles Airport, GA
(Lat. 31°15′33″ N, long. 81°27′59″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Brunswick Golden Isles Airport.

* * * * *

ASO GA E2 Brunswick Glynco Jetport, GA [Removed]

* * * * *

ASO GA E2 Brunswick Malcolm-McKinnon Airport, GA [Removed]

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

* * * * *

ASO GA E5 Brunswick, GA [Amended]

St. Simons Island Airport, GA
(Lat. 31°09′07″ N, long. 81°23′28″ W)
Brunswick Golden Isles Airport, GA
(Lat. 31°15′33″ N, long. 81°27′59″ W)
Jekyll Island Airport, GA
(Lat. 31°04′28″ N, long. 81°25′40″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the St. Simons Island Airport, and within a 7-mile radius of Brunswick Golden Isles Airport, and within a 9-mile radius of Jekyll Island Airport.

Issued in College Park, Georgia, on December 5, 2019.

Ryan Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–26861 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0590; Airspace Docket No. 19–AEA–10]

RIN 2120–AA66

Amendment of Class E Airspace; Grove City, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Grove City Airport, Grove City, PA, by updating the geographic coordinates of this airport. Also, this action would update the name and geographic coordinates of Grove City Medical Center Heliport (formerly United Community Hospital Heliport). Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface in the Grove City, PA area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 41937, August 16, 2019) for Docket No. FAA–2019–0590 to amend Class E airspace extending upward from 700 feet above the surface for Grove City Airport, Grove City, PA, by updating the geographic coordinates of the airport, and updating the name and geographic coordinates of the Grove City Medical Center Heliport (formerly United Community Hospital Heliport) to coincide with the FAA's aeronautical database.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Grove City Airport, Grove City, PA, by updating the geographic coordinates of the airport. Also the name and geographic coordinates of Grove City Medical Center Heliport (formerly United Community Hospital Heliport) are updated to coincide with the FAA's aeronautical database. Subsequent to publication of the Notice of Proposed Rulemaking, the FAA found the geographic coordinates of Grove City Medical Center Heliport were incorrect. This action corrects the error.

These changes are necessary for continued safety and management of IFR operations at this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Grove City, PA [Amended]

Grove City Airport, PA
(Lat. 41°08′46″ N, long. 80°10′04″ W)
Grove City Medical Center Heliport, PA
(Lat. 41°10′17″ N, long. 80°05′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grove City Airport, and within a 6-mile radius of the Point In Space serving Grove City Medical Center Heliport.

Issued in College Park, Georgia, on December 5, 2019.

Ryan Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–26854 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9879]

RIN 1545–BO49

Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9879) that were published in the **Federal Register** on Thursday, October 31, 2019. The final regulations provide guidance on new information reporting obligations under section 6050Y related to reportable policy sales of life insurance contracts and payments of reportable death benefits and provide guidance on the amount of death benefits excluded from gross income under section 101 following a reportable policy sale.

DATES: This correction is effective on December 13, 2019 and is applicable on or after October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Sneade, (202) 317–6995 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9879) that are the subject of this correction are issued under sections 101 and 6050Y of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9879) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the final regulations (TD 9879), that are the subject of FR Doc. 2019–23559, published on October 31, 2019 (84 FR 58460), are corrected as follows:

1. On page 58461, in the third column, fourth line from the bottom of the page, under the caption ''Comments and Changes Relating to § 1.101–1(b) of the Proposed Regulations'', the language ''apply in the'' is corrected to read ''applies in the''.

2. On page 58476, in the first column, fifth line, the language ''SB and the gift recipient, who'' is corrected to read ''SB, and the gift recipient, who''.

Martin V. Franks,

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

[FR Doc. 2019–26867 Filed 12–12–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9886]

RIN 1545–BJ92

Calculation of UBTI for Certain Exempt Organizations

Correction

In rule document 2019–26274 beginning on page 67370 in the issue of Tuesday, December 10, 2019, make the following correction:

§ 1.512(a)–5 [Corrected]

■ On page 67373, in the second column, the second amendatory instruction should read as set forth below:

■ Par. 2. Section 1.512(a)–5 is added to read as follows:

[FR Doc. C1–2019–26274 Filed 12–11–19; 4:15 pm]

BILLING CODE 1301–00–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9879]

RIN 1545–BO94

Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9879, which was published in the **Federal Register** on Thursday, October 31, 2019. Treasury Decision 9879 contained final regulations providing guidance on new information reporting obligations under section 6050Y related to reportable policy sales of life insurance contracts and payments of reportable death benefits and guidance on the amount of death benefits excluded from gross income under section 101 following a reportable policy sale.

DATES: *Effective date.* This correction is effective on December 13, 2019 and is applicable on October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Sneade (202) 317–6995 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9879) that are the subject of this correction are under sections 101 and 6050Y of the Internal Revenue Code.

Need for Correction

As published October 31, 2019 (84 FR 58460), the final regulations (TD 9879; FR Doc. 2019–23559) contained errors that may prove misleading and therefore need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.101–1 is amended by:

■ a. Revising paragraph (d)(2)(ii)(A)(*1*).

■ b. In paragraph (f)(4)(ii), removing the word ''consist'' and adding in its place ''consists.''

The revision reads as follows:

§ 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) * * *

(*1*) Is an employee within the meaning of section 101(j)(5)(A) of the acquired trade or business immediately preceding the acquisition (for purposes of this paragraph (d)(2)(ii)(A)(*1*), however, the reference in section 101(j)(5)(A) to highly compensated employee within the meaning of section 414(q) does not include a former employee); or

* * * * *

■ **Par. 3.** Section 1.6050Y–1(b) introductory text is amended by adding a sentence after the second sentence and revising the last sentence to read as follows:

§ 1.6050Y–1 Information reporting for reportable policy sales, transfers of life insurance contracts to foreign persons, and reportable death benefits.

* * * * *

(b) * * * This section and § 1.6050Y–3 apply to any notice of a transfer to a foreign person received after December 31, 2018. However, for reportable policy sales and payments of reportable death benefits occurring after December 31, 2018, and on or before December 31, 2019, and any notice of a transfer to a foreign person received after December 31, 2018, and on or before December 31, 2019, transition relief is provided as follows:

* * * * *

Martin V. Franks,

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

[FR Doc. 2019–26866 Filed 12–12–19; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe certain interest assumptions under the benefit payments regulation for plans with valuation dates in January 2020 and interest assumptions under the asset allocation regulation for plans with valuation dates in the first quarter of 2020. These interest assumptions are used for valuing benefits and paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 3829. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC's website (*https://www.pbgc.gov*).

Lump Sum Interest Assumption

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay as a lump sum. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for January 2020 measurement dates.

The January 2020 lump sum interest assumptions will be 0.25 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for December 2019, these assumptions represent no change in the immediate rate and are otherwise unchanged.

Valuation/Asset Allocation Interest Assumptions

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to value benefits for allocation purposes under section 4044 of ERISA, and some private-sector pension plans use them to determine benefit liabilities reportable under section 4044 of ERISA and for other purposes. The first quarter 2020 interest assumptions will be 2.12 percent for the first 25 years following the valuation date and 2.26 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2019, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.41 percent in the select rate, and a decrease of 0.27 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC updates appendix B of the asset allocation regulation each quarter and appendices B and C of the benefit payments regulation each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available to value benefits and, for plans that rely on our publication of them each month or each quarter, to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during January 2020, PBGC finds that good cause exists

for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 315 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
315	1–1–20	2–1–20	0.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 315 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
315	1–1–20	2–1–20	0.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, an entry for ''January–March 2020'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
January–March 2020	0.0212	1–25	0.0226	>25	N/A	N/A

Issued in Washington, DC, by

Hilary Duke,

Assistant General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–26935 Filed 12–12–19; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0950]

Special Local Regulations; Charleston Harbor Christmas Parade of Boats, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the Charleston Harbor Christmas Parade of Boats on December 14, 2019. This action is necessary to ensure safety of life on navigable waters of the United States during the Charleston Harbor Christmas Parade of Boats. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain

within the designated area unless authorized by the Captain of the Port Charleston (COTP) or a designated representative.

DATES: The regulation in 33 CFR 100.701, Table to § 100.701, Item No. (g)(6) will be enforced from 4:00 p.m. until 8:30 p.m. on December 14, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Chad.L.Ray@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.701, Item No. (g)(6), for the Charleston Harbor Christmas Parade of Boats from 4:00 p.m. through 8:30 p.m. on December 14, 2019. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District § 100.701, Item No. (g)(6), specifies the location of the regulated area for the Charleston Harbor Christmas Parade of Boats, which encompasses a portion of the waterways during the parade transit from Charleston Harbor Anchorage A through Bennis Reach, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina. During the enforcement periods, as reflected in § 100.701(c)(1), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: December 9, 2019.

J.W. Reed,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2019–26822 Filed 12–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2017–0004]

RIN 0651–AD15

Changes to the Trademark Rules of Practice To Mandate Electronic Filing; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office published in the **Federal Register** on July 31, 2019 (delayed on October 2, 2019), a final rule amending its regulations to mandate electronic filing of trademark applications and all submissions associated with trademark applications and registrations, and to require the designation of an email address for receiving USPTO correspondence, with limited exceptions. This rulemaking clarifies the mandatory electronic filing regulation addressing the requirements for receiving a filing date, by amending it to remove the word ''domicile.'' This rulemaking also clarifies the mandatory electronic filing regulation addressing the requirements for a TEAS Plus application.

DATES: This correction is effective on December 21, 2019.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, *TMFRNotices@uspto.gov,* (571) 272–8946.

SUPPLEMENTARY INFORMATION: On July 31, 2019 (84 FR 37081), the United States Patent and Trademark Office (USPTO) published in the **Federal Register** a final rule amending the Rules of Practice in Trademark Cases and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to mandate electronic filing of trademark applications based on section 1 and/or section 44 of the Trademark Act (Act), 15 U.S.C. 1051, 1126, and all submissions associated with trademark applications and registrations, and to require the designation of an email address for receiving USPTO correspondence, with limited exceptions (Mandatory Electronic Filing Rule). The effective date of the July 31, 2019, rule was delayed until December 21, 2019 (84 FR 52363, October 2, 2019). In § 2.21, the Mandatory Electronic Filing Rule addressing the requirements for receiving a filing date were amended to require the ''domicile address'' of each applicant. Prior to the July 31, 2019, Mandatory Electronic Filing Rule, the regulations at § 2.21(a) required ''[t]he name of the applicant'' and ''[a] name and address for correspondence.'' 37 CFR 2.21(a)(1), (2). In the May 30, 2018 notice of proposed rulemaking, the USPTO proposed to amend § 2.21(a)(1) to require ''[t]he name, postal address, and email address of each applicant'' to receive a filing date and made a conforming amendment to § 2.32(a)(2) to require the same information for a complete application. In the July 31, 2019, final rule, the USPTO replaced the word ''postal'' with ''domicile'' in amended § 2.21(a)(1) and amended § 2.32(a)(2) to reconcile the final rule with the provisions of another final rule entitled ''Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants'' (84 FR 31498, July 2, 2019) (U.S. Counsel rule) that required provision of domicile addresses. The USPTO has determined that substituting the wording ''domicile address'' for ''postal address'' in the July 31, 2019, final rule might result in the unintended consequence of the loss of a filing date for some applicants who provide an address that is later determined not to be their domicile address. Therefore, the USPTO has determined that the better practice is to retain the existing requirement for an ''address'' as a filing-date requirement. The requirement for a ''domicile address'' remains a requirement for a complete application in amended § 2.32(a)(2). Thus, this rulemaking amends § 2.21(a)(1) in the July 31, 2019, final rule to remove the word ''domicile.''

In addition, in light of the amendment made to § 2.21(a)(1), the USPTO makes a conforming change to § 2.22(a)(1) in the July 31, 2019, final rule to reinsert the requirement for a domicile address. In the U.S. Counsel rule, the USPTO added the requirement for the applicant's domicile address to the regulation addressing the requirements for a TEAS Plus application. 37 CFR 2.22(a)(1). Subsequently, in the July 31, 2019, Mandatory Electronic Filing Rule, the USPTO removed this requirement from § 2.22(a)(1) as duplicative because the domicile requirement added to § 2.21(a)(1) also applied to TEAS Plus applications. The amendment made to § 2.21(a)(1) in this rulemaking removes the requirement for a domicile address from § 2.21(a)(1), as discussed above, and requires the USPTO to reinsert it back in § 2.22(a)(1) so that it will

continue to apply to TEAS Plus applications as a requirement for receiving a reduced filing fee.

Rulemaking Requirements

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))).

In addition, good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) to issue this rule without prior notice and opportunity for comment and the 30-day delay in effectiveness, as it would be impracticable and contrary to the public interest. This action amends § 2.21(a)(1) to avoid a possible unintended consequence (*i.e.,* possible loss of a filing date for some applicants who provide an address that is later determined not to be their domicile address) that might result from substituting the wording ''domicile address'' for ''postal address'' in the July 31, 2019 final rule. Therefore, the USPTO has determined that the better practice is to retain the existing requirement for an ''address'' as a filing-date requirement. The requirement for a ''domicile address'' remains a requirement for a complete application in amended § 2.32(a)(2). Delay of this correction to allow for prior notice and opportunity for comment would result in the implementation of a requirement that may result in a loss of a filing date for some applicants as well as confusion among applicants regarding the requirements for a filing date. In addition, because the July 31, 2019 final rule is not effective until December 21, 2019, no party has been negatively impacted or affected by this rulemaking, which is being published prior to that effective date. Therefore, the USPTO waives the requirement for prior notice and opportunity for comment, and implements this correction on the effective date of this rule.

Corrections

In FR Doc. 2019–16259 appearing on page 37081 in the **Federal Register** of Wednesday, July 31, 2019, delayed at 84 FR 52363, October 2, 2019, the following corrections are made:

§ 2.21 [Corrected]

■ 1. On page 37093, in the third column, in § 2.21, in paragraph (a)(1), ''The name, domicile address, and email address of each applicant;'' is corrected to read ''The name, address, and email address of each applicant;''

■ 2. On page 37094, in the first and second columns, in § 2.22, paragraphs (a)(1) through (19) are redesignated as paragraphs (a)(2) through (20) and new paragraph (a)(1) is added to read as follows:

§ 2.22 Requirements for a TEAS Plus application.

(a) * * *

(1) The applicant's name and domicile address;

* * * * *

Dated: December 9, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–26899 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ01

Reimbursement of Qualifying Adoption Expenses for Certain Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes based on subsequent statutory authority, an interim final rule providing for reimbursement of qualifying adoption expenses incurred by a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. Under the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, VA may use funds appropriated or otherwise made available to VA for the ''Medical Services'' account to provide adoption reimbursement to these veterans. Under the law, reimbursement may be for the adoption-related expenses for an adoption that is finalized after the date of the enactment of this Act under the same terms as apply under the adoption reimbursement program of the Department of Defense (DoD), as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in such instruction. This rulemaking implements the new adoption reimbursement benefit for covered veterans.

DATES: *Effective date:* This rule is effective on December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hayes, Ph.D. Chief Consultant, Women's Health Services, Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–0373. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Public Law 114–223, the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (the ''2017 Act''), section 260, allows VA to use appropriated funds available to VA for the Medical Services account to provide fertility counseling and treatment using assisted reproductive technology (ART) to a covered veteran or the spouse of a covered veteran, or adoption reimbursement to a covered veteran. On January 19, 2017, VA published an interim final rule at 82 FR 6275 addressing fertility counseling and treatment using ART, including in vitro fertilization (IVF) (which is a type of ART), for both covered veterans and spouses. On March 5, 2018, VA published an interim final rule to implement our authority to provide reimbursement of qualifying adoption

expenses to covered veterans (83 FR 9208). The latter interim final rule was effective on the date of publication. The rule included a provision, consistent with funding authority under the 2017 Act, stating that authority to provide reimbursement for qualifying adoption expenses incurred by a covered veteran in the adoption of a child under 18 years of age expires September 30, 2018.

Following publication of the interim final rule Congress enacted a bill renewing and revising our authority to provide the adoption reimbursement benefit. While 2017 Act was the original authority for VA's adoption reimbursement program, it lapsed once the relevant funding period ended. VA's authority to provide reimbursement of qualifying adoption expenses to the same cohort described in the 2017 Act was subsequently renewed and extended in nearly identical form in Section 236 of Division J, Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018, Public Law 115–141 (March 23, 2018) (the ''2018 Act'') and Section 235 of Division C, Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2019, Public Law 115–244 (September 21, 2018) (the ''2019 Act''). Under this most recent authority, VA's adoption expense reimbursement program remains subject to the funding period covered by the 2019 Act and the availability of appropriations.

When we published the interim final rule, we provided a 60-day comment period, which expired on May 4, 2018. We received 4 comments from the public, all of which were supportive of this rulemaking. However, the commenters raised several issues that we address here. We make no changes based on public comments. VA adopts as final, with changes based on subsequent statutory authority, an interim final rule providing for reimbursement of qualifying adoption expenses incurred by a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment.

Per the 2017 Act, 2018 Act, and 2019 Act, veterans with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment are authorized to receive reimbursement for certain adoption-related expenses for an adoption that is finalized after September 29, 2016, (the date the 2017 Act was enacted) under the same terms as apply under the adoption reimbursement program of DoD, as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in that DoD policy. DoD Instruction 1341.09, ''DoD Adoption Reimbursement Policy'' (July 5, 2016) establishes policy, assigns responsibilities within DoD, and provides procedures for the reimbursement of qualifying adoption expenses incurred by members of the Military Services (including document submission requirements) pursuant to 10 U.S.C. 1052. That statute was enacted in 1991 and establishes the parameters of DoD's adoption reimbursement program. The interim final rule added a new § 17.390 to provide for reimbursement of qualifying adoption expenses to covered veterans, consistent with the policies and procedures established by DoD in implementing 10 U.S.C. 1052.

Section 17.390(b)(1) states that no more than $2,000 may be reimbursed under this section to a covered veteran, or to two covered veterans who are spouses of each other, for expenses incurred in the adoption of a child. In the case of two married covered veterans, only one spouse may claim reimbursement for any one adoption. Paragraph (b)(2) states that no more than $5,000 may be paid under this section to a covered veteran in any calendar year. In the case of two married covered veterans, the couple is limited to a maximum of $5,000 per calendar year.

One commenter suggested changing the reimbursement limits so two married covered veterans are not limited to the same reimbursement level of just a single covered veteran. The commenter recommended that in cases of two married covered veterans, they would have twice the benefit as a single covered veteran. Otherwise, a married veteran whose non-veteran spouse received an adoption benefit from an employer would be at an advantage relative to two married veterans. The commenter stated that allowing the benefit to be limited to each veteran (and not per family) would place VA in a position of not disadvantaging veterans who are spouses of each other.

One commenter noted that under paragraph (b) funds are limited by time period rather than by child. The commenter stated that this limitation could discourage veterans who may wish to adopt older children who are siblings, keeping them together. The commenter recommended addressing the limitation on adoption expense reimbursement by child rather than per year.

As noted above, VA is required by statute to administer its adoption reimbursement program under the same terms as apply under the adoption reimbursement program of DoD, as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in that DoD policy. The DoD policy implements 10 U.S.C. 1052, which provides that servicemembers may request reimbursement up to $2,000 per adoptive child or a maximum of $5,000 per calendar year for qualifying expenses. In the case of two married military servicemembers, only one member may claim reimbursement and the couple is limited to a maximum of $5,000 per calendar year. Our rule is consistent with these provisions. Per 38 CFR 17.390(a)(2), the application for reimbursement must be submitted no later than 2 years after the adoption is final or, in the case of adoption of a foreign child, no later than 2 years from the date a certificate of United States citizenship is issued. This is also consistent with the DoD policy. The only substantive difference in our program is that, per statute, VA may reimburse qualifying adoption expenses incurred by covered veterans only for adoptions finalized after September 29, 2016, the date the 2017 Act was enacted. VA has no statutory authority to expand the program to allow two covered veterans who are spouses to each file an application for reimbursement of qualifying adoption expenses, or increase either the per-child or annual reimbursement limits. Likewise, we do not have the statutory authority to alter the time limits reflected in this rule. We make no changes based on these comments.

One commenter asked whether a Vietnam veteran rated at 100% service-connected disability based on conditions related to Agent Orange exposure who, since 1970, has been unable to father a child is eligible for reimbursement of qualifying adoption expenses. Eligibility for reimbursement of qualifying adoption expenses is not based on status as a combat veteran or a particular rating of a service-connected disability. Reimbursement of qualifying adoption expenses is available to covered veterans with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. Regardless of the disability rating or the cause of said disability, the veteran would be eligible for this benefit if the rated service-connected disability prevents the veteran from procreating without the use of fertility treatment. We make no changes based on this comment.

Finally, based on the 2019 Act, we remove paragraph (f) which provided that authority to provide reimbursement

for qualifying adoption expenses incurred by a covered veteran in the adoption of a child under 18 years of age expires September 30, 2018. Under the most recent authority, VA's adoption expense reimbursement program remains subject to the funding period covered by the 2019 Act and the continuing availability of appropriations. However, Congress could again renew and extend this authority. For this reason and to avoid the need to continually update these regulations when a subsequent appropriations law (or other law) renews this authority, we eliminated the section that specifies an expiration date. VA's ability to provide reimbursement will remain subject to the limitations provided in the applicable statutory provisions.

Based on the rationale set forth in the interim rule and in this document, VA adopts the interim final rule as a final rule, with a technical amendment consistent with enactment of the 2019 Act.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). As required by 44 U.S.C. 3507(d), VA submitted this information collection to the Office of Management and Budget (OMB) for its review. OMB approved the new information collection requirements associated with the final rule under a 6-month emergency clearance and assigned OMB control number 2900–0860. OMB control number 2900–0860 expired on March 31, 2019. VA has applied to OMB for a renewal of this information collection under a separate document and notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking 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 Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. 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 rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles affected by this document.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, 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. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on December 6, 2019, for publication.

Consuela Benjamin,

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

For the reasons set forth in the preamble, the VA adopts the interim final rule amending 38 CFR part 17, which published on March 5, 2018 (83 FR 9208), as final with the following changes:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended in the authority for §§ 17.380, 17.390 and 17.412 by adding, immediately after ''857'', ''and sec. 236, Public Law 115–141, 132 Stat. 348'' to read in part as follows:

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

* * * * *

§ 17.390 [Amended]

■ 2. Amend § 17.390 by removing paragraph (f).

[FR Doc. 2019–26751 Filed 12–12–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0377; FRL–10002–93–Region 5]

Air Plan Approval; Indiana; Second Maintenance Plan for 1997 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 1997 ozone National Ambient Air Quality Standards (NAAQS) through the end of the second 10-year maintenance period. On June 20, 2019, the Indiana Department of Environmental Management submitted the State's plan for maintaining the 1997 ozone NAAQS for the Indianapolis, La Porte County, and South Bend-Elkhart areas and the Indiana portions of the Chicago-Gary-Lake County, IL-IN (Chicago), Cincinnati-Hamilton, OH-KY-IN (Cincinnati), and Louisville, KY-IN (Louisville) multi-state areas. EPA proposed to approve the submission on September 25, 2019, and received no comments. This action makes certain commitments related to maintenance of the 1997 ozone NAAQS in these areas federally enforceable as part of the Indiana SIP.

DATES: This final rule is effective on January 13, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0377. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we'', ''us'', and ''our'' refer to the EPA.

I. What is being addressed in this document?

This rule approves Indiana's June 20, 2019 submission to provide for maintenance of the 1997 ozone NAAQS for the Indianapolis, La Porte County, and South Bend-Elkhart areas and the Indiana portions of the Chicago, Cincinnati, and Louisville areas through the end of the second 10-year maintenance period. The background for this action is discussed in detail in EPA's notice of proposed rulemaking (NPRM), dated September 25, 2019 (84 FR 50354).

II. What comments did we receive on the proposed rule?

In the NPRM, EPA provided a 30-day review and comment period for the proposed rule. The comment period ended on October 25, 2019. We received no comments on the proposed rule.

III. What action is EPA taking?

EPA is approving, as a revision to the Indiana SIP, the State's plan for maintaining the 1997 ozone NAAQS for the Indianapolis, La Porte County, and South Bend-Elkhart areas and the Indiana portions of the Chicago, Cincinnati, and Louisville areas through the end of the second 10-year maintenance period.

VI. 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 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
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: November 25, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (e) is amended by:

■ a. Removing the entry for ''Cincinnati-Hamilton, OH-KY-IN 1997 8-hour ozone maintenance plan'' and adding in its place the entry ''Ozone (8-Hour, 1997): Cincinnati-Hamilton, OH-KY-IN (Dearborn County (part))'';

■ b. Removing the entry for ''Indianapolis Hydrocarbon Control Strategy'' and adding in its place the entry ''Ozone (8-Hour, 1997): Indianapolis, IN (Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties)'';

■ c. Removing the entry for ''Lake and Porter Counties 1997 8-hour ozone maintenance plan'' and adding in its place the entry ''Ozone (8-Hour, 1997): Chicago-Gary-Lake County, IL-IN (Lake and Porter Counties)'';

■ d. Removing the entry for ''LaPorte Hydrocarbon Control Strategy'' and adding in its place the entry ''Ozone (8-Hour, 1997): LaPorte CO., IN (LaPorte County)'';

■ e. Removing the two entries for ''Louisville Hydrocarbon Control Strategy'' and adding in their place the entry ''Ozone (8-Hour, 1997): Louisville, KY-IN (Clark and Floyd Counties)''; and

■ f. Removing the entries for ''South Bend-Elkhart 1997 8-hour ozone maintenance plan'' and ''South Bend-Elkhart Hydrocarbon Control Strategy'' and adding in their place the entry ''Ozone (8-Hour, 1997): South Bend-Elkhart, IN (Elkhart and St. Joseph Counties)''.

The additions read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * *	*	*	* *
Ozone (8-Hour, 1997): Cincinnati-Hamilton, OH-KY-IN (Dearborn County (part)).	6/20/2019	12/13/2019, [insert **Federal Register** citation].	2nd maintenance plan.
* * *	*	*	* *
Ozone (8-Hour, 1997): Indianapolis, IN (Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties).	6/20/2019	12/13/2019, [insert **Federal Register** citation].	2nd maintenance plan.
* * *	*	*	* *
Ozone (8-Hour, 1997): Chicago-Gary-Lake County, IL-IN (Lake and Porter Counties).	6/20/2019	12/13/2019, [insert **Federal Register** citation].	2nd maintenance plan.
* * *	*	*	* *
Ozone (8-Hour, 1997): LaPorte CO., IN (LaPorte County)	6/20/2019	12/13/2019, [insert **Federal Register** citation].	2nd maintenance plan.
* * *	*	*	* *
Ozone (8-Hour, 1997): Louisville, KY-IN (Clark and Floyd Counties).	6/20/2019	12/13/2019, [insert **Federal Register** citation].	2nd maintenance plan.
* * *	*	*	* *
Ozone (8-Hour, 1997): South Bend-Elkhart, IN (Elkhart and St. Joseph Counties).	6/20/2019	12/13/2019, [insert **Federal Register** citation].	2nd maintenance plan.
* * *	*	*	* *

[FR Doc. 2019–26686 Filed 12–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0734; FRL–10003–02–Region 5]

Air Plan Approval; Indiana; Indiana RACT SIP and Negative Declaration for the Oil and Natural Gas Industry Control Techniques Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a ''Negative Declaration'' for the State of Indiana regarding the Control Techniques Guideline (CTG) for the Oil and Gas Industry issued by EPA on October 20, 2016. Indiana has evaluated areas for which the Oil and Natural Gas Industry CTG must be applied under the 2008 ozone National Ambient Air Quality Standard (NAAQS). These areas include Lake and Porter counties, which are part of the Chicago-Naperville, IL-IN-WI Moderate nonattainment area for the 2008 ozone NAAQS. Therefore, reasonably available control technology (RACT) requirements would be applicable for sources covered by the Oil and Natural Gas Industry CTG in Lake and Porter counties. The Indiana Department of Environmental Management (IDEM) did not find any covered sources in Lake and Porter counties. Approval of this Negative Declaration supports EPA's February 13, 2019 approval of Indiana's volatile organic compounds (VOC) RACT Certification for Lake and Porter Counties. EPA proposed to approve this ''Negative Declaration'' on June 26, 2019 and received one set of comments.

DATES: This final rule is effective January 13, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0734. All documents in the docket are listed in the *http://www.regulations.gov* website.

Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov* or at the EPA Region 5 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for availability information).

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *liljegren.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed in this document?
II. What comments did we receive on the proposed rule?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed in this document?

In this action, EPA is approving a ''Negative Declaration'' for Lake and Porter Counties in Indiana regarding the CTG for the Oil and Gas Industry issued by EPA on October 20, 2016. As discussed more fully in the June 26, 2019 proposed approval (84 FR 30066), IDEM has adequately documented that there are no sources in Lake and Porter Counties to which the Oil and Gas CTG is applicable.

II. What comments did we receive on the proposed rule?

EPA received both supportive and adverse comments from one commenter. The adverse comments are addressed below.

(1) Comment—''Looking at Indiana's analysis of all its resources in Lake and Porter Counties coming directly from the department of Oil and Natural Gas Industry which is experienced in its analysis and has a niche in Indiana. However, I also feel that the report that has been provided may have been biased based on additional cost needed to be spent on RACT related activities.''

EPA Response—As stated in the proposal, Indiana searched its own oil and gas well records and air permits and, therefore, did not rely exclusively on the Indiana Department of Natural Resources' (IDNR) Division of Oil and Gas.

(2) Comment—''The report that the IDNR released mentions that they did this based on the database and not based on actual research performed by them. I would like to question how often their data base is updated and the sample size they have mentioned consisting of just 3 places seems like a small amount in proportion to the 2 counties.''

EPA Response—The IDNR administers Indiana's oil and gas statutes and regulates petroleum exploration and production operations in Indiana. Its analysis should provide a very sound basis for an accurate database. The sample size did not consist of just three places. Rather, three facilities were selected for further evaluation based upon their industry codes and descriptions.

(3) Comment—''EPA's proposal looks pretty dated and has been based on ozone rules back from 2016 and currently there have been so many changes that it is bound to be outdated and not effective, I think the EPA should release another updated rule to judge the negative declaration areas.''

EPA Response—The Oil and Gas CTG is, in fact, EPA's newest CTG and there is no indication that it is outdated. More importantly, Indiana's determination that there are no applicable sources is current.

(4) Comment—''The Bulk petroleum facilities which were investigated although not part of Lake and Porter County does exist and the report by the Indiana Department of Natural Resources did not provide much information as to what their findings were.''

EPA Response—This comment is not relevant because the negative declaration is only for Lake and Porter Counties.

III. What action is EPA taking?

EPA is approving Indiana's Negative Declaration for the Oil and Gas CTG. Indiana has adequately documented that it has no sources in Lake and Porter Counties to which the Oil and Gas CTG would be applicable. Approval of this Negative Declaration also supports EPA's February 13, 2019 approval of Indiana's VOC RACT Certification for Lake and Porter Counties.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA) the Administrator is required to approve a State Implementation Plan (SIP) submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 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 52

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

Dated: December 2, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (e) is amended by revising the entry for ''Lake and Porter Counties 2008 8-hour Ozone Moderate Planning Elements'' and adding an entry for ''Lake and Porter Counties 2008 8-hour Ozone Negative Declaration'' immediately following the entry ''Lake and Porter Counties 2008 8-hour Ozone Moderate Planning Elements'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Lake and Porter Counties 2008 8-hour Ozone Moderate Planning Elements.	2/28/2017, 1/9/2018, and 10/25/2018.	12/13/2019, [insert **Federal Register** citation].	2011 base year emissions inventory, Reasonable Further Progress (RFP) plan, RFP contingency measure plan, 2017 VOC and NO_X motor vehicle emissions budgets, nonattainment new source review certification, VOC RACT Certification, and enhanced motor vehicle inspection and maintenance program certification.
Lake and Porter Counties 2008 8-hour Ozone Negative Declarations.	10/25/2018	12/13/2019, [insert **Federal Register** citation].	Includes: Fiberglass Boat Manufacturing Materials CTG and Oil and Gas Industry CTG.
*	*	*	*

[FR Doc. 2019–26792 Filed 12–12–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383 and 384

[Docket No. FMCSA–2019–0120]

RIN 2126–AC32

Extension of Compliance Date for States' Query of the Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: FMCSA extends the compliance date for the requirement established by the December 5, 2016, Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) final rule that States request information from the Clearinghouse (''query'') about individuals before completing certain commercial driver's license (CDL) transactions for those drivers. The States' compliance with this requirement, currently due to begin on January 6, 2020, is delayed until January 6, 2023. This rule will, however, allow States the option to voluntarily request Clearinghouse information beginning on January 6, 2020. The compliance date extension allows FMCSA the time needed to complete its work on a forthcoming rulemaking to address the States' use of driver-specific information from the Clearinghouse, and time to develop the information technology platform through which States will electronically request and receive Clearinghouse information. The compliance date of January 6, 2020, remains in place for all other requirements set forth in the Clearinghouse final rule.

DATES: This final rule is effective December 13, 2019.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–0831, *nikki.mcdavid@dot.gov.*

SUPPLEMENTARY INFORMATION:

Rulemaking Documents

For access to docket FMCSA–2019–0120 to read background documents, go to *https://www.regulations.gov* at any time, or to Docket Operations at U.S.

Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

II. Executive Summary

A. Purpose and Summary of the Rule

Regulations established by the final rule, ''Commercial Driver's License Drug and Alcohol Clearinghouse'' (Clearinghouse final rule) (81 FR 87686 (Dec. 5, 2016)), require that, beginning January 6, 2020, State Driver Licensing Agencies (SDLAs) request information from the Clearinghouse prior to issuing, renewing, upgrading, or transferring a CDL.[1] The Clearinghouse final rule did not address how SDLAs would use Clearinghouse information for drivers licensed, or seeking to become licensed, in their State. Accordingly, the final rule's Regulatory Impact Analysis did not identify any safety benefit associated with the States' query requirement. This final rule, which delays the States' query requirement, from January 6, 2020, to January 6, 2023, would therefore have no impact on safety. In addition, under this final rule, beginning on January 6, 2020, SDLAs wishing to access the Clearinghouse may do so as an authorized user to determine whether the individual is prohibited from operating a commercial motor vehicle (CMV) because the individual has not completed the return-to-duty process. This optional access to the Clearinghouse would be exercised solely at the States' discretion.

This extension of the compliance date is necessary to allow the Agency time to complete its forthcoming rulemaking to address SDLA access to and use of driver-specific information from the Clearinghouse, as discussed below. The compliance date of January 6, 2020, continues to apply to all other requirements set forth in the Clearinghouse final rule. Beginning January 6, 2020, CDL holders' drug and alcohol testing program violations must be reported to the Clearinghouse, and motor carrier employers must perform the required queries for prospective and current driver-employees.

B. Costs and Benefits

Because the Clearinghouse final rule did not establish a cost or benefit to the SDLA query, there are neither costs nor benefits associated with this rulemaking.

[1] See 49 CFR 383.73(b)(10); (c)(10); (d)(9); (e)(8); and (f)(4).

III. Legal Basis for the Rulemaking

This final rule amends regulations established by the Clearinghouse final rule by extending the date by which States would be required to achieve compliance with the query requirements currently set forth in 49 CFR 383.73 and 49 CFR 384.235. The Clearinghouse final rule implements section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, 795, codified at 49 U.S.C. 31306a), which requires the Secretary of Transportation (the Secretary) to establish a national clearinghouse for records related to drug and alcohol testing of CDL holders. As part of that mandate, MAP–21 requires the Secretary to establish a process by which States can request and receive an individual's Clearinghouse record (49 U.S.C. 31306a(h)(2)). In addition, section 32305(b)(1) of MAP–21, codified at 49 U.S.C. 31311(a)(24), requires that States request information from the Clearinghouse prior to issuing or renewing a CDL. The Agency's authority to extend the compliance date for those State-specific requirements relies on these MAP–21 provisions. This final rule is also based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986, as amended, codified generally in 49 U.S.C. chapter 313, which requires the Secretary to establish minimum standards for the issuance of CDLs (49 U.S.C. 31308), as well as minimum standards to ensure the fitness of individuals operating a CMV (49 U.S.C. 31305(a)).

The Administrative Procedure Act requires publication of a substantive rule not less than 30 days before its effective date, except ''as otherwise provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). Due to the imminence of the initial compliance date of January 6, 2020 for the States' query requirement, established by the Clearinghouse final rule, the Agency finds ''good cause'' to make this final rule effective on the date of publication.

Finally, under 49 CFR 1.87(e)(1), the FMCSA Administrator is delegated authority to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to CMV operation.

IV. Background

The Clearinghouse final rule implemented the Congressional mandate, set forth in section 32402 of MAP–21, requiring the establishment of a national drug and alcohol clearinghouse containing CDL holders' violations of FMCSA's drug and alcohol testing regulations set forth in 49 CFR part 382. The Clearinghouse regulations, which go into effect on January 6, 2020, will enable FMCSA and motor carrier employers to identify drivers who, under 49 CFR 382.501(a), are prohibited from operating a CMV due to drug and alcohol program violations.

Additionally, as discussed above in section III. ''Legal Basis,'' MAP–21 required that SDLAs be provided access to the Clearinghouse records of individuals applying for a CDL in order to determine whether they are qualified to operate a CMV, and that SDLAs request information from the Clearinghouse before renewing or issuing a CDL to an individual. FMCSA incorporated these statutory requirements into the Clearinghouse final rule.

Following publication of the final rule, the American Association of Motor Vehicle Administrators (AAMVA), a trade association representing driver licensing authorities from the 50 States and the District of Columbia, asserted that the rule failed to address various operational issues related to the States' role in the Clearinghouse.[2] Some of the concerns and questions AAMVA raised were: (1) What does FMCSA intend that the States do with information they receive from the Clearinghouse; (2) what specific information would States receive in response to a request for information about an individual CDL holder or applicant; (3) what privacy and data controls will be applied to the transmission of Clearinghouse information to SDLAs; (4) how would an erroneous Clearinghouse record be corrected; and (5) what are the cost implications for the SDLAs.

The Agency is currently working on a proposed rule (''Clearinghouse II'' notice of proposed rulemaking (NPRM)), which will specifically address the issues raised by AAMVA. Delaying the implementation of the States' query requirement will provide FMCSA time to resolve AAMVA's concerns and ensure a seamless implementation of the States' Clearinghouse-related requirements.

V. Discussion of Notice of Proposed Rulemaking

FMCSA published a NPRM on September 6, 2019 (84 FR 46923) to extend the date by which States must query the Clearinghouse prior to issuing, renewing, transferring, or upgrading a CDL. The NPRM proposed extending the compliance date of the

[2] See AAMVA Petition for Reconsideration of the Commercial Driver's License Drug and Alcohol Clearinghouse Final Rule (June 29, 2017), Docket No. FMCSA–2011–0031, accessible through *www.regulations.gov*.

States' query requirement, established by the 2016 Clearinghouse final rule, from January 6, 2020, to January 6, 2023. The NPRM made clear that all other provisions of the Clearinghouse final rule would go into effect on January 6, 2020. Additionally, under the NPRM, SDLAs wishing to request information from the Clearinghouse could do so on a voluntary basis, beginning on January 6, 2020, by accessing the Clearinghouse as an authorized user and conducting a query prior to issuing, renewing, transferring or upgrading a CDL. If Clearinghouse information received in response to a voluntary query by an SDLA indicates the driver is prohibited from operating a CMV due to a drug or alcohol testing violation, it would be up to the State to decide whether, and how, to act on that information.

VI. Discussion of Comments on Notice of Proposed Rulemaking

The Agency received 13 comments in response to the NPRM. Three individuals opposed extending the compliance date for the States' query requirements, noting the importance of implementing the Clearinghouse without delay. However, two of those commenters erroneously believed the proposal was to delay the entire Clearinghouse final rule and not solely the States' query provision.

The Owner-Operator Independent Drivers Association (OOIDA) commented that the proposed extension may cause confusion, noting that ''[d]rivers might interpret any delay in the Clearinghouse as a delay in the entire program, thus failing to register at the proper time.'' OOIDA suggested that FMCSA consider extending the compliance date for all Clearinghouse requirements ''to allow the entire industry sufficient opportunity to register . . . and provide additional time for the Agency to ensure an efficient rollout.''

The American Trucking Associations (ATA) expressed disappointment that FMCSA proposed to delay the States' query requirement by three years, but acknowledged the need to ''resolve AAMVA's concerns and ensure a seamless implementation of the States' Clearinghouse requirements.'' ATA also recommended that, during the 3-year delay, the Agency encourage States to ''to adopt their own procedures to review Clearinghouse information through the FMCSA portal before issuing, upgrading, renewing, or transferring a CDL.''

The Virginia Department of Motor Vehicles supported the proposal ''on the grounds provided in the NPRM.'' The Oregon Department of Transportation (Oregon DOT) also supported the proposed compliance date extension, noting the need ''to permit both FMCSA and the States to complete necessary IT changes, and additionally for States to pursue any required statutory changes related to the Clearinghouse.'' The Drug and Alcohol Testing Industry Association supported the proposed extension, but only if employers, or Consortia/Third-Party Administrators (C/TPAs) acting on their behalf, are also granted a 3-year extension from the requirement ''for mandatory queries to the database.''

An individual from Connecticut asked whether the States' query requirement would apply only to a CDL, or whether a State would also have to query the Clearinghouse prior to the issuance, renewal, or upgrade or transfer of a Commercial Learner's Permit (CLP). A commenter wanted to know if Clearinghouse registration would open in the fall.

Several comments were beyond the scope of this rulemaking. One commenter believed that the pre-employment verification process ''should be easier for businesses and more thorough,'' and suggested that DOT create ''a multi-modal solution of DOT safety sensitive work with all divisions of the DOT to qualify or suspend the individual.'' Another commenter questioned how drivers without access to the internet would authorize the release of information when an employer makes a full query. The Oregon DOT advocated extending the States' Clearinghouse requirements to the issuance of CLPs. Two commenters did not take a position on the proposal.

VII. FMCSA Responses to Comments

The Agency finds that comments suggesting FMCSA should delay the entire Clearinghouse rule, or parts of the rule unrelated to the States' query requirement, are without merit. Clearinghouse registration for authorized users has been underway since October 1, 2019, and FMCSA intends to make the Clearinghouse operational beginning January 6, 2020, as required by the 2016 final rule. The Clearinghouse represents an important step forward in improving compliance with FMCSA's drug and alcohol use testing requirements and removing drivers from the roadway until the return-to-duty process has been completed, thus enhancing highway safety. It is neither necessary nor desirable to delay implementation of the core Clearinghouse reporting and query obligations applicable to motor carrier employers and their service agents, including medical review officers, C/TPAs, and to substance abuse professionals.

For the reasons stated in the NPRM, this final rule does, however, extend the compliance date applicable to the States' query requirement, from January 6, 2020, to January 6, 2023. Accordingly, FMCSA adopts, without change, the regulatory text as proposed in the NPRM. Additionally, as proposed, States wishing to voluntarily access the Clearinghouse to obtain driver-specific information prior to the issuance, renewal, transfer, or upgrade of a CDL, may do so beginning January 6, 2020. Instructions for SDLAs wishing to access the Clearinghouse will be available on the Clearinghouse website prior to that date. States opting to access the Clearinghouse during the 3-year voluntary query period would determine what, if any, action the SDLA would take if the query indicates the applicant is prohibited from operating a CMV due to a drug and alcohol program violation.

In response to the question concerning whether the State query requirement pertains to CLP holders, or only to CDL holders, FMCSA notes that the Clearinghouse final rule required only that States conduct a query prior to the issuance, renewal, transfer, or upgrade of a CDL; CLPs were not included within the scope of the requirement. While the question of whether the States' query requirement should be extended to include CLPs, as suggested by the Oregon DOT, is outside the scope of this rule, that issue will be addressed in the Clearinghouse II NPRM.

The Agency acknowledges ATA's comment suggesting that FMCSA ''encourage'' States to ''adopt procedures'' to review Clearinghouse information when conducting the specified CDL transactions. In response, FMCSA again emphasizes that the Clearinghouse final rule did not require that States take any licensing action based on driver-specific information obtained by conducting a query. As noted in the NPRM, a query does not, in and of itself, confer a safety benefit. When a voluntary query conducted in accordance with this final rule indicates an applicant is prohibited from operating a CMV because the individual has failed to complete the return-to-duty process following a drug or alcohol program violation, whether or not an SDLA would take a licensing action would be determined by State law. As discussed above, issues involving the States' use of Clearinghouse information will be addressed in the Clearinghouse II rulemaking.

VIII. International Impacts

The Federal Motor Carrier Safety Regulations (FMCSRs), and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

IX. Section-By-Section Analysis

A. Change to 49 CFR 382.725

FMCSA amends § 382.725(a) to permit States to request information from the Clearinghouse beginning January 6, 2020, and to require that States request information from the Clearinghouse on or after January 6, 2023.

B. Changes to 49 CFR Parts 383 and 384

In parts 383 and 384, FMCSA amends §§ 383.73(b)(10), (c)(10), (d)(9), (e)(8), and (f)(4) and 384.235, by changing the date from January 6, 2020, to January 6, 2023.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget has not reviewed it under those Orders. This rule is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6, dated Dec. 20, 2018). In addition, this rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Because the Clearinghouse final rule did not establish a cost or benefit for the SDLA query, there are neither costs nor benefits associated with this rulemaking.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

This rule has been designated as a deregulatory action under E.O. 13771 by the Office of Information and Regulatory Affairs because it delays a compliance date for a requirement.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).[3]

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat 857) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen the adverse effects on these businesses.

As described above, the Clearinghouse final rule requires the SDLAs to query the Clearinghouse before completing certain licensing transactions. This final rule extends that compliance date from January 6, 2020, to January 6, 2023. The extension of the compliance date is limited to the SDLAs' query requirement. The extension does not impose costs on the SDLAs.

The regulatory flexibility analysis the Agency prepared for the Clearinghouse final rule did not include the SDLAs among the small entities affected by the rule. State governments and their agencies are not included in the definition of ''small governmental jurisdictions'' (5 U.S.C. 601(5)) or ''small entities'' (5 U.S.C. 601(6)). That determination, combined with the fact that the SDLAs are the only entity affected by the extension of the compliance date, and no costs would be imposed on the SDLAs, demonstrates that the rule does not have a significant impact on small entities. Consequently, I certify the action will not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Ms. Nikki McDavid, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $165 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2018 levels) or more in any one year. This rule would not result in such an expenditure. As discussed above, FMCSA estimates the final rule would result in costs less than zero.

G. Paperwork Reduction Act

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

[3] A ''major rule'' means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

H. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. E.O. 12988 (Civil Justice Reform)

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

J. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

K. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

L. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not change the collection of personally identifiable information (PII) as set forth in the 2016 Clearinghouse final rule. The supporting PIA, available for review on the DOT website, *http://www.transportation.gov/privacy,* gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to the 2016 Clearinghouse rule, which would also apply to this final rule.

M. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

N. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

O. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget (OMB), with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

Q. Environment

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs (6)(t)(2). The Categorical Exclusion (CE) in paragraph (6)(t)(2) covers regulations ensuring States comply with the provisions of the Commercial Motor Vehicle Act of 1986, by having the appropriate information technology systems concerning the qualification and licensing of persons who apply for and persons who are issued a CDL. The requirements in this rule are covered by this CE, and the action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the *regulations.gov* website listed under **ADDRESSES**.

R. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug Testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, parts 382, 383, and 384, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Amend § 382.725 by revising paragraph (a) to read as follows:

§ 382.725 Access by State licensing authorities.

(a)(1) Beginning January 6, 2020, and before January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State may obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(2) On or after January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 3. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 stat. 405, 830; and 49 CFR 1.87.

§ 383.73 [Amended]

■ 4. Amend § 383.73 by removing the date ''January 6, 2020'' from paragraphs (b)(10), (c)(10), (d)(9), (e)(8), and (f)(4) and adding, in its place, the date ''January 6, 2023.''

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

§ 384.235 [Amended]

■ 6. Amend § 384.235 by removing the date ''January 6, 2020'' and adding, in its place, the date ''January 6, 2023.''

Issued under authority delegated in 49 CFR 1.87.

Dated: December 10, 2019.

Jim Mullen,

Acting Administrator.

[FR Doc. 2019–26943 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180209155–8589–02; RTID 0648–XP005]

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Limited Reopening of the 2019 U.S. Pelagic Longline Fishery for Bigeye Tuna in the Western and Central Pacific Ocean

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

ACTION: Temporary rule; fishery reopening; fishery closure; request for comments.

SUMMARY: NMFS is temporarily reopening the 2019 U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean (WCPO) for five days because the fishery did not catch the entire 3,554 metric ton (t) limit. This action is intended to allow the fishery to access the remainder of the available limit.

DATES: The U.S. longline fishery for bigeye tuna reopens at 12:01 a.m. local time on December 23, 2019, until 11:59 p.m. local time on December 27, 2019. NMFS must receive comments by January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5176.

SUPPLEMENTARY INFORMATION: Pursuant to regulations implemented under the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.,* NMFS established an annual limit of 3,554 t of bigeye tuna for U.S. longline vessels fishing in the Convention Area (83 FR 33851, July 18, 2018, codified at 50 CFR 300.224). The limit applies only to U.S. vessels, but does not apply to U.S. vessels operating as part of the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Regulations at 50 CFR 300.224(b), (c), and (d) detail the manner in which longline-caught bigeye tuna is attributed among the fisheries of the United States and the U.S. Participating Territories.

NMFS monitored catches of longline-caught bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the 3,554 t catch limit for 2019 would be reached by July 27, 2019. In accordance with 50 CFR 300.224(e), NMFS closed the U.S. longline fishery for bigeye tuna in the Convention Area through a temporary rule effective on July 27, 2019 through December 31, 2019 (84 FR 35568; July 24, 2019). The closure does not apply to vessels operating as part of the longline fisheries of American Samoa, Guam, or the CNMI, including vessels identified in a valid specified fishing agreement under 50 CFR 665.819(c), in accordance with 50 CFR 300.224(f)(1)(iv).

NMFS also specified a 2019 limit of 2,000 t of longline-caught bigeye tuna for each of the U.S. territories (American Samoa, Guam, and the CNMI) (84 FR 34321, July 18, 2019). That rule allows each territory to allocate up to 1,000 t to U.S. longline vessels identified in a valid specified fishing agreement.

On August 1, 2019, NMFS announced a valid specified fishing agreement between the CNMI and the Hawaii Longline Association (HLA) (84 FR 37592). In accordance with procedures in 50 CFR 300.224(d) and 50 CFR 665.819(c)(9), NMFS began attributing bigeye tuna caught by vessels identified in the CNMI/HLA agreement to the CNMI beginning on July 20, 2019. NMFS forecasted that the fishery would reach the CNMI allocation limit by November 4, 2019, and closed the fishery on that date (84 FR 57827, October 29, 2019).

On October 28, 2019, NMFS announced a valid specified fishing agreement between American Samoa and HLA, and began attributing bigeye tuna caught by vessels identified in the agreement to American Samoa starting on that date (84 FR 57652). NMFS forecasts that the fishery will reach the American Samoa allocation limit by December 22, 2019, and will stop attributing on that date.

Since NMFS closed the U.S. longline fishery in July 2019, NMFS has subsequently determined that the fishery caught and retained only 3,456 t of the 3,554 t limit while it was open

from January through July 26, leaving 98 t available for catch and retention. Based on average bigeye tuna catch rates by the U.S. longline fishery in the month of December in calendar years 2012 to 2018, we estimate that the fishery could catch 98 t in five calendar days. Accordingly, this rule reopens the fishery for five days, after which, the closure published on July 24, 2019 (84 FR 35568), will again, take effect through December 31, 2019.

To prevent a disruption to the continuity of fishing operations, the reopening will begin the day after the date that NMFS stops attributing catch to American Samoa. All fishing under the remaining 98 t limit must be done in accordance with the regulations at 50 CFR 300.224 and any other applicable regulations.

Classification

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action. Compliance with the notice and comment requirement would be unnecessary and contrary to the public interest. Because the fishery closure on July 27, 2019 was based upon estimated landings, this action simply provides an opportunity to harvest unused catch that remains available in 2019. The action is a benefit to fishermen since they would not be able to access the fishery after December 22, 2019. Moreover, NMFS solicited and responded to public comments on the rule establishing the calendar year bigeye tuna catch limit of 3,554 t (83 FR 33851, July 18, 2018). Although this action is being implemented without the opportunity for prior notice and comment, NMFS is soliciting and will respond to public comments from those affected by or otherwise interested in this rule.

Additionally, NMFS has determined that good cause exists to waive the 30-day delay in effectiveness of this rule because, under 5 U.S.C. 553(d), this rule relieves a restriction on the regulated community, and requiring a 30-day delay would be contrary to the public interest. NMFS closed the U.S. longline fishery for bigeye tuna in the Convention Area through a temporary rule effective on July 27, 2019, through December 31, 2019. The closure does not apply to vessels operating identified in a valid specified fishing agreement under 50 CFR 665.819(c), in accordance with 50 CFR 300.224(f)(1)(iv).

Currently, vessels in the U.S. longline fishery are operating under a valid specified fishing agreement between American Samoa and HLA, which allocates 1,000 t of bigeye tuna to vessel identified in the agreement. NMFS forecasts that the fishery will reach the American Samoa allocation limit by December 22, 2019, and will stop attributing bigeye tuna to American Samoa on that date. If the effectiveness of this rule is delayed, the fishery would once again, be subject to the July 27, 2019 closure through December 31, 2019, and would be unable to access the remainder of the available 2019 bigeye tuna limit. Because this rule relives a restriction by temporarily reopening the fishery for bigeye tuna, it is not subject to the 30-day delayed effectiveness pursuant to 5 U.S.C. 553(d)(1).

This action is taken under 50 CFR 300.224(e) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: December 10, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–26902 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217097–1757–02; RTID 0648–XS019]

Reef Fish Fishery of the Gulf of Mexico; 2019 Commercial and Recreational Accountability Measure and Closures for Gulf of Mexico Lane Snapper

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 the lane snapper commercial and recreational sectors in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2019 fishing year through this temporary rule. NMFS has projected that the 2019 stock annual catch limit (ACL) for Gulf lane snapper has been met. Therefore, NMFS closes the commercial and recreational sectors for Gulf lane snapper on December 13, 2019, and they will remain closed through the end of the current fishing year on December 31, 2019. These closures are necessary to protect the Gulf lane snapper resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on December 13, 2019, until 12:01 a.m., local time, on January 1, 2020.

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

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes lane snapper, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All lane snapper weights discussed in this temporary rule are in round weight.

The stock annual catch limit (ACL) for Gulf lane snapper is 301,000 lb (136,531 kg). As specified in 50 CFR 622.41(k), if during a fishing year the sum of the commercial and recreational lane snapper landings exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, NMFS is required to close the commercial and recreational sectors for the remainder of that fishing year. In the 2018 fishing year, lane snapper landings exceeded the stock ACL by 58,551 lb (26,558 kg). For the 2019, fishing year, NMFS has determined that the 2019 stock ACL for Gulf lane snapper has been met. Accordingly, this temporary rule closes the commercial and recreational sectors for Gulf lane snapper effective at 12:01 a.m., local time, on December 13, 2019 and both sectors will remain closed through the end of the current fishing year on December 31, 2019.

During the commercial and recreational closures, the commercial sale or purchase of lane snapper taken from the Gulf EEZ is prohibited and the recreational bag and possession limits for lane snapper in or from the Gulf EEZ are zero. The prohibition on possession of Gulf lane snapper also applies in Gulf state waters for a vessel issued a valid Federal charter vessel/headboat permit for Gulf reef fish. During the closures, the operator of a vessel with a valid commercial vessel permit for Gulf reef fish having lane snapper on board must have landed and bartered, traded, or sold such lane snapper prior to 12:01 a.m., local time, on December 13, 2019. The prohibition on the sale or purchase of lane snapper does not apply to fish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, on

December 13, 2019, and were held in cold storage by a dealer or processor.

Classification

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

This action is taken under 50 CFR 622.41(k) 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 that the need to immediately implement this action to close the commercial and recreational sectors for lane snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the closure provisions was already subject to notice and comment, and all that remains is to notify the public of the closures. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect lane snapper. Prior notice and opportunity for public comment would require time and would potentially allow the sectors to further exceed the stock ACL.

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

Dated: December 10, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–26933 Filed 12–10–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 240

Friday, December 13, 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 ENERGY

10 CFR Part 430

[EERE–2017–BT–TP–0003]

RIN 1904–AD80

Energy Conservation Program: Energy Conservation Standards for Consumer Refrigerators, Refrigerator-Freezers, and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of public comment period.

SUMMARY: On November 15, 2019, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') to solicit information from the public to help DOE determine whether amended standards for consumer refrigerators, refrigerator-freezers, and freezers would result in a significant amount of additional energy savings and whether those standards would be technologically feasible and economically justified. The November 15, 2019 RFI also stated that public comments will be accepted until December 30, 2019. On November 21, 2019, the DOE received a request from the Association of Home Appliance Manufacturers (AHAM) to extend the public comment period by 60 days. DOE has reviewed this request and will be granting a 45 day extinction of the public comment period to allow public comments to be summited until February 13, 2020.

DATES: The comment period for the RFI published on November 15, 2019 (84 FR 62470), is extended. DOE will accept comments, data, and information regarding this request for information received no later than February 13, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0003, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ConsumerRefrigFreezer2017STD0003@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0003 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-TP-0003.* The docket web page contains instructions on how to access all documents, including public comments in the docket.

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

Signed in Washington, DC, on December 3, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–26909 Filed 12–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0974; Product Identifier 2019–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–15–01, which applies to certain The Boeing Company Model 777 airplanes. AD 2017–15–01 requires replacing the existing mode control panel (MCP) with a new MCP having a different part number. Since we issued AD 2017–15–01, the FAA has determined that the affected parts may be installed on airplanes outside of the original applicability of AD 2017–15–01. This proposed AD would retain the requirements of AD 2017–15–01, expand the applicability to include those other airplanes, and add a new requirement for certain airplanes to identify and replace the affected parts. The FAA is proposing this AD to

address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 27, 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 NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0974.

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–2019–0974; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0974; Product Identifier 2019–NM–155–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *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 proposed AD.

Discussion

The FAA issued AD 2017–15–01, Amendment 39–18961 (82 FR 33782, July 21, 2017) (''AD 2017–15–01''), for certain The Boeing Company Model 777 airplanes. AD 2017–15–01 requires replacing the existing MCP with a new MCP having a different part number. AD 2017–15–01 resulted from reports of uncommanded altitude display changes in the MCP altitude window. The FAA issued AD 2017–15–01 to address uncommanded changes to the MCP selected altitude; such uncommanded changes could result in incorrect spatial separation between airplanes, midair collision, or controlled flight into terrain.

Actions Since AD 2017–15–01 Was Issued

Since AD 2017–15–01 was issued, it has been determined that the affected parts may be installed as rotable spares on airplanes outside of the applicability of AD 2017–15–01, thereby subjecting those airplanes to the unsafe condition. Therefore, the applicability in this proposed AD has been expanded to include all The Boeing Company Model 777 airplanes. In addition, the FAA has determined that the installation of later-approved parts is acceptable for the replacement that would be required by this proposed AD.

Related Service Information Under 1 CFR Part 51

This proposed AD would require Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016, which the Director of the Federal Register approved for incorporation by reference as of August 25, 2017 (82 FR 33782, July 21, 2017). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing this AD because we 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.

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2017–15–01, and would expand the applicability to include all The Boeing Company Model 777 airplanes. This proposed AD would also require an inspection or records check to identify the part number of the affected parts, and for airplanes with affected parts, accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0974.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016, is limited to certain The Boeing Company Model 777 airplanes. However, the applicability of this proposed AD includes all The Boeing Company Model 777 airplanes. Because the affected parts are rotable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable parts, thereby subjecting those airplanes to the unsafe condition. This difference has been coordinated with Boeing.

Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016, limits the replacement part to an MCP having part number S241W001–262. This proposed AD would allow the installation of later-approved parts for the replacement, provided those later-approved parts meet certain conditions.

Costs of Compliance

The FAA estimates that this proposed AD affects 231 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement (retained actions from AD 2017-15-01).	2 work-hours × $85 per hour = $170.	Up to $5,800 *	Up to $5,970 *	Up to $1,379,070.*
Inspection/records check (new proposed action) (up to 28 airplanes).	1 work-hour × $85 per hour = $85.	$0	$85	Up to $2,380.

* Since the FAA has received no definitive data regarding the cost of a new MCP, the FAA has provided costs for the upgrade (modified part) only.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–15–01, Amendment 39–18961 (82 FR 33782, July 21, 2017), and adding the following new AD:

The Boeing Company: Docket No. FAA–2019–0974; Product Identifier 2019–NM–155–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by January 27, 2020.

(b) Affected ADs

This AD replaces AD 2017–15–01, Amendment 39–18961 (82 FR 33782, July 21, 2017) (''AD 2017–15–01'').

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of uncommanded altitude display changes in the mode control panel (MCP) altitude window. The FAA is issuing this AD to address uncommanded changes to the MCP selected altitude; such uncommanded changes could result in incorrect spatial separation between airplanes, midair collision, or controlled flight into terrain.

(f) Compliance

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

(g) New Definitions

(1) For the purposes of this AD, an affected part is an MCP having part number S241W001–201, S241W001–202, S241W001–251, S241W001–252, or S241W001–261.

(2) For the purposes of this AD, later-approved parts are only those parts that are approved as a replacement for the applicable part identified in Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016; and are approved as part of the type design by the FAA or The Boeing Company Organization Designation Authorization (ODA) after March 3, 2016 (the publication date of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016).

(h) Retained Replacement of MCP With Revised Compliance Language

This paragraph restates the requirements of AD 2017–15–01, with revised compliance language. For airplanes identified in Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016, within 60 months after August 25, 2017, (the effective date of AD 2017–15–01): Do the actions specified in paragraph (h)(1) or (2) of this AD.

(1) Replace the existing MCP part with an MCP having part number S241W001–262, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016.

(2) Install a later-approved part as defined in paragraph (g)(2) of this AD.

(i) New MCP Identification and Replacement

For airplanes not identified in paragraph (h) of this AD with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD, do the actions specified in paragraphs (i)(1) and (2) of this AD.

(1) Within 60 months after the effective date of this AD, perform a general visual inspection of the MCP to determine the MCP part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the MCP can be conclusively determined from that review.

(2) If the MCP is an affected part, within 60 months after the effective date of this AD:

Do the actions specified in paragraph (i)(2)(i) or (ii) of this AD.

(i) Replace the existing MCP with an MCP having part number S241W001–262, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016.

(ii) Install a later-approved part as defined in paragraph (g)(2) of this AD.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install an MCP having part number S241W001–201, S241W001–202, S241W001–251, S241W001–252, or S241W001–261, on any airplane.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2017–15–01 are approved as AMOCs for the corresponding provisions of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (ii) of this AD apply.

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

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

(l) Related Information

(1) For more information about this AD, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on December 4, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–26643 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0979; Product Identifier 2019–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by a report of incorrectly engaged lock washer tabs of the main landing gear (MLG) forward pintle bearing (FPB) at the forward face of the trunnion block. This proposed AD would require detailed inspections of the left-hand (LH) and right-hand (RH) side MLG FPB nuts and lock washer tabs, and depending on findings, accomplishment of repetitive detailed inspections or corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 27, 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 the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; email: *ADs@easa.europa.eu*; internet: *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0979.

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–2019–0979; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0979; Product Identifier 2019–NM–182–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic,

environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0265, dated October 25, 2019 (''EASA AD 2019–0265'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

This proposed AD was prompted by a report of incorrectly engaged lock washer tabs of the MLG FPB at the forward face of the trunnion block. The FAA is proposing this AD to address absence of an engaged lock washer tab at the bearing nut, which could cause an unexpected rotation of the nut and loss of torque, progressively allowing an axial movement of the bearing housing. This condition, if not detected and corrected, could lead to collapse of an MLG, possibly resulting in damage to the airplane and/or injury to occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0265 describes procedures for detailed inspections of the LH and RH side MLG FPB nuts and lock washer tabs for any MLG FPB nut not correctly locked by the lock washer tab, and depending on findings, accomplishment of repetitive detailed inspections for discrepancies or corrective actions. Corrective actions include bending the washer tab to lock the bearing nut and replacing any parts that have damage or wear. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0265 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0265 will be incorporated by reference in the FAA final rule. This proposed AD would therefore require compliance with EASA AD 2019–0265 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0265 that is required for compliance with EASA AD 2019–0265 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0979 after the FAA final rule is published.

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$2,040

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

Authority for This Rulemaking

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

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

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

appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0979; Product Identifier 2019–NM–182–AD.

(a) Comments Due Date

The FAA must receive comments by January 27, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0265, dated October 25, 2019 (''EASA AD 2019–0265'').

(d) Subject

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

(e) Reason

This AD was prompted by a report of incorrectly engaged lock washer tabs of the main landing gear (MLG) forward pintle bearing (FPB) at the forward face of the trunnion block. The FAA is issuing this AD to address absence of an engaged lock washer tab at the bearing nut, which could cause an unexpected rotation of the nut and loss of torque, progressively allowing an axial movement of the bearing housing. This condition, if not detected and corrected, could lead to collapse of an MLG, possibly resulting in damage to the airplane and/or injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0265.

(h) Exceptions to EASA AD 2019–0265

(1) Where EASA AD 2019–0265 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0265 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0265 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0265 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2019–0265, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 6017; email: *ADs@easa.europa.eu*; internet: *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0979.

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

Issued in Des Moines, Washington, on December 4, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–26617 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AQ64

Disclosure of Certain Protected Records Without Written Consent

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations on disclosure of certain records. Recent changes in law, to include the VA MISSION Act of 2018, now authorize VA to disclose certain protected records to non-VA entities (including private entities and other Federal agencies) for purposes of providing health care or performing other health care-related activities or functions. The Act also authorizes VA to disclose these protected records to a

third party for the purpose of recovering or collecting reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability or to which the United States is deemed to be a third-party beneficiary. This proposed rule would align VA's regulations with the recent changes in law.

DATES: Comments must be received by VA on or before February 11, 2020.

ADDRESSES: Written comments may be submitted through *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–AQ64—Disclosure of certain protected records without written consent.'' 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 *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania H. Griffin, Director, Information Access and Privacy Office (10A7), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Records and files maintained by VA on veterans and beneficiaries, including medical records, are generally confidential, and VA may not disclose or release these materials except as provided by law. 38 U.S.C. 5701. Moreover, records of the identity, diagnosis, prognosis, or treatment by or for VA of any patient related to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia as prescribed by 38 U.S.C. 7332(a)(1) are confidential and subject to special protection against disclosure. These records may only be disclosed for the specific purposes and under the circumstances expressly authorized under 38 U.S.C. 7332(b). Paragraph (b)(1) authorizes disclosure with the prior written consent of the patient to the extent, circumstances, and purposes allowed by VA regulations. Paragraph (b)(2) authorizes disclosure under certain circumstances with or without the written consent of the patient.

Section 3 of Public Law (Pub. L.) 115–26 (April 19, 2017) amended 38 U.S.C. 7332 by adding a new paragraph (b)(2)(H), authorizing disclosure of 7332-protected records without the written consent of the patient or subject of the record to a non-VA entity (including private entities and other Federal agencies) that provides VA-authorized hospital care or medical services to veterans. It also provided that any non-VA entity receiving such records may not redisclose or use those record for a purpose other than that for which the disclosure was made.

Subsequently, section 132 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018 (June 6, 2018) amended 38 U.S.C. 7332(b)(2) by striking paragraph (H) and inserting new paragraphs (H) and (I). Paragraph (H)(i) authorizes disclosure of 7332-protected records without the written consent of the patient to a non-VA entity (including private entities and other Federal agencies) for purposes of providing health care, including hospital care, medical services, and extended care services to patients or performing other health care-related activities or functions. Thus, the scope of permissible disclosures of 7332-protected records was expanded from non-VA entities providing hospital care or medical services authorized by the VA to non-VA entities providing health care or other health care-related activities or functions. Further, paragraph (H)(ii) was amended in 2017 to provide that any entity to which a record is disclosed under this paragraph may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law. The amendment under the MISSION Act replaced ''redisclose'' with ''disclose'' and added that entities who receive 7332-protected records may also make disclosures as permitted by law. Additionally, paragraph (I) was added to authorize disclosure to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by section 1729 of this title, or for a condition for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act.

VA has published regulations implementing release of information from VA records protected by one or more confidentiality provisions in 38 CFR part 1. General rules on release of information related to alcohol or other drug use disorder, HIV infection, or sickle cell anemia are at 38 CFR 1.460 through 1.469. In particular, § 1.460 contains the definitions for §§ 1.460 through 1.499 of this part. Disclosure with patient consent is addressed in §§ 1.475 through 1.479, while disclosures that do not require patient consent are addressed in §§ 1.483 through 1.489. The focus of §§ 1.490 through 1.499 is release of information in response to a court order. VA proposes to amend part 1 to conform to these statutory changes by adding two new definitions to § 1.460, and adding two new sections at 38 CFR 1.481 and 1.482.

In this rulemaking we propose to add two new definitions to § 1.460. We would add the term ''health care'' to have the same meaning as defined in the Health Insurance Portability and Accountability Act (HIPAA) Regulations, 45 CFR 160.103. We choose this definition to maintain consistency with the HIPAA Privacy Rule regulations promulgated by the Department of Health and Human Services at 45 CFR part 160 and subparts A and E of part 164, and to align with industry standards and practice. Section 160.103 of 45 CFR defines in part ''health care'' as ''care, services, or supplies related to the health of an individual,'' including ''preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body.'' Furthermore, the ''sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription'' is included in the definition. We would cross-reference the definition found in 45 CFR 160.103 in 38 CFR 1.460 to maintain consistency in definition of the term and in the event the definition is amended in the future. We note that the VA MISSION Act of 2018 includes hospital care, medical services, and extended care services as part of health care; however, since 45 CFR 160.103 does not explicitly identify these services in the definition, we have added this language to the definition of ''health care-related activities or functions'' below.

We would also add the term ''health care-related activities or functions'' and define it to mean the actions required

for the delivery of health care, including hospital care, medical services, and extended care services. The definition would also indicate that health care-related activities or functions include: Treatment as defined by 45 CFR 164.501, activities related to reimbursement for care and treatment by a health care provider, activities related to participation in health information exchanges for the delivery of health care, health care operations as defined by 45 CFR 164.501, and activities related to a patient's exercise of privacy rights regarding health information. This definition would allow VA to implement the recent statutory changes to 7332 by expanding the scope of permissible disclosure to purposes other than providing health care. Thus, this definition will allow VA to implement the recent statutory changes to section 7332 while also maintaining consistency with the definition of ''health care'' from the HIPAA Privacy Rule. We note that this rulemaking does not negate the requirement of VA to comply with HIPAA, when applicable.

VA believes that the examples of health-care-related activities and functions are appropriate to show consistency with the HIPAA Privacy Rule, which also allows the disclosure of protected health information for treatment. VA would apply the same standard for disclosures of section 7332 protected information since it aligns with common industry practice. Section 164.501 of 45 CFR defines ''treatment'' in part as the ''provision, coordination, or management of health care and related services by . . . health care providers, including the coordination or management of health care . . . with a third party; consultations between health care providers relating to a patient; or the referral of a patient from one health care provider to another.'' We would cross-reference this definition found in 45 CFR 164.501 to maintain consistency in the definition of the terms and in the event the definitions are amended in the future. Also, the HIPAA Privacy Rule allows the disclosure of protected health information for payment activities. Likewise, VA regulations at 38 CFR 17.106 allows the disclosure of appropriate health care records to third-party payers for the purposes of verifying the care and services which are the subject of claims for which VA seeks payment, recovery, or collection. This definition will allow VA to implement the recent statutory changes to section 7332 while also maintaining consistency with industry standards and practice under the HIPAA Privacy Rule for disclosing appropriate health care records to third-party payers. Additionally, VA has entered into agreements to participate in a health information exchange (HIE) to help facilitate the transfer of information between different organizations that range from community health care providers and health plans to government agencies providing benefits. This definition would allow VA to electronically transfer health information with HIE community partners for the purposes of delivering health care. Furthermore, the HIPAA Privacy Rule allows the disclosure of protected health information for health care operations under certain circumstances outlined in 45 CFR 164.506(c)(1) and (4). Thus, VA would apply the same standard for disclosures of section 7332 protected information since it aligns with common industry practice. Section 164.501 of 45 CFR defines ''health care operations'' in part as the ''activities of [a] covered entity to the extent that the activities are related to covered functions,'' including certain administrative, financial, legal, and quality improvement activities that are necessary to support a covered entity's core functions. We would cross-reference this definition found in 45 CFR 164.501 to maintain consistency in the definition of the terms and in the event the definitions are amended in the future. Finally, both the HIPAA Privacy Rule and the Privacy Act permit individuals to request an amendment of their record and provide requirements for subsequent disclosures or informing others of any amendments made to a record. This definition would allow VA to make reasonable efforts to quickly notify prior recipients of a veteran's health information when a correction is made.

Currently 38 CFR 1.481 and 1.482 are reserved for future use, and the undesignated center heading ''Disclosures without patient consent'' precedes § 1.483. We are proposing to move the undesignated center heading to precede § 1.481 and add a new § 1.481 titled ''Disclosure of medical records of veterans who receive non-VA health care.'' Paragraph (a) of § 1.481 would state that VA may disclose records described in 38 U.S.C. 7332(a) to a non-VA entity (including private entities and other Federal agencies) for purposes of providing health care to patients or performing other health care-related activities or functions. Paragraph (b) would state that an entity to which a record is disclosed under this subparagraph may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law. This would align with the statutory changes in the VA MISSION Act of 2018.

We note that this proposed rule would authorize, but not require, VA to disclose the protected health records without patient consent. Prior to enactment of Public Law 115–26 and the VA MISSION Act of 2018, VA was prohibited from disclosing health information related to alcohol or other drug use disorder, HIV infection, or sickle cell anemia to non-VA providers in those cases where written consent was not or could not be obtained from the veteran. This created potentially harmful situations where community providers would have to make medical decisions in the absence of relevant health information or delay the delivery of care until the consent form was signed and VA could transfer the patient's medical records. Accordingly, under 38 U.S.C. 7332(b)(2)(H), which will be implemented by this proposed rule, VA will share relevant medical records with non-VA providers delivering health care and other health care-related activities or functions to veterans.

In this rulemaking we propose to add a new § 1.482 titled ''Disclosure of medical records to recover or collect reasonable charges.'' This new section would state that VA may disclose records referenced in 38 U.S.C. 7332(a) to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by 38 U.S.C. 1729, or for a condition for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act (Pub. L. 87–693; 42 U.S.C. 2651 *et seq.*).

Prior to the enactment of the VA MISSION Act of 2018, section 7332 required VA to obtain written consent to release a patient's section 7332 protected information when billing a third-party payer for treatment of a non-service connected condition. HIPAA standards on billing transactions require diagnostic codes for the submission of a bill which can convey 7332 protected information. In addition, third-party payers generally require medical records to verify treatment prior to payment of a bill. As a result, under the original language of section 7332, VA was required to procure a veteran's consent prior to billing a third party for non-service connected care if the care involved and the medical documentation to be shared included

section 7332 protected information. If VA was unable to contact a veteran or the veteran refused to provide written consent, then the Department was unable to bill third-party payers to collect for the cost of the care. This resulted in an estimated 40 million dollars per year in lost revenue. Under 38 U.S.C. 7332(b)(2)(I), VA may provide the section 7332 protected information necessary to bill for services that previously required the veteran's written consent. Section 1.482 would implement the authority in section 7332 and VA will bill under this authority.

In addition, we are proposing a technical correction to §§ 1.460 through 1.499. Currently, the statutory authority for each of these sections is found in a parenthetical immediately following each individual section. The Office of **Federal Register** has directed that statutory authorities should be listed in the introductory portion of each CFR part. Therefore, we are consolidating the statutory authority citations for these sections and moving them to the beginning of part 1.

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

The proposed rule contains no provisions constituting a collection 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 entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect health and medical insurance companies, some of which are small entities. VA has determined that this proposed rule will not have a significant economic impact because VA estimates the cost of this rulemaking to be no more than 1 percent of average annual receipts, and thus not significant. VA estimates the cost of this rulemaking to be $41.7 million per year using FY2020 estimates for health and medical insurance carriers due to an increase in potential revenue received by VA from health and medical insurance firms for billed claims. This $41.7 million dollars per year will be distributed among 815, of which 312 are small, medical and health insurance firms that provide benefits to veterans treated for non-service connected conditions and whose records are protected under 38 U.S.C. 7332. We are uncertain if any small entity will be impacted so we assume that all small entities will be impacted in addition to large entities. The cost to each of the 312 small entities will be $51,172 per year, which is 1 percent of average annual receipts for the smallest potentially affected small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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 designated this rule as a significant regulatory action under Executive Order 12866. 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 expected to be 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 would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

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; 64.029—Purchase Care Program; 64.033—VA Supportive Services for Veteran Families Program; 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; 64.054—Research and Development.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

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 July 30, 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 forth in the preamble, Department of Veterans Affairs proposes to amend 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

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

§§ 1.460 and 1.461 also issued under 38 U.S.C. 7332 and 7334.

§§ 1.462, 1.464, 1.466–1.469, 1.476, 1.478, 1.479, 1.491–1.493, 1.495 and 1.496 also issued under 38 U.S.C. 7334.

§§ 1.463, 1.465, 1.475, 1.477, 1.481, 1.482, 1.483, 1.485, 1.486–1.490, and 1.494 also issued under 38 U.S.C. 7332.

§ 1.484 also issued under 38 U.S.C. 7331 and 7332.

§ 1.485a also issued under 38 U.S.C. 5701 and 7332.

■ 2. Remove the parenthetical Authority citation immediately following each section from §§ 1.460 through 1.479.

■ 3. Amend § 1.460 by adding, in alphabetical order, definitions for ''Health care'' and ''Health care-related activities or functions'' to read as follows:

§ 1.460 Definitions.

* * * * *

Health care. The term ''health care'' has the same meaning as provided in 45 CFR 160.103.

Health care-related activities or functions. The term ''health care-related activities or functions'' means the actions required for the delivery of health care, including hospital care, medical services, and extended care services. Health care-related activities or functions includes: Treatment as defined by 45 CFR 164.501; activities related to reimbursement for care and treatment by a health care provider; activities related to participation in health information exchanges for the delivery of health care; health care operations as defined by 45 CFR 164.501; and activities related to a patient's exercise of privacy rights regarding health information.

* * * * *

■ 4. Add an undesignated center heading immediately preceding § 1.481, and new §§ 1.481 and 1.482 to read as follows:

Disclosures Without Patient Consent

§ 1.481 Disclosure of medical records of veterans who receive non-VA health care.

(a) VA may disclose records referred to in 38 U.S.C. 7332(a) to a non-VA entity (including private entities and other Federal agencies) for purposes of providing health care to patients or performing other health care-related activities or functions.

(b) An entity to which a record is disclosed under this section may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law.

§ 1.482 Disclosure of medical records to recover or collect reasonable charges.

VA may disclose records described in 38 U.S.C. 7332(a) to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by 38 U.S.C. 1729, or for a condition for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act (Pub. L. 87–693, 42 U.S.C. 2651 *et seq.*).

■ 5. Remove the undesignated center heading immediately preceding § 1.483.

■ 6. Remove the parenthetical Authority citation immediately following each section from §§ 1.483 through 1.496.

[FR Doc. 2019–26910 Filed 12–12–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[EPA–HQ–OAR–2018–0815; FRL–10002–83–OAR]

RIN 2060–AU39

Test Methods and Performance Specifications for Air Emission Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes corrections and updates to regulations for source testing of emissions under various rules. This proposed rule includes corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures that provide testers enhanced flexibility. The revisions will improve the quality of data but will not impose new substantive requirements on source owners or operators.

DATES: Comments must be received on or before February 11, 2020.

Public Hearing: If a public hearing is requested by December 18, 2019, then we will hold a public hearing. If a public hearing is requested, then additional details about the public hearing will be provided in a separate **Federal Register** notice and on our website at *https://www3.epa.gov/ttn/emc/methods.* To request or attend a hearing, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2018–0815 by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r docket@epa.gov.* Include docket ID No. EPA–HQ–OAR–2018–0815 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal Holidays).

FOR FURTHER INFORMATION CONTACT: Mrs. Lula H. Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information in this preamble is organized as follows:

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G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
J. National Technology Transfer and Advancement Act and 1 CFR Part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Public Hearing and Written Comments

To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Mrs. Lula Melton by email at *melton.lula@epa.gov* or phone at (919) 541–2910. The last day to pre-register in advance to speak at the public hearing will be December 26, 2019. If held, the public hearing will convene at 9:00 a.m. (local time) and will conclude at 4:00 p.m. (local time).

Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, EPA will accept government-issued IDs, including drivers' licenses, from the District of Columbia and all states and territories except from American Samoa. If your identification is issued by American Samoa, you must present an additional form of identification to enter the federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information for the status of your state regarding REAL ID, go to: *https://www.dhs.gov/real-id-enforcement-brieffrequently-asked-questions.* Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

Submit your comments identified by Docket ID No. EPA–HQ–OAR–2018–0815 at *https://www.regulations.gov* (our preferred method) or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. General Information

A. Does this action apply to me?

The proposed amendments apply to industries that are subject to the current provisions of 40 CFR parts 51, 60, 61, and 63. We did not list all of the specific affected industries or their North American Industry Classification System (NAICS) codes herein since there are many affected sources in numerous NAICS categories. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

B. What action is the Agency taking?

This action proposes corrections and revisions to source test methods, performance specifications (PS), and associated regulations. The corrections and revisions consist primarily of typographical errors, updates to testing procedures, and the addition of alternative equipment and methods the Agency has deemed acceptable to use.

III. Background

The EPA catalogs errors and corrections, as well as necessary revisions to test methods, performance specifications, and associated regulations in 40 CFR parts 51, 60, 61, and 63 and periodically updates and revises these provisions. The most recent updates and revisions were promulgated on November 14, 2018 (83 FR 56713). This proposed rule addresses necessary corrections and revisions identified subsequent to that final action, many of which were brought to our attention by regulated sources and end-users, such as environmental consultants and compliance professionals. These revisions will improve the quality of data obtained and give source testers the flexibility to use newly-approved alternative procedures.

IV. Incorporation by Reference

The EPA proposes to incorporate by reference one ASTM International standard. Specifically, the EPA proposes to incorporate ASTM D 2369–10, which covers volatile organic content of coatings, in Method 24. This standard was developed and adopted by ASTM International and may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

The EPA proposes to incorporate by reference SW–846 Method 6010D and SW–846 Method 6020B in Method 12. Method 6010D covers inductively

coupled plasma-atomic emission spectrometry (ICP–AES) analysis, and Method 6020B covers inductively coupled plasma-mass spectrometry (ICP–MS) analysis. These methods may be obtained from *https://www.epa.gov* or from the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

The EPA proposes to incorporate by reference Gas Processors Association (GPA) 2166 and GPA 2174 in subpart KKKK of part 60, which involve procedures for obtaining samples from gaseous and liquid fuels, respectively. These GPA standards were developed and adopted by the Gas Processors Association and may be obtained from *https://gpamidstream.org/* or from the Gas Processors Association, 6526 East 60th Street, Tulsa, OK 74145.

The EPA proposes to incorporate by reference International Organization for Standardization (ISO) 10715 in subpart KKKK of part 60. This standard involves procedures for obtaining samples from gaseous fuels. This standard was developed by the International Organization for Standardization and may be obtained from *https://www.iso.org/home.html* or from the IHS Inc., 15 Inverness Way East, Englewood, CO 80112.

ASTM D4057–5 (Reapproved 2000), ASTM D4177–95 (Reapproved 2000), ASTM D5287–97 (Reapproved 2002), ASTM D6348–03, ASTM D6784–02 (Reapproved 2008), and ASME PTC 19.10–1981 were previously approved for incorporation by reference, and no changes are proposed.

The EPA proposes to update the ASTM standards referenced in Method 311, but these standards are not incorporated by reference. The EPA is not proposing to update the ASTM standards referenced in Performance Standard 18, which are not incorporated by reference.

V. Summary of Proposed Amendments

The following amendments are being proposed.

A. Method 201A of Appendix M of Part 51

In Method 201A, section 1.2, the erroneous gas filtration temperature limit of 30 °C would be revised to 29.4 °C. In section 1.6, the erroneous word ''recommended'' would be corrected to ''required.'' Section 6.2.1(d) would be revised to allow polystyrene petri dishes as an alternative to polyethylene due to the lack of commercially available polyethylene petri dishes. The polystyrene petri dishes offer similar chemical resistivity to acids and inorganics as polyethene and have been shown to transfer extreme low residual gravimetric mass to filters when used in ambient air applications. In section 8.6.6, the erroneous stack temperature of ±10 °C would be revised to ±28 °C. In section 17.0, the erroneous caption for Figure 7 would be corrected from ''Minimum Number of Traverse Points for Preliminary Method 4 Traverse'' to ''Maximum Number of Required Traverse Points,'' and the erroneous y-axis label would be corrected from ''Minimum Number of Traverse Points'' to ''Maximum Number of Traverse Points.''

B. General Provisions (Subpart A) of Part 60

In the General Provisions of part 60, § 60.17(h) would be revised to add ASTM D2369–10 to the list of incorporations by reference and to re-number the remaining consensus standards that are incorporated by reference in alpha-numeric order.

In part 60, § 60.17(j) would be revised to add SW–846–6010D and SW–846–6020B to the list of incorporations by reference and to re-number the remaining standards that are incorporated by reference in alpha-numeric order.

In part 60, § 60.17(k) would be revised to add GPA Standards 2166–17 and 2174–14 to the list of incorporations by reference and to re-number the remaining GPA standards that are incorporated by reference in alpha-numeric order.

In part 60, § 60.17(l) would be revised to add ISO 10715:1997 to the list of incorporations by reference.

C. Standards of Performance for New Residential Wood Heaters (Subpart AAA) of Part 60

In § 60.534(h), the language would be amended based on comments received in response to an Advance Notice of Proposed Rulemaking (ANPRM), for Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (83 FR 61585, November 30, 2018). Several commenters stated that the final clause of these existing paragraphs would create loopholes that allow manufacturers and test labs to withhold critical testing data. The EPA recognizes that this provision was not intended to create an avenue for omissions, so we are proposing language to clarify these communications and their reporting.

D. Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014 (Subpart XXX) of Part 60

In § 60.766(a)(3), the text for calibration of temperature measurement would be revised to provide clarity and improve the consistency of implementation.

E. Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (Subpart CCCC) of Part 60

Subpart CCCC of part 60 would be revised to clarify that (1) initial and annual performance testing for particulate matter (PM) for waste-burning kilns and energy recovery units (ERU) is to be conducted using Method 5 or Method 29 of Appendix A of part 60; (2) the required particulate matter continuous parameter monitoring system (PM CPMS) is used to demonstrate continuing compliance with the PM emission limit; and (3) heat input information must be reported for each ERU. The current language in §§ 60.2110(i), (i)(1)(iii) and 60.2145(b), when read together, make it clear that for purposes of demonstrating compliance with the PM emission limit, there must be initial testing and subsequently, annually and for ongoing continuous demonstration of compliance, that data from the compliant performance test in turn must be used to set an operating limit for the PM CPMS. Tables 6 and 7, however, presently specify PM CPMS as the performance test method for determining compliance.

Paragraphs 60.2110(i)(1) and 60.2145(j) would be revised to clarify that the PM CPMS coupled with an operating limit is used for continuing compliance demonstration with the PM emission limit. Paragraphs 60.2110(i)(1)(iii) and (i)(2) would be revised to include Method 29 as an alternative to Method 5 to measure PM in determining compliance with the PM emission limit. Paragraph 60.2145(j) would also be revised to add PM to the list of pollutants for which performance tests are conducted annually. Paragraph (p) would be added to § 60.2210 to require that annual reports include the annual heat input and average annual heat input rate of all fuels being burned in ERUs in order to verify which subcategory of ERU applies.

The required annual performance test timeframe would be changed from ''between 11 and 13 calendar months following the previous performance test'' to ''no later than 13 calendar

months following the previous performance test'' in paragraphs 60.2145(y)(3) and 60.2150. The current two-month testing range can present operational and testing challenges for facilities that have multiple commercial and industrial solid waste incineration (CISWI) units, and this revision would be consistent with other rules, such as the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, to which CISWI units may be subject.

Table 6 (Emission Limitations for Energy Recovery Units) and Table 7 (Emission Limitations for Waste-Burning Kilns) would be revised to clarify the performance test method for PM. The fourth column of the ''Particulate matter (filterable)'' row of Table 6 would be revised to remove the requirement to use a PM CPMS as the performance test method for large ERU. The fourth column of the ''Particulate matter (filterable)'' row of Table 7 would be revised to remove the requirement to use a PM CPMS and to instead specify Methods 5 and 29 as alternatives for measuring PM to determine compliance with the PM limit. The third column of the ''Particulate matter (filterable)'' row of Table 7 would be changed from a 30-day rolling average to specify a 3-run average with a minimum sample volume of 2 dry standard cubic meter (dscm) per run.

F. Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units (Subpart DDDD) of Part 60

Subpart DDDD of part 60 would be revised to clarify that (1) initial and annual performance testing for PM for waste-burning kilns and ERU is to be conducted using Method 5 or Method 29 of Appendix A of part 60; (2) the required PM CPMS is used to demonstrate continuing compliance with the PM emission limit; and (3) heat input information must be reported for ERU. The current language in §§ 60.2675(i) and (i)(1)(iii) and 60.2710(b), when read together, makes it clear that for purposes of demonstrating compliance for PM, performance testing must be used initially and then annually and for purposes of ongoing continuous demonstration of compliance, data from the compliant performance test is in turn used to set an operating limit for the PM CPMS. Tables 7 and 8, however, presently specify PM CPMS as the performance test method for determining compliance.

Paragraphs 60.2675(i)(1) and 60.2710(j) would be revised to clarify that the PM CPMS is used for continuing compliance demonstration with the PM emission limit. Paragraph 60.2710(j) would be also revised to clarify that PM performance tests are conducted annually and §§ 60.2675(i)(1)(iii) and (i)(2) would be revised to include Method 29 as an alternative to Method 5 to measure PM in determining compliance with the PM emission limit.

Also, the required annual performance test timeframe would be changed from ''between 11 and 13 calendar months following the previous performance test'' to ''no later than 13 calendar months following the previous performance test'' in §§ 60.2710(y)(3) and 60.2715. The current two-month testing range can present operational and testing challenges for facilities that have multiple CISWI units, and this revision would be consistent with other rules, such as the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, to which CISWI units may be subject.

Table 7 (Emission Limitations for Energy Recovery Units) and Table 8 (Emission Limitations That Apply to Waste-Burning Kilns) would be revised to clarify the performance test method for PM. The fourth column of the ''Particulate matter filterable'' row of Table 7 would be revised to remove the requirement to use a PM CPMS as the performance test method for large ERU. The fourth column of the ''Particulate matter filterable'' row of Table 8 would be revised to specify Methods 5 and 29 as alternatives for measuring PM to determine compliance with the PM emission limit. The third column of the ''Particulate matter filterable'' row of Table 8 would be changed from a 30-day rolling average to specify a 3-run average with a minimum sample volume of 1 dscm per run.

G. Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) of Part 60

In Table 2 of subpart JJJJ, text would be added to clarify that when stack gas flowrate measurements are necessary, they must be made at the same time as pollutant concentration measurements unless the option in Method 1A is applicable and is being used.

H. Standards of Performance for Stationary Combustion Turbines (Subpart KKKK) of Part 60

In 2006, EPA promulgated the combustion turbine criteria pollutant NSPS, Subpart KKKK of 40 CFR part 60 (71 FR 38482, July 6, 2006). This rule, which includes a sulfur dioxide (SO_2) emissions standard for all fuels, including natural gas, also made provisions to minimize the compliance burden for owners/operators of combustion turbines burning natural gas and/or low sulfur distillate oil. At the time, the Agency recognized that any SO_2 testing requirements for owners/operators of combustion turbines burning natural gas would result in compliance costs without any associated environmental benefit.

As currently written, the initial and subsequent performance tests required in § 60.4415 may be satisfied by fuel analyses performed by the facility, a contractor, the fuel vendor, or any other qualified agency as described in § 60.4415(a)(1). However, the fuel sample must be collected using ASTM D5287 (Standard Practice for Automatic Sampling of Gaseous Fuels). This method is not typically used by owner/operators of natural gas pipelines and, as a result, tariff sheets cannot be used without approval of the alternate method. This is creating a situation where the owner/operators of the combustion turbines must do their own sampling and testing, a burden that was not intended in the original rulemaking.

To align the rule requirements with the original intent of subpart KKKK, the EPA is proposing to include additional sampling methods in order for tariff sheets to be used to satisfy the SO_2 performance testing requirements. Specifically, § 60.4415(a)(1) would be amended to include GPA 2166 and ISO 10715 for manual sampling of gaseous fuels. In addition, manual sampling method GPA 2174 would be added for liquid fuels. The EPA is soliciting comment regarding whether additional sampling methods should also be included and whether additional test methods should be included in §§ 60.4360 and 60.4415. Specifically, for sampling, EPA is soliciting comment on including American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 14—Natural Gas Fluids Measurement, Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer, 7th Edition, August 2017. For determining the sulfur content of liquid fuels, EPA is soliciting comment on adding ASTM D5623–94 (2014) (Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection) and ASTM D7039–15a (Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry). For determining the sulfur content of gaseous fuels, EPA is soliciting comment on adding GPA D2140–17 (Liquefied Petroleum Gas Specifications

and Test Methods) and GPA 2261–19 (Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography).

These amendments would also be consistent with the burden reduction proposed by the EPA in 2012 (77 FR 52554, August 29, 2012). In that proposal, the EPA proposed amendments to subpart KKKK that would eliminate the SO_2 emissions limit for owner/operators of combustion turbines burning natural gas and/or low sulfur distillate and add additional sampling and test methods for owners/operators of combustion turbines burning other fuels. (The EPA has not taken final action on that proposal.)

I. Standard of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (Subpart QQQQ) of Part 60

In subpart QQQQ, in § 60.5476(i), the language would be amended based on comments received in response to an ANPRM for Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (83 FR 61585, November 30, 2018). Several commenters stated that the final clause of these existing paragraphs would create loopholes that allow manufacturers and test labs to withhold critical testing data. The EPA recognizes that this provision was not intended to create an avenue for omissions, so we are proposing language to clarify these communications and their reporting.

J. Method 4 of Appendix A–3 of Part 60

In Method 4, the erroneous leak check procedures in section 8.1.3 would be corrected; the erroneous section 8.1.4.2 would be corrected; and in the table in section 9.1, the erroneous reference to section 8.1.1.4 would be replaced with section 8.1.3.2.2.

Method 4 would be revised to standardize the constants between Methods 4 and 5, and more significant digits would be added to constants to remove rounding and truncation errors. Also, the option for volumetric determination of the liquid content would be deleted to remove the unnecessary density conversion. We believe most method users have moved to gravimetric measurement of the liquid contents to lower the cost and increase the accuracy of the liquid measurement. Revisions would occur in various sections (2.1, 6.1.5, 11.1, 11.2, 12.1.1, 12.1.2, 12.1.3, 12.2.1, and 12.2.2) and Figures 4–4 and 4–5.

K. Method 5 of Appendix A–3 of Part 60

In Method 5, sections 6.2.4 and 8.1.2 would be revised to allow polystyrene petri dishes as an alternative to polyethylene due to the lack of commercially available polyethylene petri dishes. The polystyrene petri dishes offer similar chemical resistivity to acids and inorganics as polyethene and have been shown to transfer extreme low residual gravimetric mass to the filters when used in ambient air applications.

Method 5 would also be revised to standardize the constants between Methods 4 and 5, and more significant digits would be added to constants to remove rounding and truncation errors. Also, the option for volumetric determination of the liquid content would be deleted to remove the unnecessary density conversion. We believe most method users have moved to gravimetric measurement of the liquid contents to lower the cost and increase the accuracy of the liquid measurement. Revisions would occur in various sections (6.1.1.8, 6.2.5, 8.7.6.4, 12.1, 12.3, 12.4, 12.11.1, 12.11.2, 16.1.1.4, and 16.2.3.3) and in Figure 5–6.

L. Method 7C of Appendix A–4 of Part 60

In Method 7C, in section 7.2.11, the erroneous chemical compound, sodium sulfite would be corrected to sodium nitrite.

M. Method 7E of Appendix A–4 of Part 60

In Method 7E, section 8.5 would be revised to ensure that the specified bias and calibration error checks are performed consistently. The results of the post-run system bias and calibration error checks are used to validate the run, as well as to correct the results of each individual test run for bias found in the sampling system. The more frequently these checks are performed, the more accurate the bias adjusted data will be.

N. Method 12 of Appendix A–5 of Part 60

In Method 12, sections 7.1.2, 8.7.1.6, 8.7.3.1, and 8.7.3.6 would be revised to remove references regarding the use of silicone grease, which is no longer allowed when conducting Method 5, and section 12.3 would be revised to correctly refer to the title of section 12.4 of Method 5.

Section 16.1 allows measurements of PM emissions in conjunction with the lead measurement but does not currently provide enough detail to ensure proper PM measurement; the proposed revisions to section 16.1 would provide testers with the necessary procedures to execute the PM and lead emissions measurements using one sampling train.

Sections 16.3, 16.4.1, 16.4.2, 16.5, 16.5.1, and 16.5.2 would be revised to specify appropriate EPA analytical methods, as well as supporting quality assurance procedures, as part of the allowed alternatives to use inductively coupled plasma-atomic emission spectrometry (ICP–AES) and inductively coupled plasma-mass spectrometry (ICP–MS) for sample analysis. Section 16.0 currently allows three alternatives to the atomic absorption analysis otherwise required in Method 12, specifically ICP–AES in section 16.4, ICP–MS in section 16.5, and cold vapor atomic fluorescence spectrometry (CVAFS) in section 16.6. In regard to the options to use ICP–AES and ICP–MS for analysis of lead, sections 16.4 and 16.5 currently do not include any specifics for applying these candidate analytical techniques, nor any procedures for assessing data quality. The proposed revisions would provide the needed specificity by referencing existing EPA methods for ICP–AES and ICP–MS along with supporting quality assurance requirements. The option to use CVAFS to measure lead (section 16.6) would be removed since CVAFS for lead is not generally available, and there is no existing EPA method for conducting it.

O. Method 16B of Appendix A–6 of Part 60

In Method 16B, in section 2.1, the erroneous phrase ''an integrated gas sample'' would be corrected to ''a gas sample.'' In sections 6.1 and 8.2, the reference to section 8.4.1 would be changed to 8.3.1 since section 8.4.1 would be renumbered to 8.3.1. The text in section 8.3, ''Analysis. Inject aliquots of the sample into the GC/FPD analyzer for analysis. Determine the concentration of SO_2 directly from the calibration curves or from the equation for the least-squares line.'' would be moved to section 11.1 to be consistent with EPA test method formatting. Sections 8.4, 8.4.1, and 8.4.2 would be renumbered to 8.3, 8.3.1, and 8.3.2, respectively since the text in section 8.3 would be moved to section 11.1. In section 11.1, the sentence ''Sample collection and analysis are concurrent for this method (see section 8.3).'' would be deleted. Section 11.2 would be added so that a uniform set of analysis results would be obtained over the test period.

P. Method 16C of Appendix A–6 of Part 60

In Method 16C, in section 13.1, ''gas concentration'' would be replaced with ''span'' for clarity.

Q. Method 24 of Appendix A–7 of Part 60

In Method 24, section 6.2, the most recent version of ASTM D 2369 (ASTM D 2369–10) would be added.

R. Method 25C of Appendix A–7 of Part 60

We are proposing to change the correction of non-methane organic compounds (NMOC) within the method. Currently, we require the NMOC to be corrected by nitrogen or oxygen content. The correction is done by nitrogen unless the nitrogen content exceeds a threshold of 20 percent. When the nitrogen threshold is above 20 percent, the correction is done by oxygen. We are considering multiple options for revisions, which are outlined in greater detail in docket ID EPA–HQ–OAR–2018–0815, based on data provided by industry also provided in docket ID EPA–HQ–OAR–2018–0815. The revisions to the correction that we are considering are for when only oxygen is used as a NMOC correction, setting a rainfall threshold in lieu of a nitrogen percent threshold, and requiring a methane measurement and using methane only as the correction. We have provided amendatory text for each option in docket ID EPA–HQ–OAR–2018–0815.

S. Method 26 of Appendix A–8 of Part 60

In Method 26, in section 8.1.2, the misspelled word ''undereporting'' in the next to the last sentence would be corrected to ''under reporting.''

T. Method 26A of Appendix A–8 of Part 60

In Method 26A, section 6.1.3, a reference to section 6.1.1.7 of Method 5 would be added to make the filter temperature sensor placement consistent with the requirements in Method 5. Also, in section 6.1.3, the requirement that the filter temperature sensor must be encased in glass or Teflon would be added because of the reactive nature of the halogen acids. In section 8.1.5, the misspelled word ''undereporting'' would be corrected to ''under reporting.''

U. Performance Specification 4B of Appendix B of Part 60

In Performance Specification 4B, the response time in section 4.5 would be changed from ''must not exceed 2 minutes'' to ''must not exceed 240 seconds'' to be consistent with the response time in Performance Specification 4A.

V. Performance Specification 5 of Appendix B of Part 60

In Performance Specification 5, section 5.0, the erroneous term ''users manual'' would be replaced with ''user's manual,'' and in the note in section 8.1, the sentence ''For Method 16B, you must analyze a minimum of three aliquots spaced evenly over the test period.'' would be added to provide consistency with the number of aliquots analyzed in Method 16B, which may be used as the reference method.

W. Performance Specification 6 of Appendix B of Part 60

In Performance Specification 6, section 13.1 would be revised to clarify that the calibration drift test period for the analyzers associated with the measurement of flow rate should be the same as that for the pollutant analyzer that is part of the continuous emission rate monitoring system (CERMS). Section 13.2 would be revised for clarity and to be consistent with the requirements in Performance Specification 2.

X. Performance Specification 8 of Appendix B of Part 60

In Performance Specification 8, a new section 8.3 would be added to require that an instrument drift check be performed as described in Performance Specification 2, and the existing sections 8.3, 8.4, and 8.5 would be re-numbered as 8.4, 8.5, and 8.6, respectively.

Y. Performance Specification 9 of Appendix B of Part 60

In Performance Specification 9, the quality control and performance audit sections would be clarified. In section 7.2, a requirement that performance audit gas must be an independent certified gas cylinder or cylinder mixture certified by the supplier to be accurate to two percent of the tagged value supplied with the cylinder would be added.

In section 8.3, an incorrect reference concerning quality control requirements that pertain to the 7-day drift test would be clarified and corrected, and an incorrect reference to the error calculation equation would be corrected. In section 8.4, a requirement to ensure that performance audit samples challenge the entire sampling system including the sample transport lines would be added, and quality control requirements that must be met for performance audit tests would be specified by adding references to sections 13.3 and 13.4.

In section 10.1, the erroneous word ''initial'' would be deleted from the title, ''Initial Multi-Point Calibration,'' and the quality control requirements that must be met for multi-point calibrations would be specified by referencing sections 13.1 and 13.2 in addition to 13.3. Sections 10.1 and 10.2 would be clarified such that calibrations may be performed at the instrument rather than through the entire sampling system.

In section 13.1, language would be clarified to ensure that every time a triplicate injection is performed, the calibration error must be less than or equal to 10 percent of the calibration gas value. In section 13.2, language would be clarified to specify that the linear regression correlation coefficient must be determined to evaluate the calibration curve for instrument response every time the continuous emission monitoring system (CEMS) response is evaluated over multiple concentration levels. Section 13.4 would be added to describe the quality control requirements for the initial and periodic performance audit test sample.

Z. Performance Specification 18 of Appendix B of Part 60

In Performance Specification 18, section 2.3 would be revised to clarify that Method 321 is only applicable to Portland cement plants. Also, in section 11.9.1, the reference to Method 321 would be deleted because Method 321 is specific to Portland cement plants, and it is already specified in the applicable regulations.

AA. Procedure 1 of Appendix F of Part 60

In Procedure 1, section 5.2.3(2), the criteria for cylinder gas audits (CGAs) as applicable to diluent monitors would be specified for clarity.

BB. Method 107 of Appendix B of Part 61

In Method 107, the erroneous equation 107–3 would be corrected by adding the omitted plus (+) sign.

CC. General Provisions (Subpart A) of Part 63

In the General Provisions of part 63, in § 63.2, the definition of alternative test method would be revised to exclude ''that is not a test method in this chapter and'' because doing so clarifies that to use methods other than those required by a specific subpart requires the alternative test method review and approval process.

Section 63.14(h) would be revised to add ASTM D 4457, ASTM D 4747, ASTM D 4827, and ASTM D 5910 to the list of incorporations by reference and to re-number the remaining consensus standards that are incorporated by reference in alpha-numeric order.

DD. Portland Cement Manufacturing (Subpart LLL) of Part 63

In subpart LLL, the units of measure in Equations 12, 13, 17, 18, and 19 would be revised to add clarity and consistency. Equations 12 and 13 need to be corrected so that the operating limit units of measure is calculated correctly. The calculation of the operating limit is established by a relationship of the total hydrocarbons (THC) CEMS signal to the organic HAPs compliance concentration. As illustrated in Table 1 in Part 63, Subpart LLL, the THC and organic HAP emissions limits units are in ppmvd corrected to 7 percent oxygen. Therefore, the average organic HAP values in equation 12 need to be in ppmvd, corrected to 7 percent oxygen, instead of ppmvw. The THC CEMS monitor units of measure are ppmvw, as propane and the variables would be updated to reflect this. The variables in equations 13 and 19 reference variables in equations 12 and 18, respectively. Those variables would be updated for consistency between the equations.

The units of measure in equation 17 should be the monitoring system's units of measure. It is possible for those systems to be on either a wet or a dry basis. Currently, the equation is only on a wet basis, even though it should be on the basis of the monitor (wet or dry). The changes to the units of measure from ppmvw to ppmv takes either possibility into account. For Equations 17 and 18, the operating limit units of measure would be changed to the units of the CEMS monitor, ppmv.

EE. Method 301 of Appendix A of Part 63

In Method 301, section 11.1.3, the erroneous SD in equation 301–13 would be replaced with SD_d.

FF. Method 308 of Appendix A of Part 63

In Method 308, section 12.4, erroneous equation 308–3 would be corrected, and in section 12.5, erroneous equation 308–5 would be corrected.

GG. Method 311 of Appendix A of Part 63

In Method 311, in sections 1.1 and 17, the ASTM would be updated. Specifically, in section 1.1, ASTM D4747–87 would be updated to D4747–02, and ASTM D4827–93 would be updated to D4827–03. Also, in section 1.1, Provisional Standard Test Method, PS 9–94 would be replaced with D5910–05. In section 17, ASTM D4457–85 would be updated to ASTM D4457–02, and ASTM D4827–93 would be updated to ASTM D4827–03.

HH. Method 315 of Appendix A of Part 63

In Method 315, in Figure 315–1, an omission would be corrected by adding a ''not to exceed'' blank criteria for filters used in this test procedure. The blank criteria was derived from evaluation of blank and spiked filters used to prepare Method 315 audit samples. We would set the allowable blank correction for filters based on the greater of two criteria. The first criterion requires the blank to be at least 10 times the measured filter blanks from the audit study. The second criterion requires the blank to be at least 5 times the resolution of the analytical balance required in Method 315. The ''not to exceed'' value would, therefore, be based on the second criterion (balance resolution) because it is the higher of the two criteria.

II. Method 316 of Appendix A of Part 63

In Method 316, section 1.0, the erroneous positive exponents would be corrected to negative exponents. Also, the title of section 1.0, ''Introduction,'' would be changed to ''Scope and Application'' to be consistent with the Environmental Monitoring Management Council (EMMC) format for test methods.

JJ. Method 323 of Appendix A of Part 63

In the title of Method 323, the misspelled word ''Derivitization'' would be corrected to ''Derivatization,'' and in section 2.0, the misspelled word ''colorietrically'' would be corrected to ''colorimetrically.''

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. This proposed rule is expected to provide meaningful burden reduction by updating and clarifying methods and performance specifications, thereby improving data quality, and also by providing source testers flexibility by incorporating approved alternative procedures.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The amendments being proposed in this action to the test methods, performance specifications, and testing regulations only make corrections and minor updates to existing testing methodology. In addition, the proposed amendments clarify performance testing requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule will not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175. This action would correct and update existing testing regulations. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act and 1 CFR Part 51

This action involves technical standards. The EPA proposes to use ASTM D 2369 in Method 24. The ASTM D 2369 standard covers volatile content of coatings. The EPA proposes to use ASTM D 4457, ASTM D 4747, ASTM D 4827, and ASTM D 5910 in Method 311. These ASTM standards cover procedures to identify and quantify hazardous air pollutants in paints and coatings. The ASTM standards were developed and adopted by the American Society for Testing and Materials and may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

The EPA proposes to use GPA 2166 and GPA 2174 in Subpart KKKK of part 60, which involve procedures for obtaining samples from gaseous and liquid fuels, respectively. These GPA standards were developed and adopted by the Gas Processors Association and may be obtained from *https://gpamidstream.org/* or from the Gas Processors Association, 6526 East 60th Street, Tulsa, OK 74145.

The EPA proposes to use ISO 10715 in subpart KKKK of part 60. This standard involves procedures for obtaining samples from gaseous fuels. This standard was developed by the International Organization for Standardization and may be obtained from *https://www.iso.org/home.html* or from the ISH Inc., 15 Inverness Way East, Englewood, CO 80112.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action would correct and update existing testing regulations.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Performance specifications, Test methods and procedures.

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Performance specifications, Test methods and procedures.

40 CFR Parts 61 and 63

Environmental protection, Air pollution control, Incorporation by reference, Performance specifications, Test methods and procedures.

Dated: November 25, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Revise sections 1.2, 1.6, 6.2.1(d), and 8.6.6 and Figure 7 in Method 201A of appendix M to part 51 to read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

Method 201A—Determination of PM_{10} and $PM_{2.5}$ Emissions From Stationary Sources (Constant Sampling Rate Procedure)

* * * * *

1.2 Applicability. This method addresses the equipment, preparation, and analysis necessary to measure filterable PM. You can use this method to measure filterable PM from stationary sources only. Filterable PM is collected in stack with this method (*i.e.,* the method measures materials that are solid or liquid at stack conditions). If the gas filtration temperature exceeds 29.4 °C (85 °F), then you may use the procedures in this method to measure only filterable PM (material that does not pass through a filter or a cyclone/filter combination). If the gas filtration temperature exceeds 29.4 °C (85 °F), and you must measure both the filterable and condensable (material that condenses after passing through a filter) components of total primary (direct) PM emissions to the atmosphere, then you must combine the procedures in this method with the procedures in Method 202 of appendix M to this part for measuring condensable PM. However, if the gas filtration temperature never exceeds 29.4 °C (85 °F), then use of Method 202 of appendix M to this part is not required to measure total primary PM.

* * * * *

1.6 Conditions. You can use this method to obtain particle sizing at 10 micrometers and or 2.5 micrometers if you sample within 80 and 120 percent of isokinetic flow. You can also use this method to obtain total filterable particulate if you sample within 90 to 110 percent of isokinetic flow, the number of sampling points is the same as required by Method 5 of appendix A–3 to part 60 or Method 17 of appendix A–6 to part 60, and the filter temperature is within an acceptable range for these methods. For Method 5, the acceptable range for the filter temperature is generally 120 °C (248 °F) unless a higher or lower temperature is specified. The acceptable range varies depending on the source, control technology and applicable rule or permit condition. To satisfy Method 5 criteria, you may need to remove the in-stack filter and use an out-of-stack filter and recover the PM in the probe between the $PM_{2.5}$ particle sizer and the filter. In addition, to satisfy Method 5 and Method 17 criteria, you may need to sample from more than 12 traverse points. Be aware that this method determines in-stack PM_{10} and $PM_{2.5}$ filterable emissions by sampling from a required maximum of 12 sample points, at a constant flow rate through the train (the constant flow is necessary to

maintain the size cuts of the cyclones), and with a filter that is at the stack temperature. In contrast, Method 5 or Method 17 trains are operated isokinetically with varying flow rates through the train. Method 5 and Method 17 require sampling from as many as 24 sample points. Method 5 uses an out-of-stack filter that is maintained at a constant temperature of 120 °C (248 °F). Further, to use this method in place of Method 5 or Method 17, you must extend the sampling time so that you collect the minimum mass necessary for weighing each portion of this sampling train. Also, if you are using this method as an alternative to a test method specified in a regulatory requirement (*e.g.,* a requirement to conduct a compliance or performance test), then you must receive approval from the authority that established the regulatory requirement before you conduct the test.

* * * * *

6.2.1 * * *

(d) Petri dishes. For filter samples; glass, polystyrene, or polyethylene, unless otherwise specified by the Administrator.

* * * * *

8.6.6 Sampling Head. You must preheat the combined sampling head to the stack temperature of the gas stream at the test location (±28 °C, ±50 °F). This will heat the sampling head and prevent moisture from condensing from the sample gas stream.

* * * * *

17.0 * * *

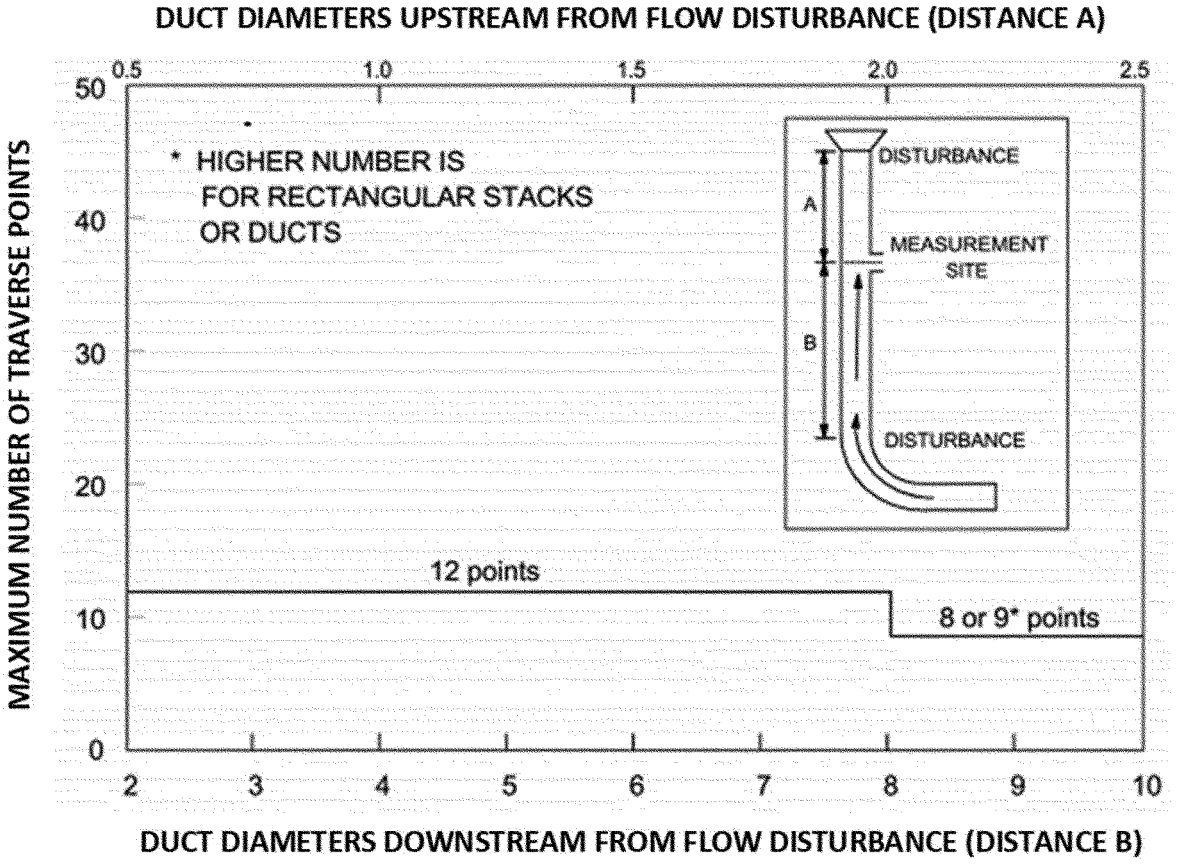

Figure 7. Maximum Number of Required Traverse Points

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 3. The authority citation for part 60 continues to read as follows:

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

■ 4. Amend § 60.17 by:

■ a. Revising paragraph (a) the last sentence;

■ b. Redesignating paragraphs (h)(95) through (209) as (h)(96) through (210), respectively;

■ c. Adding new paragraph (h)(95);

■ d. Adding paragraphs (j)(3) and (4);

■ e. Redesignating paragraphs (k)(2) and (3) as paragraphs (k)(4) and (5) and paragraph (k)(1) as paragraph (2), respectively;

■ f. Adding new paragraphs (k)(1) and (3); and

■ g. Adding paragraph (l)(2).

The revisions and additions read as follows:

§ 60.17 Incorporation by reference.

(a) * * * For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(h) * * *

(95) ASTM D2369–10, Standard Test Method for Volatile Content of Coatings, (Approved June 1, 2015), IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

* * * * *

(j) * * *

(3) SW–846–6010D, Inductively Coupled Plasma-Optical Emission Spectrometry, Update VI, July 2018, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for appendix A–5 to Part 60: Method 12, Section 16.4.2.

(4) SW–846–6020B, Inductively Coupled Plasma-Mass Spectrometry, Update V, July 2014, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for appendix A–5 to Part 60: Method 12, Section 16.5.2.

(k) * * *

(1) Gas Processors Association Standard 2166–17, Obtaining Natural Gas Samples for Analysis by Gas Chromatography, (Reaffirmed 2017) IBR approved for § 60.4415(a).

* * * * *

(3) Gas Processors Association Standard 2174–14, Obtaining Liquid Hydrocarbon Samples for Analysis by Gas Chromatography, (Revised 2014) IBR approved for § 60.4415(a).

* * * * *

(l) * * *

(2) ISO 10715:1997, Natural gas—Sampling guidelines, (First Edition, June 1, 1997), IBR approved for § 60.4415(a).

* * * * *

Subpart AAA—Standards of Performance for New Residential Wood Heaters

■ 5. In § 60.534 revise paragraph (h) to read as follows:

§ 60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

* * * * *

(h) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the wood heater must be limited to written communications transmitted prior to the first pretest burn of the certification test series. During certification tests, the manufacturer may communicate with the third-party certifier, and only in writing to notify them that the manufacturer has observed a deviation from proper test procedures by the laboratory. All communications must be included in the test documentation required to be submitted pursuant to § 60.533(b)(5) and must be consistent with instructions provided in the owner's manual required under § 60.536(g).

* * * * *

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

■ 6. In § 60.766 revise paragraph (a)(3) to read as follows:

§ 60.766 Monitoring of operations.

* * * * *

(a) * * *

(3) Monitor temperature of the landfill gas on a monthly basis as provided in 60.765(a)(5). The temperature measuring device must be calibrated annually using the procedure in 40 CFR part 60, appendix A–1, Method 2, Section 10.3 such that a minimum of two temperature points, bracket within 10 percent of all landfill absolute temperature measurements or two fixed points of ice bath and boiling water, corrected for barometric pressure, are used.

* * * * *

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

■ 7. Amend § 60.2110 by revising the introductory text to paragraph (i) and paragraphs (i)(1) and (2) to read as follows:

§ 60.2110 What operating limits must I meet and by when?

* * * * *

(i) If you use a PM CPMS to demonstrate continuing compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (i)(1) through (5) of this section:

(1) Determine your operating limit as the average PM CPMS output value recorded during the performance test or at a PM CPMS output value corresponding to 75 percent of the emission limit if your PM performance test demonstrates compliance below 75 percent of the emission limit. You must verify an existing or establish a new operating limit after each repeated performance test. You must repeat the performance test annually and reassess and adjust the site-specific operating limit in accordance with the results of the performance test:

(i) Your PM CPMS must provide a 4–20 milliamp output, or digital equivalent, and the establishment of its relationship to manual reference method measurements must be determined in units of milliamps;

(ii) Your PM CPMS operating range must be capable of reading PM concentrations from zero to a level equivalent to at least two times your allowable emission limit. If your PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit; and

(iii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (*e.g.,* average all your PM CPMS output values for three corresponding Method 5 or Method 29 test runs).

(2) If the average of your three PM performance test runs are below 75 percent of your PM emission limit, you must calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS output values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or Method 29 performance test with the procedures in (i)(1) through (5) of this section:

* * * * *

■ 8. Amend § 60.2145 by revising the introductory text to paragraph (j) and paragraph (y)(3) to read as follows:

§ 60.2145 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

* * * * *

(j) For waste-burning kilns, you must conduct an annual performance test for particulate matter, cadmium, lead, carbon monoxide, dioxins/furans and hydrogen chloride as listed in table 7 of this subpart, unless you choose to demonstrate initial and continuous compliance using CEMS, as allowed in paragraph (u) of this section. If you do not use an acid gas wet scrubber or dry scrubber, you must determine compliance with the hydrogen chloride emissions limit using a HCl CEMS according to the requirements in paragraph (j)(1) of this section. You must determine compliance with the mercury emissions limit using a mercury CEMS or an integrated sorbent trap monitoring system according to paragraph (j)(2) of this section. You must determine compliance with nitrogen oxides and sulfur dioxide using CEMS. You must determine continuing compliance with the particulate matter emissions limit using a PM CPMS according to paragraph (x) of this section.

* * * * *

(y) * * *

(3) For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test must be conducted on an annual basis (no later than 13 calendar months following the previous performance test).

* * * * *

■ 9. Revise § 60.2150 to read as follows:

§ 60.2150 By what date must I conduct the annual performance test?

You must conduct annual performance tests no later than 13 calendar months following the previous performance test.

■ 10. Amend § 60.2210 by revising the introductory paragraph and adding paragraph (p) to read as follows:

§ 60.2210 What information must I include in my annual report?

The annual report required under § 60.2205 must include the items listed in paragraphs (a) through (p) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2215, 60.2220, and 60.2225:

* * * * *

(p) For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies.

■ 11. Revise Tables 6 and 7 to subpart CCCC of part 60 to read as follows:

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]		Using this averaging time [2]	And determining compliance using this method [2]
	Liquid/gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	35 parts per million dry volume	Biomass—240 parts per million dry volume. Coal—95 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxin/furans (Total Mass Basis).	No Total Mass Basis limit, must meet the toxic equivalency basis limit below.	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.093 nanograms per dry standard cubic meter.	Biomass—0.076 nanograms per dry standard cubic meter.[3] Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 of appendix A–7 of this part).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).	Fugitive ash.
Hydrogen chloride	14 parts per million dry volume	Biomass—0.20 parts per million dry volume. Coal—58 parts per million dry volume.	3-run average (For Method 26, collect a minimum volume of 360 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.00056 milligrams per dry standard cubic meter.	Biomass—0.0022 milligrams per dry standard cubic meter. Coal—0.013 milligrams per dry standard cubic meter.	3-run average (collect enough volume to meet an in-stack detection limit data quality objective of 0.03 ug/dscm).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[3]
Nitrogen oxides	76 parts per million dry volume	Biomass—290 parts per million dry volume. Coal—460 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable).	110 milligrams per dry standard cubic meter.	Biomass—5.1 milligrams per dry standard cubic meter. Coal—130 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013—Continued

For the air pollutant	You must meet this emission limitation [1]		Using this averaging time [2]	And determining compliance using this method [2]
	Liquid/gas	Solids		
Sulfur dioxide	720 parts per million dry volume	Biomass—7.3 parts per million dry volume. Coal—850 parts per million dry volume.	3-run average (for Method 6, collect a minimum of 60 liters, for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4).

[1] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.
[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2145 and 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or an integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.
[3] Incorporated by reference, *see* § 60.17.

TABLE 7 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR WASTE-BURNING KILNS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2 3]
Cadmium	0.0014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	90 (long kilns)/190 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	0.51 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume	3-run average (1 hour minimum sample time per run) or 30-day rolling average if HCl CEMS is being used.	If a wet scrubber or dry scrubber is used, performance test (Method 321 at 40 CFR part 63, appendix A). If a wet scrubber or dry scrubber is not used, HCl CEMS as specified in § 60.2145(j).
Lead	0.014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0037 milligrams per dry standard cubic meter. *Or* 21 pounds/million tons of clinker [3].	30-day rolling average	Mercury CEMS or integrated sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B and procedure 5 of appendix F of this part), as specified in § 60.2145(j).
Nitrogen oxides	200 parts per million dry volume	30-day rolling average	Nitrogen oxides CEMS (performance specification 2 of appendix B and procedure 1 of appendix F of this part).
Particulate matter (filterable).	4.9 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix-8).
Sulfur dioxide	28 parts per million dry volume	30-day rolling average	Sulfur dioxide CEMS (performance specification 2 of appendix B and procedure 1 of appendix F of this part).

[1] All emission limitations are measured at 7 percent oxygen (except for CEMS and integrated sorbent trap monitoring system data during startup and shutdown), dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.
[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2145 and 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.
[3] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in § 60.2145(y)(3). They are not subject to the CEMS, integrated sorbent trap monitoring system, or CPMS requirements that otherwise may apply to the main kiln exhaust.

* * * * *

Subpart DDDD—Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

■ 12. Amend § 60.2675 by revising the introductory text to paragraph (i) and paragraphs (i)(1) and (2) to read as follows:

§ 60.2675 What operating limits must I meet and by when?

* * * * *

(i) If you use a PM CPMS to demonstrate continuing compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (i)(1) through (5) of this section:

(1) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (milliamps, or the digital signal equivalent) from the PM CPMS for the periods corresponding to the test runs (*e.g.,* three 1-hour average PM CPMS output values for three 1-hour test runs):

(i) Your PM CPMS must provide a 4–20 milliamp output, or the digital signal equivalent, and the establishment of its relationship to manual reference method measurements must be

determined in units of milliamps or digital bits;

(ii) Your PM CPMS operating range must be capable of reading PM concentrations from zero to a level equivalent to at least two times your allowable emission limit. If your PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit; and

(iii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (*e.g.,* average all your PM CPMS output values for the three corresponding Method 5 or Method 29 p.m. test runs).

(2) If the average of your three PM performance test runs are below 75 percent of your PM emission limit, you must calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS output values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or Method 29 performance test with the procedures in (i)(1) through (5) of this section:

* * * * *

■ 13. Amend § 60.2710 by revising paragraphs (j) and (y)(3) to read as follows:

§ 60.2710 How do I demonstrate continuous compliance with the amended emission limitations and the operating limits?

* * * * *

(j) For waste-burning kilns, you must conduct an annual performance test for the pollutants (except mercury and hydrogen chloride if no acid gas wet scrubber or dry scrubber is used) listed in table 8 of this subpart, unless you choose to demonstrate initial and continuous compliance using CEMS, as allowed in paragraph (u) of this section. If you do not use an acid gas wet scrubber or dry scrubber, you must determine compliance with the hydrogen chloride emissions limit using a HCl CEMS according to the requirements in paragraph (j)(1) of this section. You must determine compliance with the mercury emissions limit using a mercury CEMS or an integrated sorbent trap monitoring system according to paragraph (j)(2) of this section. You must determine continuing compliance with particulate matter using a PM CPMS according to paragraph (x) of this section.

* * * * *

(y) * * *

(3) For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test must be conducted on an annual basis (no later than 13 calendar months following the previous performance test).

■ 14. Revise § 60.2715 to read as follows:

§ 60.2715 By what date must I conduct the annual performance test?

You must conduct annual performance tests no later than 13 calendar months following the previous performance test.

■ 15. Revise Tables 7 and 8 to subpart DDDD of part 60 to read as follows:

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER MAY 20, 2011

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]		Using this averaging time [3]	And determining compliance using this method [3]
	Liquid/gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	35 parts per million dry volume	Biomass—260 parts per million dry volume. Coal—95 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	2.9 nanograms per dry standard cubic meter.	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.32 nanograms per dry standard cubic meter.	Biomass—0.12 nanograms per dry standard cubic meter. Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	14 parts per million dry volume	Biomass—0.20 parts per million dry volume. Coal—58 parts per million dry volume.	3-run average (for Method 26, collect a minimum of 120 liters; for Method 26A, collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0024 milligrams per dry standard cubic meter.	Biomass—0.0022 milligrams per dry standard cubic meter. Coal—0.013 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008),[4] collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[4]

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER MAY 20, 2011—Continued

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]		Using this averaging time [3]	And determining compliance using this method [3]
	Liquid/gas	Solids		
Nitrogen oxides	76 parts per million dry volume	Biomass—290 parts per million dry volume. Coal—460 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable.	110 milligrams per dry standard cubic meter.	Biomass—11 milligrams per dry standard cubic meter. Coal—130 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	720 parts per million dry volume	Biomass—7.3 parts per million dry volume. Coal—850 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[2] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.
[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2710 and 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.
[4] Incorporated by reference, see § 60.17.

TABLE 8 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO WASTE-BURNING KILNS AFTER MAY 20, 2011

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3 4]
Cadmium	0.0014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon monoxide	110 (long kilns)/790 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	1.3 nanograms per dry standard cubic meter	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume	3-run average (collect a minimum volume of 1 dry standard cubic meter), or 30-day rolling average if HCl CEMS is being used.	If a wet scrubber or dry scrubber is used, performance test (Method 321 at 40 CFR part 63, appendix A of this part). If a wet scrubber or dry scrubber is not used, HCl CEMS as specified in § 60.2710(j).
Lead	0.014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Mercury	0.011 milligrams per dry standard cubic meter. *Or* 58 pounds/million tons of clinker.	30-day rolling average	Mercury CEMS or integrated sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B and procedure 5 of appendix F of this part), as specified in § 60.2710(j).
Nitrogen oxides	630 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable.	13.5 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix–8).
Sulfur dioxide	600 parts per million dry volume	3-run average (for Method 6, collect a minimum of 20 liters; for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[2] All emission limitations are measured at 7 percent oxygen (except for CEMS and integrated sorbent trap monitoring system data during startup and shutdown), dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.
[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §§ 60.2710 and § 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.
[4] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in 60.2710(y)(3). They are not subject to the CEMS, integrated sorbent trap monitoring system, or CPMS requirements that otherwise may apply to the main kiln exhaust.

* * * * *

Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

■ 16. Revise Table 2 to subpart JJJJ of part 60 to read as follows:

As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for NO_X, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005) [a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR part 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	(c) Measurements to determine the exhaust flowrate must be made (1) at the same time as the measurement for NO_X concentration or, alternatively (2) according to the option in Section 11.1.2 of Method 1A of 40 CFR part 60, Appendix A–1, if applicable.
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, [e] or ASTM Method D6348–03 [d e].	(d) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.
		v. Measure NO_X at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Method 7E of 40 CFR part 60, appendix A–4, ASTM Method D6522–00 (Reapproved 2005), [a d] Method 320 of 40 CFR part 63, appendix A, [e] or ASTM Method D6348–03 [d e].	(e) Results of this test consist of the average of the three 1-hour or longer runs.
	b. limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for CO, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005) [a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	(c) Measurements to determine the exhaust flowrate must be made (1) at the same time as the measurement for CO concentration or, alternatively (2) according to the option in Section 11.1.2 of Method 1A of 40 CFR part 60, Appendix A–1, if applicable.
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, [e] or ASTM Method D6348–03 [d e].	(d) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Method 10 of 40 CFR part 60, appendix A4, ASTM Method D6522–00 (Reapproved 2005), [a d e] Method 320 of 40 CFR part 63, appendix A, [e] or ASTM Method D6348–03 [d e].	(e) Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
	c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for VOC, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005) [a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	(c) Measurements to determine the exhaust flowrate must be made (1) at the same time as the measurement for VOC concentration or, alternatively (2) according to the option in Section 11.1.2 of Method 1A of 40 CFR part 60, Appendix A–1, if applicable.
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A,[e] or ASTM Method D6348–03 [d e].	(d) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.
		v. Measure VOC at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Methods 25A and 18 of 40 CFR part 60, appendices A–6 and A–7, Method 25A with the use of a hydrocarbon cutter as described in 40 CFR 1065.265, Method 18 of 40 CFR part 60, appendix A–6,[c e] Method 320 of 40 CFR part 63, appendix A,[e] or ASTM Method D6348–03 [d e].	(e) Results of this test consist of the average of the three 1-hour or longer runs.

[a] Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.
[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B. AMSE PTC 19.10–1981 incorporated by reference, see 40 CFR 60.17
[c] You may use EPA Method 18 of 40 CFR part 60, appendix A–6, provided that you conduct an adequate pre-survey test prior to the emissions test, such as the one described in OTM 11 on EPA's website (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).
[d] Incorporated by reference; see 40 CFR 60.17.
[e] You must meet the requirements in § 60.4245(d).

* * * * *

Subpart KKKK—Standards of Performance for Stationary Combustion Turbines

■ 17. In § 60.4415, revise the introductory text to paragraph (a)(1) to read as follows:

§ 60.4415 How do I conduct the initial and subsequent performance tests for sulfur?

(a) * * *

(1) If you choose to periodically determine the sulfur content of the fuel combusted in the turbine, a representative fuel sample may be collected either by an automatic sampling system or manually. For automatic sampling, follow either ASTM D5287 (incorporated by reference, see § 60.17) for gaseous fuels or ASTM D4177 (incorporated by reference, see § 60.17) for liquid fuels. For manual sampling of gaseous fuels, follow either GPA 2166 or ISO 10715 (both of which are incorporated by reference, see § 60.17). For manual sampling of liquid fuels, follow either GPA 2174 or the procedures for manual pipeline sampling in section 14 of ASTM D4057 (both of which are incorporated by reference, see § 60.17). The fuel analyses of this section may be performed either by you, a service contractor retained by you, the fuel vendor, or any other qualified agency. Analyze the samples for the total sulfur content of the fuel using:

* * * * *

Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

■ 18. In § 60.5476 revise paragraph (i) to read as follows:

§ 60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

* * * * *

(i) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test

after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the central heater must be limited to written communications transmitted prior to the first pretest burn of the certification test series. During certification tests, the manufacturer may communicate with the third-party certifier, and only in writing to notify them that the manufacturer has observed a deviation from proper test procedures by the laboratory. All communications must be included in the test documentation required to be submitted pursuant to § 60.5475(b)(5) and must be consistent with instructions provided in the owner's manual required under § 60.5478(f).

* * * * *

■ 19. Amend Appendix A–3 to part 60 by:

■ a. In Method 4, revising sections 2.1, 6.1.5, 8.1.3, 8.1.4.2, 9.1, 11.1, 11.2, 12.1.1, 12.1.2, 12.1.3, 12.2.1, and 12.2.2 and Figures 4–4 and 4–5; and

■ b. In Method 5, revising sections 6.1.1.8, 6.2.4, 6.2.5, 8.1.2, 8.7.6.4, 12.1, 12.3, 12.4, 12.11.1, 12.11.2, 16.1.1.4, and 16.2.3.3 and Figure 5–6.

The revisions read as follows:

Appendix A–3 to Part 60—Test Methods 4 through 5I

* * * * *

Method 4—Determination of Moisture Content in Stack Gases

* * * * *

2.1 A gas sample is extracted at a constant rate from the source; moisture is removed from the sample stream and determined gravimetrically.

* * * * *

6.1.5 Barometer and Balance. Same as Method 5, sections 6.1.2 and 6.2.5, respectively.

* * * * *

8.1.3 Leak-Check Procedures.

8.1.3.1 Leak Check of Metering System Shown in Figure 4–1. That portion of the sampling train from the pump to the orifice meter should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. The following procedure is suggested (see Figure 5–2 of Method 5): Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13 to 18 cm (5 to 7 in.) water column by blowing into the rubber tubing. Pinch off the tubing and observe the manometer for one minute. A loss of pressure on the manometer indicates a leak in the meter box; leaks, if present, must be corrected.

8.1.3.2 Pretest Leak Check. A pretest leak check of the sampling train is recommended, but not required. If the pretest leak check is conducted, the following procedure should be used.

8.1.3.2.1 After the sampling train has been assembled, turn on and set the filter and probe heating systems to the desired operating temperatures. Allow time for the temperatures to stabilize. If a Viton A O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 380 mm (15 in.) Hg vacuum.

Note: A lower vacuum may be used, provided that it is not exceeded during the test.

8.1.3.2.2 Leak-check the train by first plugging the inlet to the filter holder and pulling a 380 mm (15 in.) Hg vacuum (see note in section 8.1.3.2.1). Then connect the probe to the train, and leak-check at approximately 25 mm (1 in.) Hg vacuum; alternatively, the probe may be leak-checked with the rest of the sampling train, in one step, at 380 mm (15 in.) Hg vacuum. Leakage rates in excess of 4 percent of the average sampling rate or 0.00057 m^3/min (0.020 cfm), whichever is less, are unacceptable.

8.1.3.2.3 Start the pump with the bypass valve fully open and the coarse adjust valve completely closed. Partially open the coarse adjust valve, and slowly close the bypass valve until the desired vacuum is reached. Do not reverse the direction of the bypass valve, as this will cause water to back up into the filter holder. If the desired vacuum is exceeded, either leak-check at this higher vacuum, or end the leak check and start over.

8.1.3.2.4 When the leak check is completed, first slowly remove the plug from the inlet to the probe, filter holder, and immediately turn off the vacuum pump. This prevents the water in the impingers from being forced backward into the filter holder and the silica gel from being entrained backward into the third impinger.

8.1.3.3 Leak Checks During Sample Run. If, during the sampling run, a component (*e.g.,* filter assembly or impinger) change becomes necessary, a leak check shall be conducted immediately before the change is made. The leak check shall be done according to the procedure outlined in section 8.1.3.2 above, except that it shall be done at a vacuum equal to or greater than the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.020 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction will need to be applied to the total volume of dry gas metered; if, however, a higher leakage rate is obtained, either record the leakage rate and plan to correct the sample volume as shown in section 12.3 of Method 5, or void the sample run.

Note: Immediately after component changes, leak checks are optional. If such leak checks are done, the procedure outlined in section 8.1.3.2 above should be used.

8.1.3.4 Post-Test Leak Check. A leak check of the sampling train is mandatory at the conclusion of each sampling run. The leak check shall be performed in accordance with the procedures outlined in section 8.1.3.2, except that it shall be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 m^3 min (0.020 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction need be applied to the total volume of dry gas metered. If, however, a higher leakage rate is obtained, either record the leakage rate and correct the sample volume as shown in section 12.3 of Method 5, or void the sampling run.

* * * * *

8.1.4.2 At the end of the sample run, close the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final DGM meter reading, and conduct a post-test leak check, as outlined in section 8.1.3.4.

* * * * *

9.1 Miscellaneous Quality Control Measures.

Section	Quality control measure	Effect
Section 8.1.3.2.2	Leak rate of the sampling system cannot exceed four percent of the average sampling rate or 0.00057 m^3/min (0.020 cfm).	Ensures the accuracy of the volume of gas sampled. (Reference Method).

Section	Quality control measure	Effect
Section 8.2.1	Leak rate of the sampling system cannot exceed two percent of the average sampling rate.	Ensures the accuracy of the volume of gas sampled. (Approximation Method).

* * * * *

11.1 Reference Method. Weigh the impingers after sampling and record the difference in weight to the nearest 0.5 g at a minimum. Determine the increase in weight of the silica gel (or silica gel plus impinger) to the nearest 0.5 g at a minimum. Record this information (see example data sheet, Figure 4–5), and calculate the moisture content, as described in section 12.0.

11.2 Approximation Method. Weigh the contents of the two impingers, and measure the weight to the nearest 0.5 g.

* * * * *

12.1.1 Nomenclature.

B_{ws} = Proportion of water vapor, by volume, in the gas stream.

M_w = Molecular weight of water, 18.015 g/g-mole (18.015 lb/lb-mole).

P_m = Absolute pressure (for this method, same as barometric pressure) at the dry gas meter, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 (mm Hg)(m³)/(g-mole)(°K) for metric units and 21.85 (in. Hg)(ft³)/(lb-mole)(°R) for English units.

T_m = Absolute temperature at meter, °K (°R).

T_{std} = Standard absolute temperature, 293.15 °K (527.67 °R).

V_f = Final weight of condenser water plus impinger, g.

V_i = Initial weight, if any, of condenser water plus impinger, g.

V_m = Dry gas volume measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{wc(std)}$ = Volume of water vapor condensed, corrected to standard conditions, scm (scf).

$V_{wsg(std)}$ = Volume of water vapor collected in silica gel, corrected to standard conditions, scm (scf).

W_f = Final weight of silica gel or silica gel plus impinger, g.

W_i = Initial weight of silica gel or silica gel plus impinger, g.

Y = Dry gas meter calibration factor.

ΔV_m = Incremental dry gas volume measured by dry gas meter at each traverse point, dcm (dcf).

12.1.2 Volume of Water Vapor Condensed.

$$V_{wc(std)} = \frac{(Vf - Vi)RT_{std}}{P_{std}M_w} \qquad Eq\ 4-1$$

$$= K_1(Vf - Vi)$$

Where:

K_1 = 0.001335 m³/g for metric units,
= 0.04716 ft³/g for English units.

12.1.3 * * *

K_3 = 0.001335 m³/g for metric units,
= 0.04716 ft³/g for English units.

* * * * *

12.2.1 Nomenclature.

B_{wm} = Approximate proportion by volume of water vapor in the gas stream leaving the second impinger, 0.025.

B_{ws} = Water vapor in the gas stream, proportion by volume.

M_w = Molecular weight of water, 18.015 g/g-mole (18.015 lb/lb-mole).

P_m = Absolute pressure (for this method, same as barometric pressure) at the dry gas meter, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 [(mm Hg)(m³)]/[(g-mole)(K)] for metric units and 21.85 [(in. Hg)(ft³)]/[(lb-mole)(°R)] for English units.

T_m = Absolute temperature at meter, °K (°R).

T_{std} = Standard absolute temperature, 293.15 °K (527.67 °R).

V_f = Final weight of condenser water plus impinger, g.

V_i = Initial weight, if any, of condenser water plus impinger, g.

V_m = Dry gas volume measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{wc(std)}$ = Volume of water vapor condensed, corrected to standard conditions, scm (scf).

Y = Dry gas meter calibration factor.

12.2.2 Volume of Water Vapor Collected.

$$V_{wc(std)} = \frac{(Vf - Vi)RT_{std}}{P_{std}M_w} \qquad Eq\ 4-5$$

$$= K_5(Vf - Vi)$$

K_5 = 0.001335 m³/g for metric units,
= 0.04716 ft³/g for English units.

* * * * *

Clock Time	Gas Volume through meter (Vm), (m^3 or ft^3)	Rate meter setting (m^3/min or ft^3/min)	Meter temperature (°C or °F)

Figure 4-4. Example Moisture Determination Field Data Sheet – Approximation Method

	Impinger weight (g)	Silica gel weight (g)
Final		
Initial		
Difference		

Figure 4-5. Analytical Data – Reference Method

Method 5—Determination of Particulate Matter Emissions From Stationary Sources

* * * * *

6.1.1.8 Condenser. The following system shall be used to determine the stack gas moisture content: Four impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first, third, and fourth impingers shall be of the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) ID glass tube extending to about 1.3 cm (½ in.) from the bottom of the flask. The second impinger shall be of the Greenburg-Smith design with the standard tip. Modifications (*e.g.,* using flexible connections between the impingers, using materials other than glass, or using flexible vacuum lines to connect the filter holder to the condenser) may be used, subject to the approval of the Administrator. The first and second impingers shall contain known quantities of water (Section 8.3.1), the third shall be empty, and the fourth shall contain a known weight of silica gel, or equivalent desiccant. A temperature sensor, capable of measuring temperature to within 1 °C (2 °F) shall be placed at the outlet of the fourth impinger for monitoring purposes. Alternatively, any system that cools the sample gas stream and allows measurement of the water condensed and moisture leaving the condenser, each to within 0.5 g may be used, subject to the approval of the Administrator. An acceptable technique involves the measurement of condensed water either gravimetrically and the determination of the moisture leaving the condenser by: (1) Monitoring the temperature and pressure at the exit of the condenser and using Dalton's law of partial pressures; or (2) passing the sample gas stream through a tared silica gel (or equivalent desiccant) trap with exit gases kept below 20 °C (68 °F) and determining the weight gain. If means other than silica gel are used to determine the amount of moisture leaving the condenser, it is recommended that silica gel (or equivalent) still be used between the condenser system and pump to prevent moisture condensation in the pump and metering devices and to avoid the need to make corrections for moisture in the metered volume.

Note: If a determination of the PM collected in the impingers is desired in addition to moisture content, the impinger system described above shall be used, without modification. Individual States or control agencies requiring this information shall be contacted as to the sample recovery and analysis of the impinger contents.

* * * * *

6.2.4 Petri dishes. For filter samples; glass, polystyrene, or polyethylene, unless otherwise specified by the Administrator.

6.2.5 Balance. To measure condensed water to within 0.5 g at a minimum.

* * * * *

8.1.2 Check filters visually against light for irregularities, flaws, or pinhole leaks. Label filters of the proper diameter on the back side near the edge using numbering machine ink. As an alternative, label the shipping containers (glass, polystyrene or polyethylene petri dishes), and keep each filter in its identified container at all times except during sampling.

* * * * *

8.7.6.4 Impinger Water. Treat the impingers as follows: Make a notation of any color or film in the liquid catch. Measure the liquid that is in the first three impingers by weighing it to within 0.5 g at a minimum by using a balance. Record the weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Discard the liquid after measuring and recording the weight, unless analysis of the impinger catch is required (see *Note*, section 6.1.1.8). If a different type of

condenser is used, measure the amount of moisture condensed gravimetrically.

* * * * *

12.1 Nomenclature.

A_n = Cross-sectional area of nozzle, m^2 (ft^2).

B_{ws} = Water vapor in the gas stream, proportion by volume.

C_a = Acetone blank residue concentration, mg/mg.

c_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (gr/dscf).

I = Percent of isokinetic sampling.

L_1 = Individual leakage rate observed during the leak-check conducted prior to the first component change, m^3/min (ft^3/min)

L_a = Maximum acceptable leakage rate for either a pretest leak-check or for a leak-check following a component change; equal to 0.00057 m^3/min (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.

L_i = Individual leakage rate observed during the leak-check conducted prior to the ''i^{th}'' component change (i = 1, 2, 3 . . . n), m^3/min (cfm).

L_p = Leakage rate observed during the post-test leak-check, m^3/min (cfm).

m_a = Mass of residue of acetone after evaporation, mg.

m_n = Total amount of particulate matter collected, mg.

M_w = Molecular weight of water, 18.015 g/g-mole (18.015 lb/lb-mole).

P_{bar} = Barometric pressure at the sampling site, mm Hg (in. Hg).

P_s = Absolute stack gas pressure, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 ((mm Hg)(m^3))/((K)(g-mole)) {21.85 ((in. Hg)(ft^3))/((°R) (lb-mole))}.

T_m = Absolute average DGM temperature (see Figure 5–3), K (°R).

T_s = Absolute average stack gas temperature (see Figure 5–3), K (°R).

T_{std} = Standard absolute temperature, 293.15 K (527.67 °R).

V_a = Volume of acetone blank, ml.

V_{aw} = Volume of acetone used in wash, ml.

V_{1c} = Total volume of liquid collected in impingers and silica gel (see Figure 5–6), g.

V_m = Volume of gas sample as measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{w(std)}$ = Volume of water vapor in the gas sample, corrected to standard conditions, scm (scf).

V_s = Stack gas velocity, calculated by Method 2, Equation 2–7, using data obtained from Method 5, m/sec (ft/sec).

W_a = Weight of residue in acetone wash, mg.

Y = Dry gas meter calibration factor.

ΔH = Average pressure differential across the orifice meter (see Figure 5–4), mm H_2O (in. H_2O).

ρ_a = Density of acetone, mg/ml (see label on bottle).

θ = Total sampling time, min.

θ_1 = Sampling time interval, from the beginning of a run until the first component change, min.

θ_i = Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.

θ_p = Sampling time interval, from the final (nth) component change until the end of the sampling run, min.

13.6 = Specific gravity of mercury.

60 = Sec/min.

100 = Conversion to percent.

* * * * *

12.3 * * *

K_1 = 0.38572 °K/mm Hg for metric units, = 17.636 °R/in. Hg for English units.

* * * * *

12.4 Volume of Water Vapor Condensed

$$V_{w(std)} = V_{lc}\frac{RT_{std}}{M_w P_{std}} \qquad \text{Eq. 5-2}$$

$$= K_2 V_{lc}$$

Where: K_2 = 0.001335 m3/g for metric units, = 0.04716 ft3/g for English units.

* * * * *

12.11.1 * * *

Where:

K_4 = 0.003456 ((mm Hg)(m^3))/((ml)(°K)) for metric units, = 0.002668 ((in. Hg)(ft^3))/((ml)(°R)) for English units.

* * * * *

12.11.2 * * *

Where:

K_5 = 4.3209 for metric units, = 0.09450 for English units.

* * * * *

16.1.1.4 * * *

Where:

K_1 = 0.38572 °K/mm Hg for metric units, = 17.636 °R/in. Hg for English units.

T_{adj} = 273.15 °C for metric units = 459.67 °F for English units.

* * * * *

16.2.3.3 * * *

Where:

K_1 = 0.38572 °K/mm Hg for metric units, = 17.636 °R/in. Hg for English units.

* * * * *

18.0 * * *

Plant _____
Date _____
Run No. _____
Filter No. _____

Amount liquid lost during transport, mg _____
Acetone blank volume, ml _____
Acetone blank concentration, mg/mg (Equation 5-4) _____
Acetone wash blank, mg (Equation 5-5) _____

Container number	Weight of particulate collected, mg		
	Final weight	Tare weight	Weight gain
1.			
2.			
Total collected particulate			
Less acetone wash blank			
Weight of particulate matter			

	Weight of liquid collected, g	
	Impinger weight	Silica gel weight
Final		
Initial		
Liquid collected		
Total weight collected		

Figure 5-6. Analytical Data Sheet

* * * * *

■ 20. Amend Appendix A–4 to part 60 by:

■ a. In Method 7C, revising section 7.2.11.

■ b. In Method 7E, revising section 8.5.

The revisions read as follows:

Appendix A–4 to Part 60—Test Methods 6 Through 10B

* * * * *

Method 7C—Determination of Nitrogen Oxide Emissions From Stationary Sources—Alkaline-Permanganate/Colorimetric Method

* * * * *

7.2.11 Sodium Nitrite ($NaNO_2$) Standard Solution, Nominal Concentration, 1000 µg NO_2^-/ml. Desiccate $NaNO_2$ overnight. Accurately weigh 1.4 to 1.6 g of $NaNO_2$ (assay of 97 percent $NaNO_2$ or greater), dissolve in water, and dilute to 1 liter. Calculate the exact NO_2-concentration using Equation 7C–1 in section 12.2. This solution is stable for at least 6 months under laboratory conditions.

* * * * *

Method 7E—Determination of Nitrogen Oxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

8.5 Post-Run System Bias Check and Drift Assessment.

How do I confirm that each sample I collect is valid? After each run, repeat the system bias check or 2-point system calibration error check (for dilution systems) to validate the run. Do not make adjustments to the measurement system (other than to maintain the target sampling rate or dilution ratio) between the end of the run and the completion of the post-run system bias or system calibration error check. Note that for all post-run system bias or 2-point system calibration error checks, you may inject the low-level gas first and the upscale gas last, or vice-versa. If conducting a relative accuracy test or relative accuracy test audit, consisting of nine runs or more, you may risk sampling for up to three runs before performing the post-run bias or system calibration error check provided you pass this test at the conclusion of the group of three runs. A failed post-run bias or system calibration error check in this case will invalidate all runs subsequent to the last passed check. When conducting a performance or compliance test, you must perform a post-run system bias or system calibration error check after each individual test run.

* * *

* * * * *

■ 21. Amend Appendix A–5 to part 60, Method 12 by:

■ a. Revising sections 7.1.2, 8.7.1.6, 8.7.3.1, 8.7.3.6, 12.3, 16.1 through 16.5;

■ b. Adding sections 16.5.1 and 16.5.2; and

■ c. Removing section 16.6.

The revisions and additions read as follows:

Appendix A–5 to Part 60—Test Methods 11 Through 15A

* * * * *

Method 12—Determination of Inorganic Lead Emissions From Stationary Sources

* * * * *

7.1.2 Silica Gel and Crushed Ice. Same as Method 5, sections 7.1.2 and 7.1.4, respectively.

* * * * *

8.7.1.6 Brush and rinse with 0.1 N HNO_3 the inside of the front half of the

filter holder. Brush and rinse each surface three times or more, if needed, to remove visible sample matter. Make a final rinse of the brush and filter holder. After all 0.1 N HNO_3 washings and sample matter are collected in the sample container, tighten the lid on the sample container so that the fluid will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify its contents clearly.

* * * * *

8.7.3.1. Cap the impinger ball joints.

* * * * *

8.7.3.6. Rinse the insides of each piece of connecting glassware for the impingers twice with 0.1 N HNO_3; transfer this rinse into Container No. 4. Do not rinse or brush the glass-fritted filter support. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify its contents clearly.

* * * * *

12.3 Dry Gas Volume, Volume of Water Vapor Condensed, and Moisture Content. Using data obtained in this test, calculate $V_{m(std)}$, $V_{w(std)}$, and B_{ws} according to the procedures outlined in Method 5, sections 12.3 through 12.5.

* * * * *

16.1 Simultaneous Determination of Particulate Matter and Lead Emissions. This Method 12 may be used to simultaneously determine Pb and particulate matter provided:

(1) A glass fiber filter with a low Pb background is used and this filter is checked, desiccated and weighed per section 8.1 of Method 5,

(2) An acetone rinse, as specified by Method 5, sections 7.2 and 8.7.6.2, is used to remove particulate matter from the probe and inside of the filter holder prior to and kept separate from the 0.1 N HNO_3 rinse of the same components,

(3) The recovered filter, the acetone rinse, and an acetone blank (Method 5, section 7.2) are subjected to gravimetric analysis of Method 5, sections 6.3 and 11.0 prior the analysis for Pb as described below, and

(4) The entire train contents, including the 0.1 N HNO_3 impingers, filter, acetone and 0.1 N HNO_3 probe rinses are treated and analyzed for Pb as described in Sections 8.0 and 11.0 of this method.

16.2 Filter Location. A filter may be used between the third and fourth impingers provided the filter is included in the analysis for Pb.

16.3 In-Stack Filter. An in-stack filter may be used provided: (1) A glass-lined probe and at least two impingers, each containing 100 ml of 0.1 N HNO_3 after the in-stack filter, are used and (2) the probe and impinger contents are recovered and analyzed for Pb. Recover sample from the nozzle with acetone if a particulate analysis is to be made as described in section 16.1 of this method.

16.4 Inductively Coupled Plasma-Atomic Emission Spectrometry (ICP–AES) Analysis. ICP–AES may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.4.1 Sample collection/recovery, sample loss check, and sample preparation procedures are as defined in sections 8.0, 11.1, and 11.2, respectively, of this method.

16.4.2 Analysis shall be conducted following Method 6010D of SW–846 (incorporated by reference, see § 60.17). The limit of detection for the ICP–AES must be demonstrated according to section 15.0 of Method 301 in appendix A of part 63 of this chapter and must be no greater than one-third of the applicable emission limit. Perform a check for matrix effects according to section 11.5 of this method.

16.5 Inductively Coupled Plasma-Mass Spectrometry (ICP–MS) Analysis. ICP–MS may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.5.1 Sample collection/recovery, sample loss check, and sample preparation procedures are as defined in sections 8.0, 11.1, and 11.2, respectively of this method.

16.5.2 Analysis shall be conducted following Method 6020B of SW–846 (incorporated by reference, see § 60.17). The limit of detection for the ICP–MS must be demonstrated according to section 15.0 of Method 301 in appendix A to part 63 of this chapter and must be no greater than one-third of the applicable emission limit. Use the multipoint calibration curve option in section 10.4 of Method 6020B and perform a check for matrix effects according to section 11.5 of this method.

* * * * *

■ 22. Amend Appendix A–6 to part 60 by:

■ a. In Method 16B revising sections 2.1, 6.1, 8.2;

■ b. Removing section 8.3;

■ c. Redesignating sections 8.4, 8.4.1, and 8.4.2 as 8.3, 8.3.1, and 8.3.2, respectively;

■ d. Revising section 11.1;

■ e. Adding section 11.2; and

■ f. In Method 16C, revising section 13.1.

The revisions and addition read as follows:

Appendix A–6 to Part 60—Test Methods 16 Through 18

* * * * *

Method 16B—Determination of Total Reduced Sulfur Emissions From Stationary Sources

* * * * *

2.1 A gas sample is extracted from the stack. The SO_2 is removed selectively from the sample using a citrate buffer solution. The TRS compounds are then thermally oxidized to SO_2 and analyzed as SO_2 by gas chromatography (GC) using flame photometric detection (FPD).

* * * * *

6.1 Sample Collection. The sampling train is shown in Figure 16B–1. Modifications to the apparatus are accepted provided the system performance check in Section 8.3.1 is met.

* * * * *

8.2 Sample Collection. Before any source sampling is performed, conduct a system performance check as detailed in section 8.3.1 to validate the sampling train components and procedures. Although this test is optional, it would significantly reduce the possibility of rejecting tests as a result of failing the post-test performance check. At the completion of the pretest system performance check, insert the sampling probe into the test port making certain that no dilution air enters the stack though the port. Condition the entire system with sample for a minimum of 15 minutes before beginning analysis. If the sample is diluted, determine the dilution factor as in section 10.4 of Method 15.

* * * * *

11.1 Analysis. Inject aliquots of the sample into the GC/FPD analyzer for analysis. Determine the concentration of SO_2 directly from the calibration curves or from the equation for the least-squares line.

11.2 Perform analysis of a minimum of three aliquots or one every 15 minutes, whichever is greater, spaced evenly over the test period.

* * * * *

Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources

* * * * *

13.1 Analyzer Calibration Error. At each calibration gas level (low, mid, and high), the calibration error must either not exceed 5.0 percent of the calibration span or $|C_{Dir} - C_v|$ must be ≤0.5 ppmv.

* * * * *

■ 23. In Appendix A–7 to part 60, in Method 24, revise section 6.2 to read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 24—Determinaton of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

* * * * *

6.2 ASTM D 2369–81, 87, 90, 92, 93, 95, or 10. Standard Test Method for Volatile Content of Coatings.

* * * * *

■ 24. Amend Appendix A–8 to part 60 by:

■ a. In Method 26, revising section 8.1.2; and

■ b. In Method 26A, revising sections 6.1.3 and 8.1.5.

The revisions read as follows:

Appendix A–8 to Part 60—Test Methods 26 Through 30B

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method

* * * * *

8.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock (*i.e.,* the heated area in Figure 26–1) to a temperature sufficient to prevent water condensation. This temperature must be maintained between 120 and 134 °C (248 and 273 °F). The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained. It is important to maintain a temperature around the probe and filter in this range since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and, hence, any collection of acid gases on these components would result in potential under reporting of these emissions. The applicable subparts may specify alternative higher temperatures.)

* * * * *

Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Isokinetic Method

* * * * *

6.1.3 Pitot Tube, Differential Pressure Gauge, Filter Heating System, Filter Temperature Sensor with a glass or Teflon encasement, Metering System, Barometer, Gas Density Determination Equipment. Same as Method 5, sections 6.1.1.3, 6.1.1.4, 6.1.1.6, 6.1.1.7, 6.1.1.9, 6.1.2, and 6.1.3.

* * * * *

8.1.5 Sampling Train Operation. Follow the general procedure given in Method 5, Section 8.5. It is important to maintain a temperature around the probe, filter (and cyclone, if used) between 120 and 134 °C (248 and 273 °F) since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and hence any collection of acid gases on these components would result in potential under reporting these emissions. The applicable subparts may specify alternative higher temperatures.) For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–3. If the condensate impinger becomes too full, it may be emptied, recharged with 50 ml of 0.1 N H2SO4, and replaced during the sample run. The condensate emptied must be saved and included in the measurement of the volume of moisture collected and included in the sample for analysis. The additional 50 ml of absorbing reagent must also be considered in calculating the moisture. Before the sampling train integrity is compromised by removing the impinger, conduct a leak-check as described in Method 5, section 8.4.2.

* * * * *

■ 25. Amend Appendix B to part 60 by:

■ a. In Performance Specification 4B, revising section 4.5;

■ b. In Performance Specification 5, revising sections 5.0 and 8.1;

■ c. In Performance Specification 6, revising sections 13.1 and 13.2;

■ d. In Performance Specification 8, redesignating sections 8.3, 8.4, and 8.5 as 8.4, 8.5, and 8.6, respectively;

■ e. Adding new section 8.3;

■ f. In Performance Specification 9, revising sections 7.2, 8.3, 8.4, 10.1, 10.2, 13.1, and 13.2;

■ g. Adding section 13.4;

■ h. In Performance Specification 18, revising sections 2.3 and 11.9.1.

The revisions and additions read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources

* * * * *

4.5 *Response Time.* The response time for the CO or O_2 monitor must not exceed 240 seconds.

* * * * *

Performance Specification 5—Specifications and Test Procedures for TRS Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

5.0 Safety

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS user's manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

* * * * *

8.1 Relative Accuracy Test Procedure. Sampling Strategy for reference method (RM) Tests, Number of RM Tests, and Correlation of RM and CEMS Data are the same as PS 2, sections 8.4.3, 8.4.4, and 8.4.5, respectively.

Note: For Method 16, a sample is made up of at least three separate injects equally space over time. For Method 16A, a sample is collected for at least 1 hour. For Method 16B, you must analyze a minimum of three aliquots spaced evenly over the test period.

* * * * *

Performance Specification 6—Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

* * * * *

13.1 Calibration Drift. Since the CERMS includes analyzers for several measurements, the CD shall be determined separately for each analyzer in terms of its specific measurement. The calibration for each analyzer associated with the measurement of flow rate shall not drift or deviate from each reference value of flow rate by more than 3 percent of the respective high-level reference value over the CD test period (*e.g.,* seven-day) associated with the pollutant analyzer. The CD specification for each analyzer for which other PSs have been established (*e.g.,* PS 2 for SO_2 and NO_X), shall be the same as in the applicable PS.

13.2 CERMS Relative Accuracy. Calculate the CERMS Relative Accuracy using Eq. 2–6 of section 12 of Performance Specification 1. The RA of the CERMS shall be no greater than 20 percent of the mean value of the RM's test data in terms of the units of the emission standard, or in cases where the average emissions for the test are less

than 50 percent of the applicable standard, substitute the emission standard value in the denominator of Eq. 2–6 in place of the RM.

* * * * *

Performance Specification 8—Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.3 Calibration Drift Test Procedure. Same as section 8.3 of PS 2.

8.4 Reference Method (RM). Use the method specified in the applicable regulation or permit, or any approved alternative, as the RM.

8.5 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, and Number of RM Tests. Follow PS 2, sections 8.4.3, 8.4.5, and 8.4.4, respectively.

8.6 Reporting. Same as section 8.5 of PS 2.

* * * * *

Performance Specification 9—Specifications and Test Procedures for Gas Chromatographic Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

7.2 Performance Audit Gas. Performance Audit Gas is an independent cylinder gas or cylinder gas mixture. A certified EPA audit gas shall be used, when possible. A gas mixture containing all the target compounds within the calibration range and certified by EPA's Traceability Protocol for Assay and Certification of Gaseous Calibration Standards may be used when EPA performance audit materials are not available. If a certified EPA audit gas or a traceability protocol gas is not available, use a gas manufacturer standard accurate to 2 percent.

* * * * *

8.3 Seven (7)-Day Calibration Error (CE) Test Period. At the beginning of each 24-hour period, set the initial instrument set points by conducting a multi-point calibration for each compound. The multi-point calibration shall meet the requirements in section 13.1, 13.2, and 13.3. Throughout the 24-hour period, sample and analyze the stack gas at the sampling intervals prescribed in the regulation or permit. At the end of the 24-hour period, inject the calibration gases at three concentrations for each compound in triplicate and determine the average instrument response. Determine the CE for each pollutant at each concentration using Equation 9–2. Each CE shall be ≤10 percent. Repeat this procedure six more times for a total of 7 consecutive days.

8.4 Performance Audit Test Periods. Conduct the performance audit once during the initial 7-day CE test and quarterly thereafter. Performance Audit Tests must be conducted through the entire sampling and analyzer system. Sample and analyze the EPA audit gas(es) (or the gas mixture) three times. Calculate the average instrument response. Results from the performance audit test must meet the requirements in sections 13.3 and 13.4.

* * * * *

10.1 Multi-Point Calibration. After initial startup of the GC, after routine maintenance or repair, or at least once per month, conduct a multi-point calibration of the GC for each target analyte. Calibration is performed at the instrument independent of the sample transport system. The multi-point calibration for each analyte shall meet the requirements in sections 13.1, 13.2, and 13.3.

* * * * *

10.2 Daily Calibration. Once every 24 hours, analyze the mid-level calibration standard for each analyte in triplicate. Calibration is performed at the instrument independent of the sample transport system. Calculate the average instrument response for each analyte. The average instrument response shall not vary more than 10 percent from the certified concentration value of the cylinder for each analyte. If the difference between the analyzer response and the cylinder concentration for any target compound is greater than 10 percent, immediately inspect the instrument making any necessary adjustments, and conduct an initial multi-point calibration as described in section 10.1.

* * * * *

13.1 Calibration Error (CE). The CEMS must allow the determination of CE at all three calibration levels. The average CEMS calibration response must not differ by more than 10 percent of calibration gas value at each level after each 24-hour period and after any triplicate calibration response check.

13.2 Calibration Precision and Linearity. For each triplicate injection at each concentration level for each target analyte, any one injection shall not deviate more than 5 percent from the average concentration measured at that level. When the CEMS response is evaluated over three concentration levels, the linear regression curve for each organic compound shall be determined using Equation 9–1 and must have an $r^2 \geq 0.995$.

* * * * *

13.4 Performance Audit Test Error. Determine the error for each average pollutant measurement using the Equation 9–2 in section 12.3. Each error shall be less than or equal to 10 percent of the cylinder gas certified value. Report the audit results including the average measured concentration, the error and the certified cylinder concentration of each pollutant as part of the reporting requirements in the appropriate regulation or permit.

* * * * *

Performance Specification 18—Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

2.3 The relative accuracy (RA) must be established against a reference method (RM) (for example, Method 26A, Method 320, ASTM International (ASTM) D6348–12, including mandatory annexes, or Method 321 for Portland cement plants as specified by the applicable regulation or, if not specified, as appropriate for the source concentration and category). Method 26 may be approved as a RM by the Administrator on a case-by-case basis if not otherwise allowed or denied in an applicable regulation.

* * * * *

11.9.1 Unless otherwise specified in an applicable regulation, use Method 26A in 40 CFR part 60, appendix A–8, Method 320 in 40 CFR part 63, appendix A, or ASTM D6348–12 including all annexes, as applicable, as the RMs for HCl measurement. Obtain and analyze RM audit samples, if they are available, concurrently with RM test samples according to the same procedure specified for performance tests in the general provisions of the applicable part. If Method 26 is not specified in an applicable subpart of the regulations, you may request approval to use Method 26 in appendix A–8 to this part as the RM on a site-specific basis under §§ 63.7(f) or 60.8(b). Other RMs for moisture, O_2, etc., may be necessary. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data.

* * * * *

■ 26. In Appendix F to part 60, in Procedure 1, revising section 5.2.3(2) to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination

* * * * *

5.2.3 * * *

(2) For the CGA, ±15 percent of the average audit value or ±5 ppm, whichever is greater; for diluent monitors, ±15 percent of the average audit value.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 27. The authority citation for part 61 continues to read as follows:

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

■ 28. In Appendix B to part 61, in Method 107, revising section 12.3, equation 107–3 to read as follows:

Appendix B to Part 61—Test Methods

* * * * *

Method 107—Determination of Vinyl Chloride Content of In-Process Wastewater Samples, and Vinyl Chloride Content of Polyvinyl Chloride Resin Slurry, Wet Cake, and Latex Samples

* * * * *

12.3 * * *

$$C_{rvc} = \frac{A_s P_a}{R_f T_1}\left[\frac{M_v V_g}{Rm} + K_p(TS)T_2 + K_w(1-TS)T_2\right] \qquad Eq.\,107-3$$

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 29. The authority citation for part 63 continues to read as follows:

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

■ 30. In § 63.2, revise the definition of ''Alternative test method'' to read as follows:

§ 63.2 Definitions.

* * * * *

Alternative test method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

* * * * *

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

■ 31. Amend § 63.1349, by revising paragraphs (b)(7)(viii)(A) and (B), (b)(8)(vi), and (b)(8)(vii)(B) and C to read as follows:

* * * * *

(b) * * *

(7) * * *

(viii) * * *

(A) Determine the THC CEMS average value in ppmvw, and the average of your corresponding three total organic HAP compliance test runs, using Equation 12.

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_i, \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_i \qquad \text{(Eq. 12)}$$

Where:

$\bar{x}$ = The average THC CEMS value in ppmvw, as propane.

X_i = The THC CEMS data points in ppmvw, as propane, for all three test runs.

$\bar{y}$ = The average organic HAP value in ppmvd, corrected to 7 percent oxygen.

Y_i = The organic HAP concentrations in ppmvd, corrected to 7 percent oxygen, for all three test runs.

n = The number of data points.

(B) You must use your three run average THC CEMS value and your three run average organic HAP concentration from your Method 18 and/or Method 320 compliance tests to determine the operating limit. Use equation 13 to determine your operating limit in units of ppmvw THC, as propane.

$$T_l = \left(\frac{9}{\bar{y}}\right) * \bar{x} \qquad \text{(Eq. 13)}$$

Where:

T_l = The 30-day operating limit for your THC CEMS, ppmvw, as propane.

$\bar{y}$ = The average organic HAP concentration from Eq. 12, ppmvd, corrected to 7 percent oxygen.

$\bar{x}$ = The average THC CEMS concentration from Eq. 12, ppmvw, as propane.

9 = 75 percent of the organic HAP emissions limit (12 ppmvd, corrected to 7 percent oxygen)

* * * * *

(b) * * *

(8) * * *

(vi) If your kiln has an inline kiln/raw mill, you must conduct separate performance tests while the raw mill is operating (''mill on'') and while the raw mill is not operating (''mill off''). Using the fraction of time the raw mill is on and the fraction of time that the raw mill is off, calculate this limit as a weighted average of the SO_2 levels measured during raw mill on and raw mill off compliance testing with Equation 17.

$$R = (y * t) + x * (1 - t) \qquad \text{(Eq. 17)}$$

Where:

R = Operating limit as SO_2, ppmv.

y = Average SO_2 CEMS value during mill on operations, ppmv.

t = Percentage of operating time with mill on, expressed as a decimal.

x = Average SO_2 CEMS value during mill off operations, ppmv.

1 − t = Percentage of operating time with mill off, expressed as a decimal.

* * * * *

(b) * * *

(8) * * *

(vii) * * *

(B) Determine your SO_2 CEMS instrument average ppmv, and the average of your corresponding three HCl compliance test runs, using Equation 18.

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_1 , \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_1 \qquad \text{(Eq. 18)}$$

Where:

$\bar{x}$ = The average SO_2 CEMS value in ppmv.

X_1 = The SO_2 CEMS data points in ppmv for the three runs constituting the performance test.

$\bar{y}$ = The average HCl value in ppmvd, corrected to 7 percent oxygen.

Y_1 = The HCl emission concentration expressed as ppmvd, corrected to 7 percent oxygen for the three runs constituting the performance test.

n = The number of data points.

(C) With your instrument zero expressed in ppmv, your SO_2 CEMS three run average expressed in ppmv, and your three run HCl compliance test average in ppmvd, corrected to 7 percent O_2, determine a relationship of ppmvd HCl corrected to 7 percent O_2 per ppmv SO_2 with Equation 19.

$$R = \frac{\bar{y}}{(\bar{x} - z)} \qquad \text{(Eq. 19)}$$

Where:

R = The relative HCl ppmvd, corrected to 7 percent oxygen, per ppmv SO_2 for your SO_2 CEMS.

$\bar{y}$ = The average HCl concentration from Eq. 18 in ppmvd, corrected to 7 percent oxygen.

$\bar{x}$ = The average SO_2 CEMS value from Eq. 18 in ppmv.

z = The instrument zero output ppmv value.

* * * * *

■ 32. Amend Appendix A to part 63 by:

■ a. In Method 301, revising section 11.1.3;

■ b. In Method 308, revising section 12.4, equation 308–3 and section 12.5, equation 308–5;

■ c. In Method 311, revising sections 1.1 and 17;

■ d. In Method 315, revising Figure 315–1;

■ e. In Method 316, revising section 1.0; and

■ f. In Method 323, revising the method heading and section 2.0.

The revisions read as follows:

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media

* * * * *

11.1.3 *T Test.* Calculate the t-statistic using Equation 301–13.

$$t = \frac{|d_m|}{\left(\frac{SD_d}{\sqrt{n}}\right)} \qquad \text{(Eq. 301-13)}$$

* * * * *

Method 308—Procedure for Determination of Methanol Emission From Stationary Sources

* * * * *

12.4 * * *

$$E = \frac{M_{tot}\, Q_{std}}{V_{m(std)}} \qquad \text{Equation 308-3}$$

12.5 * * *

$$R = \frac{m_v\, v_s}{s} \qquad \text{Equation 308-5}$$

* * * * *

Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings By Direct Injection Into a Gas Chromatograph

* * * * *

1.1 Applicability. This method is applicable for determination of most compounds designated by the U.S. Environmental Protection Agency as volatile hazardous air pollutants (HAP's) (See Reference 1) that are contained in paints and coatings. Styrene, ethyl acrylate, and methyl methacrylate can be measured by ASTM D 4827–03 or ASTM D 4747–02. Formaldehyde can be measured by ASTM D 5910–05 or ASTM D 1979–91. Toluene diisocyanate can be measured in urethane prepolymers by ASTM D 3432–89. Method 311 applies only to those volatile HAP's which are added to

the coating when it is manufactured, not to those that may form as the coating cures (reaction products or cure volatiles). A separate or modified test procedure must be used to measure these reaction products or cure volatiles in order to determine the total volatile HAP emissions from a coating. Cure volatiles are a significant component of the total HAP content of some coatings. The term ''coating'' used in this method shall be understood to mean paints and coatings.

* * * * *

17. * * *

4. Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. ASTM Designation D4457–02.

5. Standard Test Method for Determining the Unreacted Monomer Content of Latexes Using Capillary Column Gas Chromatography. ASTM Designation D4827–03.

6. Standard Test Method for Determining Unreacted Monomer Content of Latexes Using Gas-Liquid Chromatography, ASTM Designation D4747–02.

* * * * *

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

* * * * *

FIGURE 315-1. PARTICULATE AND MCEM ANALYSES

Particulate Analysis			
Plant			
Date			
Run No.			
Filter No.			
Amount liquid lost during transport			
Acetone blank volume (ml)			
Acetone blank concentration (Eq. 315-4) (mg/mg)			
Acetone wash blank (Eq. 315-5) (mg)			
	Final weight (mg)	**Tare weight (mg)**	**Weight gain (mg)**
Container No. 1			
Container No. 2			
Total			
Less Acetone blank			
Weight of particulate matter			
	Final volume (mg)	Initial volume (mg)	Liquid collected (mg)
Moisture Analysis			
Impingers	Note 1	Note 1	
Silica gel			
Total			
NOTE 1: Convert volume of water to weight by multiplying by the density of water (1 g/ml).			

Container No.	**Final weight (mg)**	**Tare of aluminum dish (mg)**	**Weight gain**	**Acetone wash volume (ml)**	**Methylene chloride wash volume (ml)**
MCEM Analysis					
1					
2 + 2M					
3W					
3S					
Total			Σm_{total}	$0V_{aw}$	ΣV_{tw}

Less acetone wash blank (mg) (not to exceed 1 mg/l of acetone used)	$w_a = c_a p_a \Sigma V_{aw}$
Less methylene chloride wash blank (mg) (not to exceed 1.5 mg/l of methylene chloride used)	$w_t = c_t p_t \Sigma V_{tw}$
Less filter blank (mg) (not to exceed 0.5 mg/filter)	F_b
MCEM weight (mg)	$m_{MCEOM} = \Sigma m_{total} - w_a - w_t - f_b$

Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries

1.0 Scope and Application

This method is applicable to the determination of formaldehyde, CAS Registry number 50–00–0, from stationary sources in the mineral wool and wool fiber glass industries. High purity water is used to collect the formaldehyde. The formaldehyde concentrations in the stack samples are determined using the modified pararosaniline method. Formaldehyde can be detected as low as 8.8×10^{-10} lbs/cu ft (11.3 ppbv) or as high as 1.8×10^{-3} lbs/cu ft (23,000,000 ppbv), at standard conditions over a 1 hour sampling period, sampling approximately 30 cu ft.

* * * * *

Method 323—Measurement of Formaldehyde Emissions From Natural Gas-Fired Stationary Sources—Acetyl Acetone Derivatization Method

* * * * *

2.0 Summary of Method. An emission sample from the combustion exhaust is drawn through a midget impinger train containing chilled reagent water to absorb formaldehyde. The formaldehyde concentration in the impinger is determined by reaction with acetyl acetone to form a colored derivative which is measured colorimetrically.

* * * * *

[FR Doc. 2019–26134 Filed 12–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2018–0681, FRL–10003–11–Region 2]

Approval of Air Quality Implementation Plans; New Jersey; Infrastructure SIP for Interstate Transport Requirements for the 2006 PM_{10}, 2008 Lead, 2010 Nitrogen Dioxide, and 2011 Carbon Monoxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the portions of New Jersey's State Implementation Plan (SIP) revision submittal regarding infrastructure requirements for interstate transport of pollution with respect to the 2006 particulate matter of 10 microns (μm) or less (PM_{10}), 2008 lead, 2010 nitrogen dioxide (NO_2), and 2011 carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS).

DATES: Written comments must be received on or before January 13, 2020.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2018–0681 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information 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.*

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3702, or by email at *Fradkin.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Background
II. Summary of SIP Revision and EPA Analysis
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

A. General

The EPA is proposing to approve the portions of the State of New Jersey's Infrastructure SIP submission, dated October 17, 2014, which address the Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) requirements pertaining to interstate transport of pollution with respect to the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO National Ambient Air Quality Standards (NAAQS).

On September 21, 2006 (71 FR 61144 (October 17, 2006)), the EPA retained [1] the primary and secondary 24-hour PM_{10} standard of 150 micrograms per cubic meter of air (μg/m³), as an average over a 24-hour period, not to be exceeded more than once per year on average over a 3-year period, that was initially promulgated on June 2, 1987 (52 FR 24634 (July 1, 1987)).

On October 15, 2008 (73 FR 66964 (November 12, 2008)), the EPA promulgated a revised primary and secondary NAAQS for lead. The 2008 lead NAAQS level is 0.15 μg/m³, and the averaging time is a rolling 3-month period with a maximum (not-to-be-exceeded) form to be evaluated over a 3-year period.

On January 22, 2010 (75 FR 6474 (February 9, 2010)), the EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations.

On August 12, 2011 (76 FR 54294 (August 31, 2011)), the EPA retained the existing primary standard for CO of 9 ppm as an 8-hour average, and 35 ppm as a 1-hour standard average, neither to be exceeded more than once per year. The EPA initially established a NAAQS for CO on April 30, 1971 (36 FR 8186).

B. EPA's Infrastructure Requirements

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[2]

[1] The PM_{10} standard was also retained on December 14, 2012 (78 FR 3086 (January 15, 2013)), but that is not being addressed in this action.

[2] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous

Continued

Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[3] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

C. Interstate Pollution Transport Requirements

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to include adequate provisions prohibiting any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the ''good neighbor'' provision of the CAA. Further information can be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at *www.regulations.gov,* Docket number EPA–R02–OAR–2018–0681.

II. Summary of SIP Revision and EPA Analysis

On October 17, 2014 New Jersey submitted, through the New Jersey Department of Environmental Protection (NJDEP), a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. Although not specifically required by 110(a)(1), since neither NAAQS was new or revised, the October 17, 2014 SIP submittal also included infrastructure requirements for the 2006 PM_{10} and 2011 CO NAAQS.

On May 30, 2018 the EPA addressed the portion of New Jersey's October 17, 2014 submission not germane to transport, including: 110(a)(2)(A), 110(a)(2)(B), 110(a)(2)(C), 110(a)(2)(E), 110(a)(2)(F), 110(a)(2)(G), 110(a)(2)(H), 110(a)(2)(J), 110(a)(2)(K), 110(a)(2)(L), and 110(a)(2)(M) for all submitted NAAQS (*i.e.,* 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$ NAAQS, 2006 PM_{10} and 2011 CO NAAQS).[4] In the same action, the EPA addressed CAA element 110(a)(2)(D)(ii), Interstate and International Pollution Abatement, for all NAAQS addressed in the SIP submittal.

The EPA acted on CAA element 110(a)(2)(D)(i)(II) prong 3 (interstate transport provisions for the Prevention of Significant Deterioration) and prong 4 (interstate provisions for visibility) on September 19, 2016 for all NAAQS addressed in the SIP submittal. In the September 19, 2016 rulemaking, the EPA disapproved prong 3 and approved prong 4.[5]

The EPA acted on 110(a)(2)(D)(i)(I) for the interstate transport pollution requirements portion of the New Jersey October 17, 2014 submittal with respect to the 2012 $PM_{2.5}$ NAAQS, finalizing approval on August 14, 2018.[6]

With respect to the 2008 ozone NAAQS, New Jersey withdrew the 110(a)(2)(D)(i)(I) for the interstate transport pollution requirements portion of the October 17, 2014 submission in a letter to the EPA on March 30, 2016. New Jersey subsequently submitted a SIP revision addressing 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS (as well as the 2015 ozone NAAQS) on May 13, 2019. The EPA will address New Jersey's May 13, 2019 SIP submittal in a separate action at a later date.

The EPA is not acting on 110(a)(2)(D)(i)(I) for interstate transport pollution with respect to the 2010 SO_2 NAAQS and will address it in another action.

This proposed rulemaking action addresses the portions of New Jersey's infrastructure submittal for the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS that pertain to transport requirements of CAA section 110(a)(2(D)(i)(I).

The portions of New Jersey's October 17, 2014 SIP submittal addressing section 110(a)(2)(D)(i)(I) set forth New Jersey's position that it does not significantly contribute to nonattainment in, or interfere with maintenance by, any other state with respect to the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS. Additionally, New Jersey described in its submittal its existing SIP-approved control measures, and other federally enforceable control measures, such as consent decrees and federal rules that apply to 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO sources within the State.

In our analysis of New Jersey's SIP submission with respect to the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS, the EPA considered ambient air quality data, the proximity of nearby nonattainment and maintenance areas, and emission trends.

With respect to the 2008 lead NAAQS, the EPA's evaluation indicates that there are no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby nonattainment or maintenance areas in nearby states. Additionally, there are no significant lead sources in New Jersey near the State borders.

Regarding the 2006 PM_{10} NAAQS, the EPA's evaluation indicates that there are also no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby nonattainment and maintenance areas for the 24-hour PM_{10} NAAQS, and emissions continue to trend downward.

With respect to the 2010 NO_2 NAAQS, the EPA's evaluation indicates that there are also no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby nonattainment and maintenance areas. New Jersey NO_2 emissions continue to trend downward and are projected by the EPA to further decrease by 2023.

For the 2011 CO NAAQS, the EPA's evaluation indicates that there are also no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby CO nonattainment areas. Nearby maintenance areas in neighboring states have maintained the NAAQS for close to two decades. CO emissions continue to trend downward, and additional mobile emissions reductions are projected by 2030 as a result of Federal Tier 3 standards.

The EPA therefore proposes to approve New Jersey's infrastructure SIP submittal for CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS.

A detailed summary and explanation of EPA's review and rationale for the proposed approval of this SIP revision as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS may be found in the TSD.

agency actions, including EPA's prior action on New Jersey's infrastructure SIP submitted on October 17, 2014 that addressed the portion of the submission not germane to transport to address 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$ NAAQS, 2006 PM_{10} and 2011 CO NAAQS (83 FR 24661(May 30, 2018)).

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

[4] 83 FR 24661(May 30, 2018).

[5] 81 FR 64070 (September 19, 2016).

[6] 83 FR 40151 (August 14, 2018).

III. Proposed Action

The EPA is proposing to approve New Jersey's infrastructure submittal dated October 17, 2014, addressing interstate transport for the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS as these portions meet the requirements in section 110(a)(2)(D)(i)(I) of the CAA.

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, 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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 rulemaking action, pertaining to New Jersey's section 110(a)(2) infrastructure requirements for the 2006 PM_{10}, 2008 lead, 2010 NO_2, and 2011 CO NAAQS is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 25, 2019.

Peter D. Lopez,

Regional Administrator, Region 2.

[FR Doc. 2019–26922 Filed 12–12–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 240

Friday, December 13, 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.

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Bankruptcy Procedure

AGENCY: Advisory Committee on the Federal Rules of Bankruptcy Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 7, 2020, in Kansas City, MO.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

SUPPLEMENTARY INFORMATION: Announcements for this hearing were previously published in 84 FR 42951.

Dated: December 9, 2019.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2019–26892 Filed 12–12–19; 8:45 am]

BILLING CODE 2210–55–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Submission for Review

AGENCY: U.S. Agency for International Development (USAID).

ACTION: 30-Day notice and request for comments.

SUMMARY: U.S. Agency for International Development (USAID), 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 the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (1) whether the proposed collection of information is necessary for sustaining USAID-funded programming; (2) the accuracy of USAID's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to Ethel Brooks, USAID, Bureau of Economic Growth, Education and Environment (E3)/Office of Education at *ebrooks@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Ethel Brooks, USAID, Bureau of Economic Growth, Education and Environment (E3)/Office of Education at *ebrooks@usaid.gov* or 202–712–4226.

SUPPLEMENTARY INFORMATION:

Title: Forms used to collect USAID Exchange Visitor Program management data, including Conditions of Sponsorship for U.S. Activities; Exchange Visitors Biographical Data; Dependent Certification; and Cost Repayment.

Analysis: Data from these forms are required to manage USAID's Exchange Visitor Program.

In support of its development objectives, USAID sponsors U.S.-based education and capacity strengthening programs for host country nationals, referred to as the Exchange Visitor (EV) Program. Exchange Visitors travel to the United States under a J–1 visa.

The USAID Bureau of Economic Growth, Education, and Environment, Office of Education (E3/ED) manages the Agency's J–1 visa designation and ensures the Agency's compliance with Department of Homeland Security (DHS) and Department of State (DoS) regulations contained in 22 CFR 62.1–90. The Office of Education collects Exchange Visitor data from USAID's overseas Missions and Contractors, and manages the Agency's EV approval process. USAID relies on the data to fulfill a mandatory Agency function of providing the DHS, including Immigration and Customs Enforcement (ICE), and the DoS with information about host country nationals who study in the U.S. under USAID sponsorship. The referenced bio data forms are used to collect such data. The forms include a section for collecting data about the individuals': (a) Suitability for USAID sponsorship; (b) agreed upon commitment to return to the home country and use their newly acquired skills to help solve local development problems; (c) agreement to reimburse program costs if they fail to comply with USAID's and other U.S. Government Agencies Policy requirements; and (d) certification of dependents who accompany or visit EVs during their study in the U.S. USAID/Washington and Missions also use the data collected through these forms to monitor program performance and program completion, along with other management interventions. The main purpose is to enable the transfer of effective education and capacity interventions to host country governments while supporting U.S. national interests. The secondary purpose is to improve future planning and use of USAID resources. These objectives are aligned with Congressional requirements under the Foreign Assistance Act of 1961, as amended. They are also closely aligned with objectives of the Journey to Self-Reliance for countries where USAID operates.

Method of Collection: Electronic.

OMB Number: Not assigned.

Agency Form No.: N/A.

Agency: U.S. Agency for International Development (USAID).

Federal Register: This information was previously published in the **Federal Register** on September 4, 2019 allowing for a 60-day public comment period under Document #2019–19233.

Type of Request: Forms Renewal.

Affected Public: Host country nationals whose study in the U.S. is funded by USAID.

Number of Respondents: 1.

One Responder submitted a comment for the public record. The comment was unrelated to collecting data, instead it was a concern that foreign students who are sponsored to study in the U.S.

remain here indefinitely and fill jobs that should be reserved for Americans.

Expiration Date: Three years from issuance date.

Frequency: Once during the Exchange Visitor's program period.

Estimated number of hours: Less than 15 minutes per form.

Stephen M. Kowal,

Deputy Director, USAID E3 Bureau Office of Education.

[FR Doc. 2019–26938 Filed 12–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2019–0025]

Notice of Request for a New Information Collection: Small Meat Processor Study

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to create a new information collection to survey small and very small meat processing plants about a draft report concerning FSIS resources available to help them achieve and maintain regulatory compliance. This is a new information collection with an estimated burden of 375 hours.

DATES: Submit comments on or before February 11, 2020.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2019–0025. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Small Meat Processor Study.

OMB Control Number: 0583–XXXX.

Type of Request: Request for a new information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). This statute mandates that FSIS protect the public by verifying that meat products are safe, wholesome, unadulterated, and properly labeled and packaged.

Section 12107 of the 2018 Farm Bill states that the Secretary shall offer to enter into a contract with a land-grant college or university or a non-land-grant college of agriculture (as those terms are defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3101)) to review the effectiveness of existing FSIS guidance materials and other tools used by small and very small establishments, including: (1) The effectiveness of the outreach conducted by the Food Safety and Inspection Service to small and very small establishments; (2) the effectiveness of the guidance materials and other tools used by the Food Safety and Inspection Service to assist small and very small establishments; and (3) the responsiveness of Food Safety and Inspection Service personnel to inquiries and issues from small and very small establishments.

FSIS has entered into a Cooperative Agreement with the College of Agriculture at Oregon State University, to conduct this review for small and very small establishments. FSIS is requesting approval for a new information collection to survey small and very small meat processing plants about a draft report concerning FSIS resources available to help them achieve and maintain regulatory compliance. This is a new information collection with an estimated burden of 375 hours.

Oregon State will develop a draft report based on multiple data sources. This draft report will then be distributed to a wider audience of key stakeholders that are small plant operators. Oregon will ask those stakeholders to read the draft report and fill out a short survey to gather their feedback. The survey will be administered online and also in-person at three regional small plant stakeholder meetings being held in different locations in 2020.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of burden: FSIS estimates that it will take respondents an average of 75 minutes per response.

Respondents: Official establishments.

Estimated total number of respondents: 300.

Estimated annual number of responses per respondent: 1.

Estimated total annual burden on respondents: 375 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done in Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–26882 Filed 12–12–19; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the countervailing duty (CVD) administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) to correct two ministerial errors. The period of review (POR) is January 1, 2016 through December 31, 2016.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, 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) 482–3586.

Background

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(b)(5), on August 28, 2019, Commerce published its final results in the administrative review of the CVD order on solar cells from China covering the POR.[1] On September 9, 2019, Jinko Solar Co., Ltd, a mandatory respondent in this administrative review, timely submitted ministerial error allegations concerning the *Final Results.*[2] No other parties submitted ministerial error allegations or commented on Jinko Solar's allegations. Complaints were filed with the U.S. Court of International Trade (the Court) challenging the *Final Results.* The United States sought leave from the Court to address these ministerial error allegations. The Court granted the United States' request and allowed until December 13, 2019 to publish any amended final results in the **Federal Register.**

Scope of the Order

The merchandise covered by the CVD order is solar cells from China, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. A full description of the scope of the order is contained in the Final Results Decision Memorandum.[3]

Ministerial Errors

Section 751(h) of the Act and 19 CFR 351.224(f) define a ''ministerial error'' as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. As discussed in the Response to Ministerial Error Allegations, Commerce finds that the errors alleged by Jinko Solar regarding the calculations for the benchmarks used to calculate benefits with respect to the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Program and the Provision for Aluminum Extrusions for LTAR Program constitute ministerial errors within the meaning of 19 CFR 351.224(f).[4]

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), Commerce is amending the *Final Results* to correct these ministerial errors. Specifically, Commerce is amending the net subsidy rates for Jinko Solar and for the companies for which

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2016,* 84 FR 45125 (August 28, 2019) and accompanying Issues and Decision Memorandum (Final Results Decision Memorandum) (collectively, *Final Results*).

[2] Jinko Solar Co., Ltd. filed its allegations on behalf of itself and certain affiliated companies: Jinko Solar Import and Export Co., Ltd.; JinkoSolar International Limited; and Zhejiang Jinko Solar Co., Ltd. (collectively, Jinko Solar). *See* Jinko Solar's Letter, ''Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Jinko's Ministerial Error Comments,'' dated September 9, 2019 (Ministerial Error Allegations).

[3] *See* Final Results Decision Memorandum at 3–4.

[4] *See* Memorandum, ''Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2016: Response to Ministerial Error Allegations in the Final Results,'' dated concurrently with, and hereby adopted by, this notice (Response to Ministerial Error Allegations).

a review was requested, but which were not selected as mandatory company respondents (*i.e.,* the non-selected companies subject to this administrative review).[5] Commerce notes that correcting these two ministerial errors has no impact on the subsidy rate calculated in the *Final Results* for the other mandatory respondent in this administrative review, Canadian Solar Inc. (Canadian Solar). The revised net subsidy rates are provided below.

Amended Final Results

As a result of correcting the two ministerial errors, Commerce determines the countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent *ad valorem*)
Canadian Solar Inc. and Cross-Owned Affiliates[6]	9.70
Jinko Solar Import and Export Co., Ltd. and Cross-Owned Affiliates[7]	12.70

Review-Specific Rate Applicable to the Non-Selected Companies Subject to this Review:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Baoding Jiasheng Photovoltaic Technology Co., Ltd	11.76
Baoding Tianwei Yingli New Energy Resources Co., Ltd	11.76
Beijing Tianneng Yingli New Energy Resources Co., Ltd	11.76
Canadian Solar (USA) Inc	11.76
Changzhou Trina Solar Energy Co., Ltd	11.76
Changzhou Trina Solar Yabang Energy Co., Ltd	11.76
Chint Solar (Zhejiang) Co., Ltd	11.76
Dongguan Sunworth Solar Energy Co., Ltd	11.76
ERA Solar Co. Limited	11.76
ET Solar Energy Limited	11.76
Hainan Yingli New Energy Resources Co., Ltd	11.76
Hangzhou Sunny Energy Science and Technology Co., Ltd	11.76
Hengdian Group DMEGC Magnetics Co., Ltd	11.76
Hengshui Yingli New Energy Resources Co., Ltd	11.76
JA Solar Technology Yangzhou Co., Ltd	11.76
JA Technology Yangzhou Co., Ltd	11.76
Jiangsu High Hope Int'l Group	11.76
Jiawei Solarchina (Shenzhen) Co., Ltd	11.76
Jiawei Solarchina Co., Ltd	11.76
JingAo Solar Co., Ltd	11.76
Jinko Solar (U.S.) Inc.	11.76
Jinko Solar International Limited	11.76
Lightway Green New Energy Co., Ltd	11.76
Lixian Yingli New Energy Resources Co., Ltd	11.76
Luoyang Suntech Power Co., Ltd	11.76
Nice Sun PV Co., Ltd	11.76
Ningbo Qixin Solar Electrical Appliance Co., Ltd	11.76
Risen Energy Co., Ltd	11.76
Shanghai BYD Co., Ltd	11.76
Shanghai JA Solar Technology Co., Ltd	11.76
Shenzhen Glory Industries Co., Ltd	11.76
Shenzhen Topray Solar Co., Ltd	11.76
Sumec Hardware & Tools Co., Ltd	11.76
Systemes Versilis, Inc	11.76
Taizhou BD Trade Co., Ltd	11.76
tenKsolar (Shanghai) Co., Ltd	11.76
Tianjin Yingli New Energy Resources Co., Ltd	11.76
Toenergy Technology Hangzhou Co., Ltd	11.76
Trina Solar (Changzhou) Science & Technology Co., Ltd	11.76
Wuxi Suntech Power Co., Ltd	11.76
Yancheng Trina Solar Energy Technology Co., Ltd	11.76
Yingli Energy (China) Co., Ltd	11.76
Yingli Green Energy Holding Company Limited	11.76
Yingli Green Energy International Trading Company Limited	11.76
Zhejiang Era Solar Technology Co., Ltd	11.76
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	11.76

[5] Consistent with the *Final Results,* for the non-selected companies, Commerce calculated an amended rate by weight-averaging the amended subsidy rate for Jinko Solar with the subsidy rate calculated in the *Final Results* for Canadian Solar (as noted above, correcting these ministerial errors has no impact on the subsidy rate calculated for Canadian Solar in the *Final Results*) using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR.

[6] Cross-owned affiliates are: Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; Canadian Solar Manufacturing (Changshu) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc. (name was changed to CSI Solar Power Group Co., Ltd. in December 2016); CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; CSI New Energy Holding Co., Ltd. (name was CSI Solar Manufacture Inc. until July 2015); CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.; Changshu Tegu New Materials Technology Co., Ltd.; Changshu Tlian Co., Ltd.; and Suzhou Sanysolar Materials Technology Co., Ltd.

[7] Cross-owned affiliates are: Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jinko Solar (Shanghai) Management Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; and Xinjiang Jinko Solar Co., Ltd.

Assessment Rates/Cash Deposits

Normally, Commerce would issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these amended final results of review, to liquidate shipments of subject merchandise produced and/or exported by the companies listed above entered, or withdrawn from warehouse, for consumption on or after January 1, 2016 through December 31, 2016. However, between September 27, 2019 and October 28, 2019, the Court enjoined liquidation of certain entries that are subject to the *Final Results.*[8] Accordingly, Commerce will not instruct CBP to assess countervailing duties on those enjoined entries pending resolution of the associated liquidation.

Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for the companies listed above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after July 28, 2019, which is the date of the *Final Results.* For all non-reviewed firms, Commerce will instruct CBP to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties that are subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

Disclosure

Commerce intends to disclose the calculations performed for these amended final results to interested parties within five business days of the date of this notice in accordance with 19 CFR 351.224(b).

Commerce is issuing and publishing these amended final results in accordance with sections 751(h) and 771(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: December 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26817 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[8] The Court issued statutory injunctions under case numbers 19–00182 (September 27, 2019), 19–00178 (October 4, 2019), and 19–00183 (October 28, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–826]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam). The period of investigation is January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, Paul Walker, or Julie Geiger, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698; (202) 482–0413; or (202) 482–2057, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 6, 2019.[1] On September 13, 2019, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), Commerce published its postponement of the deadline for the preliminary determination of the investigation, and the revised deadline is now December 6, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are wind towers from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Accordingly, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice. See* Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines

[1] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 84 FR 48329 (September 13, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 84 FR at 38217.

that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of wind towers from Vietnam based on a request made by the Wind Tower Trade Coalition (the petitioner).[7] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than April 20, 2020, unless postponed.

All-Others Rate

Sections 703(d)(1)(A)(i) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely on facts otherwise available, as outlined under section 776 of the Act.

In this investigation, Commerce calculated an individually-estimated countervailable subsidy rate for the mandatory respondent, CS Wind Vietnam Co., Ltd. (CS Wind), which is not zero, *de minimis,* or based entirely on facts otherwise available. Because CS Wind is the only mandatory respondent in this investigation and its individually-calculated rate is not zero, *de minimis,* or determined entirely under section 776 of the Act, Commerce has assigned CS Wind's rate as the estimated all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Producer/exporter	Subsidy rate (percent)
CS Wind Vietnam Co., Ltd	2.43
All Others	2.43

Suspension of Liquidation

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for submitting case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. Pursuant to 705(b)(2) of the Act, if the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: December 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Petitioner's Letter, ''Utility Scale Wind Towers from the Socialist Republic of Vietnam: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated November 27, 2019.

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 11150 (February 15, 2013).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Application of the CVD Law to Imports from Vietnam
VIII. Subsidies Valuation
IX. Analysis of Programs
X. Entered Value Adjustment
XI. Calculation of the All-Others Rate
XII. ITC Notification
XIII. Recommendation

[FR Doc. 2019–26947 Filed 12–12–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–812]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria: Final Results of the Antidumping Duty Administrative Review; 2016–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that sales of certain carbon and alloy steel cut-to-length plate (CTL plate) from Austria were made at less than normal value during the period of review (POR) November 14, 2016 through April 30, 2018.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Preston N. Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041.

SUPPLEMENTARY INFORMATION:

Background

This review covers voestalpine Bohler Edelstahl GmbH & Co KG (vaBEG) and voestalpine Bohler Bleche GmbH & Co KG (vaBBG) (affiliated producers/exporters of the subject merchandise) and their non-exporting affiliates, voestalpine High Performance Metals International GmbH (vaHPMI), voestalpine Grobblech GmbH (Grobblech), and voestalpine Steel & Service Center GmbH (SSC) (collectively, voestalpine).[1] Commerce published the *Preliminary Results* on June 13, 2019 and invited interested parties to comment.[2] On July 17, 2019, Commerce received a case brief from voestalpine.[3] On July 24, 2019, Commerce received a rebuttal brief from SSAB Enterprises LLC (the petitioner).[4] For a further discussion of events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[5] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On October 8, 2019, Commerce extended the deadline for the final results by 60 days.[6] Accordingly, the deadline for the final results is now December 10, 2019.

Scope of the Order

The product covered by the scope of the order is CTL plate from Austria. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin for voestalpine.[8] Specifically, we applied a level of trade (LOT) adjustment to voestalpine's normal value (NV) only where export price (EP) sales were made at a different LOT than home-market sales, and we applied a constructed export price (CEP) offset to NV for comparisons to all CEP sales.

[1] Commerce continues to find that vaBEG, vaBBG, and vaHPMI are the successors-in-interest to Bohler Edelstahl GmbH & Co KG (BEG), Bohler Bleche GmbH & Co KG (BBG), and Bohler International GmbH (BIG), respectively. Additionally, Commerce has determined to collapse, and treat as a single entity, vaBEG, vaBBG, and their affiliated companies vaHPMI, Grobblech, and SSC (collectively, voestalpine). For a discussion of this analysis, *see* Memorandum, ''Analysis Memorandum for voestalpine Companies in the Final Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria,'' dated concurrently with this memorandum (voestalpine Final Analysis Memorandum); *see also* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria,'' dated June 7, 2019.

[2] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria: Preliminary Results of the Antidumping Duty Administrative Review; 2016–2018,* 84 FR 27583 (June 13, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *See* voestalpine's Letter, ''Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: voestalpine Case Brief,'' dated July 17, 2019.

[4] *See* Petitioner's Letter, ''Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Rebuttal Brief,'' dated July 24, 2019.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria; 2016–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2016–2018,'' dated October 8, 2019.

[7] *See* Issues and Decision Memorandum at 2–7.

[8] *See* Issues and Decision Memorandum at 7–9; *see also* voestalpine Final Analysis Memorandum.

Furthermore, we made certain adjustments to voestalpine's selling and financial expenses.

Final Results of the Administrative Review

As a result of this review, Commerce determines that the following weighted-average dumping margin exists for the period November 14, 2016 through April 30, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
voestalpine Bohler Edelstahl GmbH & Co KG	41.19
voestalpine Bohler Bleche GmbH & Co KG	
voestalpine High Performance Metals International GmbH	
voestalpine Grobblech GmbH	
voestalpine Steel & Service Center GmbH	

Disclosure of Calculations

We intend to disclose the calculations performed for these final results within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protections (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).

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by voestalpine for which voestalpine did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

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 for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for voestalpine will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 28.57 percent, the all-others rate established in the less-than-fair-value investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 9, 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 From the Preliminary Results
V. Discussion of the Issues
  Comment 1: LOT Adjustments and CEP Offsets
  Comment 2: Revisions to Selling Expenses and Financial Expenses
  Comment 3: Major-Input Adjustment
VI. Recommendation

[FR Doc. 2019–26948 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[9] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 82 FR 16366 (April 4, 2017), revised in *Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation and Notice of Amended Final Determination and Order Pursuant to Court Decision,* 84 FR 7344 (March 4, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–840]

Carbon and Alloy Steel Threaded Rod From Thailand: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on carbon and alloy steel threaded rod from Thailand.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Emily Halle or Robert Scully, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0176 or (202) 482–0572, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on October 21, 2019, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation, including its affirmative determination of critical circumstances, with respect to imports of carbon and alloy steel threaded rod from Thailand.[1] On December 5, 2019, the ITC notified Commerce of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of the LTFV imports of carbon and alloy steel threaded rod from Thailand, and its determination that critical circumstances do not exist with respect to imports of subject merchandise from Thailand.[2]

Scope of the Order

The merchandise covered by this order is carbon and alloy steel threaded rod from Thailand. For a complete description of the scope of the order, *see* the appendix to this notice.

Antidumping Duty Order

On December 5, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of carbon and alloy steel threaded rod from Thailand sold at LTFV, and further found that critical circumstances do not exist with respect to imports of subject merchandise from Thailand. Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order.

Because the ITC determined that an industry in the United States is materially injured by imports of carbon and alloy steel threaded rod from Thailand that are sold at LTFV, section 736(b)(1) of the Act is applicable. Accordingly, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the carbon and alloy steel threaded rod from Thailand exceeds the export price (or constructed export price) of the merchandise for entries of carbon and alloy steel threaded rods from Thailand which are entered, or withdrawn from warehouse, for consumption on or after August 7, 2019, the date of publication of the *Preliminary Determination*.[3] We will not include entries occurring after the expiration of the provisional measures period and before the date of publication of the ITC's final affirmative determination under section 735(b) of the Act, as further described below.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to suspend liquidation of all appropriate entries of carbon and alloy steel threaded rod from Thailand as described in the appendix to this notice which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. We will also instruct CBP to require, at the same time as importers would normally deposit estimated customs duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted average dumping margins listed below. The all-others rate applies to all producers or exporters not specifically listed.

In accordance with section 736(b)(2) of the Act, Commerce will instruct CBP to release any bond or other security, and refund any cash deposit made to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the ITC's final affirmative determination under section 735(b) of the Act. Further, Commerce will instruct CBP to terminate the suspension of liquidation of, and to liquidate without regard to antidumping duties, entries of carbon and alloy steel threaded rod from Thailand which are entered, or withdrawn from warehouse, for consumption prior to the date of publication of the ITC's affirmative determination under section 735(b) of the Act.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. Because no party requested an extension of provisional measures, provisional measures were in effect beginning on the date of publication of the *Preliminary Determination* and ending on December 5, 2019. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination in the **Federal Register**.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of carbon and alloy steel threaded rod from Thailand entered, or withdrawn from warehouse, for consumption on or after December 5, 2019, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

In its final determination, the ITC did not make an affirmative critical

[1] *See Carbon and Alloy Steel Threaded Rod from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 84 FR 56162 (October 21, 2019).

[2] *See* Notification Letter from the ITC, dated December 5, 2019.

[3] *See Carbon and Alloy Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances,* 84 FR 38597 (August 7, 2019) (*Preliminary Determination*).

circumstances finding with respect to imports of subject merchandise from Thailand that were subject to Commerce's final affirmative critical circumstances determination. Accordingly, Commerce will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 9, 2019 (*i.e.,* 90 days prior to the date of publication of the *Preliminary Determination*), but before August 7, 2019 (*i.e.,* the publication date of the *Preliminary Determination*).

Estimated Weighted-Average Dumping Margins

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Tycoons Worldwide Group (Thailand) Co. Ltd	20.83
All Others	20.83

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to carbon and alloy steel threaded rod from Thailand pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by the scope of this investigation is carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to these investigations are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of these investigations, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this investigation whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this investigation is: (1) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements.

Excluded from the scope of the antidumping investigation on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on Certain Steel Threaded Rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this investigation is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[FR Doc. 2019–27044 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–834]

Utility Scale Wind Towers From Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Indonesia. The period of investigation is January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Andrew Medley, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 6, 2019.[1] On September 13, 2019, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), Commerce published its postponement of the deadline for the preliminary determination of this investigation, and the revised deadline is now December 6, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics

[1] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 84 FR 48329 (September 13, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Utility Scale Wind Towers from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are wind towers from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigations as it appeared in the *Initiation Notice.* Accordingly, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice. See* Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of wind towers from Indonesia based on a request made by the Wind Tower Trade Coalition (the petitioner).[7] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than April 20, 2020, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely on facts otherwise available, as outlined under section 776 of the Act.

In this investigation, Commerce calculated an individually-estimated countervailable subsidy rate for the mandatory respondent, PT Kenertec Power System (Kenertec), that is not zero, *de minimis,* or based entirely on facts otherwise available. Because Kenertec is the only mandatory respondent in this investigation and its individually-calculated rate is not zero, *de minimis,* or determined entirely under section 776 of the Act, Commerce has assigned Kenertec's rate as the estimated all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Exporter/producer	*Ad Valorem* subsidy rate (percent)
PT Kenertec Power System	20.29
All Others	20.29

Suspension of Liquidation

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for submitting case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 84 FR at 38217.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit and section 771(5A) of the Act regarding specificity.

[7] *See* Petitioner's Letter, ''Utility Scale Wind Towers from Indonesia: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated November 27, 2019.

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. Pursuant to 705(b)(2) of the Act, if the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: December 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Injury Test
V. Subsidies Valuation
VI. Analysis of Programs
VII. Recommendation

[FR Doc. 2019–26946 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–837]

Certain Quartz Surface Products From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain quartz surface products (quartz surface products) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is April 1, 2018 through March 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Kyle Clahane AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 3, 2019.[1] On October 1, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now December 4, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are quartz surface products from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments

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[1] *See Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 25529 (June 3, 2019) (*Initiation Notice*).

[2] *See Certain Quartz Surface Products From India and the Republic of Turkey: Postponement of the Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 52062 (October 1, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notic*e, 84 FR at 25530.

timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for mandatory respondents Belenco dis Tikaret A.Ş. (Belenco), Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş), or for imports subject to the all-others rate. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined or any margins determined entirely under section 776 of the Act. Belenco is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Belenco, as referenced in the ''Preliminary Determination'' section below.[7]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Belenco dis Tikaret A.Ş.; and Peker Yüzey Tasarımları Sanayi ve Ticaret A.Ş	4.88	[8] 4.86
Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi	[9] 0.00	Not Applicable
All Others	4.88	[10] 4.86

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination, except if that rate is zero or *de minimis,* no cash deposit will be required; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin for Ermaş is zero, entries of shipments of subject merchandise produced and exported by this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Ermaş. Entries of shipments of subject merchandise in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States in any other producer/exporter combination or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate

[6] *See* Memorandum, ''Certain Quartz Surface Products from India and the Republic of Turkey: Scope Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] For a complete analysis of the data, *see* Memorandum, ''Certain Quartz Surface Products (QSP) from Turkey: Calculation of All-Others Rate in Preliminary Determination,'' dated concurrently with this notice (All Others' Rate Memorandum).

[8] *See* Memorandum, ''Analysis for the Preliminary Determination in the Investigation of Certain Quartz Surface Products from the Republic of Turkey: Belenco dis Tikaret A.Ş.,'' dated concurrently with this memorandum, at Exhibit 4.

[9] *See* Memorandum, ''Analysis for the Preliminary Determination in the Investigation of Certain Quartz Surface Products from the Republic of Turkey: Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi,'' dated concurrently with this memorandum, at Exhibit 4.

[10] *See* All Others' Rate Memorandum.

may be found in the Preliminary Determination section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 18 and 20, 2019, respectively, pursuant to 19 CFR 351.210(e), Belenco and Ermaş requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether subject imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish. In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* Belenco's Letter, ''Quartz Surface Products from Turkey: Extension Request for Final Determination,'' dated November 18, 2019; *see also* Ermaş' Letter, ''Quartz Surface Products from Turkey: Extension Request of Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş) for Final Determination,'' dated November 20, 2019.

manufacture of the quartz surface products. The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (Glass Pieces); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Single Entity Analysis
VI. Postponement of Final Determination and Extension of Provisional Measures
VII. Discussion of the Methodology
VIII. Date of Sale
IX. Product Comparisons
X. Export Price and Constructed Export Price
XI. Normal Value
XII. Negative Preliminary Determination of Critical Circumstances
XIII. Adjustments to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Investigation
XIV. Currency Conversion
XV. Recommendation

[FR Doc. 2019–26818 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–108]

Ceramic Tile From the People's Republic of China: Notice of Correction to the Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the preliminary determination of sales at less than fair value (LTFV) for ceramic tile from the People's Republic of China (China). The period of investigation is October 1, 2018, through March 31, 2019.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Heather Lui or Paul Walker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0016 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION: On November 14, 2019, Commerce published the preliminary determination of sales at LTFV for ceramic tile from China.[1] In the *Preliminary Determination,* Commerce inadvertently omitted certain separate rate companies and their corresponding producers from the margin chart. Commerce also is correcting spelling errors for two additional separate rate companies.

Additionally, in the *Preliminary Determination,* Commerce inadvertently identified Beilitai (Tianjin) Tile Co., Ltd. and its producers as receiving the separate rate applicable to non-individually examined companies.[2] Because we found in the *Preliminary Determination* that Beilitai (Tianjin) Tile Co., Ltd. should be treated as a single entity with mandatory respondent Belite Ceramics (Anyang) Co., Ltd. and Tianjin Honghui Creative Technology Co., Ltd.,[3] Beilitai (Tianjin) Tile Co., Ltd. and its producers should be included in the margin applicable to Belite Ceramics (Anyang) Co., Ltd./Beilitai (Tianjin) Tile Co., Ltd./Tianjin Honghui Creative Technology Co., Ltd. We correct those omissions and errors in the chart below.

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Belite Ceramics (Anyang) Co., Ltd (Belite)/ Beilitai (Tianjin) Tile Co., Ltd./Tianjin Honghui Creative Technology Co., Ltd	Belite Ceramics (Anyang) Co., Ltd./Beilitai (Tianjin) Tile Co., Ltd./Tianjin Honghui Creative Technology Co., Ltd	244.26	233.72
Avangarde Ceramiche	Fujian Nan'an Xinglong Ceramics Co., Ltd	178.20	167.66
	Guangdong Jiajun Ceramics Co., Ltd	178.20	167.66
Beijing Shiji Mingtai Inc	Jinjiang Guoxing Ceramics Building Materials Co., Ltd	178.20	167.66
	Fujian Honghua Group Co., Ltd	178.20	167.66
	Fujian Zhangzhou Jianhua Ceramics Co., Ltd	178.20	167.66
	Foshan Dongpeng Ceramics Co., Ltd	178.20	167.66
	Fujian Huatai Group Co., Ltd	178.20	167.66
	Quanzhou Zhiran Ceramics Co., Ltd	178.20	167.66
	Quanzhou Yuanlong Building Materials Development Co., Ltd	178.20	167.66
	Fujian Xindezhou Ceramics Co., Ltd	178.20	167.66
	Jinjiang Juntao Ceramics Industry Co., Ltd	178.20	167.66
Bestview (Fuzhou) Import & Export Co. Ltd	Foshan Lanyu Building Material Co. Ltd	178.20	167.66
	Tianjin Belite Ceramics Co., Ltd Foshan Branch	178.20	167.66
	Jingdezhen Leixi Building Material Factory	178.20	167.66
	Foshan Nanhai District Energy Building Material Co., Ltd	178.20	167.66
Buddy Mosaic Limited	Foshan Tanhua Building Material Co., Ltd	178.20	167.66
Everstone Industry (Qingdao) Co., Ltd		178.20	167.66
Foshan Junjing Industrial Co., Ltd	Guangdong Jialian Enterprise Ceramics Co., Ltd	178.20	167.66
	Foshan Jinhong Ceramics Co., Ltd	178.20	167.66
	Foshan Jinyi Ceramics Co., Ltd	178.20	167.66

[1] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, and Postponement of Final Determination,* 84 FR 61877 (November 14, 2019) (*Preliminary Determination*).

[2] *See Preliminary Determination,* 84 FR at 61878.

[3] *Id.*

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
	Foshan Nanhai Longpeng Vitrified Brick Co., Ltd	178.20	167.66
	Jiangxi Shiwan Global Ceramics Co., Ltd	178.20	167.66
	Xinxing County Jinmaili Ceramics Co., Ltd	178.20	167.66
	Foshan Lailida Building Material Co., Ltd	178.20	167.66
	Fujian Mingsheng Ceramic Development Co., Ltd	178.20	167.66
	Foshan Qiangshengda Building Material Co., Ltd	178.20	167.66
	Guangdong Shenghui Ceramics Co., Ltd	178.20	167.66
	Guangdong Xiejin Ceramics Co., Ltd	178.20	167.66
	Qingyuan Xinjinshan Ceramics Co., Ltd	178.20	167.66
	Sihui Quanquan Ceramics Co., Ltd	178.20	167.66
	Enping Xiangda Ceramics Co., Ltd	178.20	167.66
	Foshan Xinhenglong Polishing Brick Co., Ltd	178.20	167.66
	Enping Xinjincheng Ceramics Co., Ltd	178.20	167.66
	Guangdong Xinruncheng Ceramics Co., Ltd	178.20	167.66
	Foshan Shiwan Yulong Ceramics Co., Ltd	178.20	167.66
	Jiangmen Xinxingwei Building Material Co., Ltd	178.20	167.66
	Jinjiang Zhongrong Ceramic Building Material Co., Ltd	178.20	167.66
Foshan Rainbow Color Export & Import Co., Ltd	Foshan Baleno Ceramic Co., Ltd	178.20	167.66
	Foshan Ligaote Ceramic Co., Ltd	178.20	167.66
McMarmocer Ceramics Limited	Guangdong Overland Ceramics Co., Ltd	178.20	167.66
Zhuhai Xuri Star Trading Co. Ltd	Zhuhai City Doumen District Xuri Pottery and Porcelain Company Limited	178.20	167.66

This correction to the preliminary determination and notice are issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Date: December 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26905 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–817]

Oil Country Tubular Goods From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on oil country tubular goods (OCTG) from the Republic of Turkey (Turkey). We determine that Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A. S., Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S., (collectively, Borusan), received countervailable subsidies during the period of review (POR), January 1, 2017 through December 31, 2017.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0697.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2019, Commerce published the *Preliminary Results* of this CVD administrative review in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Results.* In September 2019, we received timely filed case and rebuttal briefs from the United States Steel Corporation, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (collectively, the petitioners) and Borusan. On November 7, 2019, we held a public hearing[2] on the *Preliminary Results.*[3]

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and

[1] *See Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017,* 84 FR 39797 (August 12, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Public Hearing Transcript, ''Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the Republic of Turkey,'' dated November 7, 2019.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review of Oil Country Tubular Goods from the Republic of Turkey; 2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum) at 2–3.

7306.29.81.50. The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum.[5] These issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov;* the Issues and Decision Memorandum is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable during the POR, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Results

Based on the comments received from the petitioners and Borusan, we revised the calculation of the net countervailable subsidy rate for Borusan. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we determine the following net countervailable subsidy rate for Borusan,[7] for the period January 1, 2017 through December 31, 2017:

Company	Subsidy rate (percent *ad valorem*)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S., (collectively, Borusan)	0.90

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review. We will instruct CBP to liquidate shipments of subject merchandise produced by and/or exported by Borusan, entered, or withdrawn from warehouse, for consumption on or after January 1, 2017 through December 31, 2017, at the *ad valorem* rate listed above.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties at the rate shown above for Borusan, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 9, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Scope of the Order
III. Subsidies Valuation Information
IV. Benchmark Interest Rates
V. Analysis of Programs
VI. Analysis of Comments
  Comment 1: How to Attribute Subsidies Received by Borusan on a D–3 Certificate Under the Inward Processing Certificate Program;
  Comment 2: Whether Commerce Should Use a Tier 2 Benchmark in the Provision for Less Than Adequate Remuneration (LTAR) Program Because Commerce Found That a Particular Market Situation (PMS) Distorts the Turkish Market;
  Comment 3: How to Treat the Customs Duty and Value Added Tax (VAT) Exemptions Received by Borusan Under the Investment Encouragement Program (IEP)
VII. Recommendation

[FR Doc. 2019–26907 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[4] *Id.* at 2–3.

[5] *Id.* at 4–15.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[7] Commerce has determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S. are cross-owned. *See* Preliminary Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: 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 Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. (collectively, Shanghai Wells) has failed to demonstrate its eligibility for separate rate status during the period of review (POR); thus, Shanghai Wells will be considered part of the China-wide entity. We invite all interested parties to comment on these preliminary results.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Jasun Moy or Viet Le, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194, or (202) 482–0621, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2018, Commerce initiated an administrative review of the antidumping duty order [1] on steel wire garment hangers (hangers) from the People's Republic of China (China) in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) with respect to four companies: Hangzhou Qingqing Mechanical Co., Ltd. (Hangzhou Qingqing); Hangzhou Yingqing Material Co., Ltd. (Hangzhou Yingqing); Hong Kong Wells Ltd.; and Shanghai Wells Hanger Co., Ltd.[2] On May 1, 2019, Commerce rescinded its review of two of these companies, Hangzhou Qingqing and Hangzhou Yingqing, based on a timely-filed withdrawal of the request for review.[3] Because we have previously found that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. are a single entity, Shanghai Wells remains the sole respondent in this review.[4]

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, resulting in a revised deadline for these preliminary results.[5] Additionally, Commerce exercised its discretion to extend the deadline for the preliminary results until December 10, 2019.[6]

On November 1, 2018, Commerce issued the standard non-market economy (NME) questionnaire to Shanghai Wells.[7] On November 30, 2018, Shanghai Wells submitted its response to section A.[8] On December 17, 2018, Shanghai Wells submitted its response to sections C and D of the NME questionnaire.[9] From February 21, 2019 through July 12, 2019, Shanghai Wells timely submitted supplemental questionnaire responses.[10] M&B Metal Products Co. Inc. (the petitioner) requested that Commerce conduct on-site verification of Shanghai Wells to confirm the accuracy and completeness of its responses.[11] After scheduling a verification and then rescheduling it in response to Shanghai Wells' request, Shanghai Wells ultimately did not permit Commerce to verify its questionnaire responses.[12]

Scope of the Order

The merchandise subject to the order is steel wire garment hangers. For a full description of the scope, *see* the Preliminary Decision Memorandum.[13]

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[14] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity.[15] Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review and the China-wide entity's rate is not subject to change (*i.e.,* 187.25 percent).[16]

Methodology

Commerce is conducting this review in accordance with section 751(a) 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

[1] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (October 6, 2008) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 63615 (December 11, 2018).

[3] *See Steel Wire Garment Hangers from the People's Republic of China; 2017–2018; Partial Rescission of the Tenth Antidumping Duty Administrative Review,* 84 FR 18478 (May 1, 2019).

[4] Commerce found that Shanghai Wells Hanger Co., Ltd., Hong Kong Wells Ltd., and Hong Kong Wells Ltd. (USA) are affiliated and that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. are a single entity. Because there were no changes to the facts that supported that decision since that determination was made, we continue to find that these companies are affiliated and that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. comprise a single entity for this administrative review. *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994, 27996 (May 13, 2011); *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2016–2017,* 83 FR 53449 (October 23, 2018) (*Single Entity Determination*).

[5] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[6] *See* Memorandum, ''Steel Wire Garment Hangers from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administration Review,'' dated September 23, 2019.

[7] *See* Letter to Shanghai Wells, ''Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Non-Market Economy Questionnaire,'' dated November 1, 2018 (NME questionnaire).

[8] *See* Shanghai Wells' November 30, 2018 Section A Questionnaire Response.

[9] *See* Shanghai Wells' December 17, 2018 Section C and D Questionnaire Response.

[10] *See* Shanghai Wells' February 21, 2019 Section A Supplemental Questionnaire Response; Shanghai Wells' March 19, 2019 Section C Supplemental Questionnaire Response; Shanghai Wells' April 16, 2019 Section D Supplemental Questionnaire Response; Shanghai Wells' May 27, 2019 Second Supplemental Questionnaire Response; Shanghai Wells' June 24, 2019 Third Supplemental Questionnaire Response; Shanghai Wells' July 24, 2019 Fourth Supplemental Questionnaire Response.

[11] *See* Petitioner's Letter, ''Tenth Administrative Review of Steel Wire Garment Hangers from China—Petitioner's Request for Verification,'' dated February 25, 2019.

[12] *See* Shanghai Wells' Letter, ''Steel Wire Garment Hangers from the People's Republic of China: Reply to Verification Schedule,'' dated October 25, 2019.

[13] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China; 2017–2018,'' dated concurrently with and hereby adopted by this notice.

[14] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[15] *Id.*

[16] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 41480 (July 15, 2015), and accompanying Preliminary Decision Memorandum, unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013–2014,* 80 FR 69942 (November 12, 2015).

an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it 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 and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Based on Shanghai Wells' refusal to allow Commerce to verify its questionnaire responses including its response to the section A questionnaire, consistent with sections 782(d) and (i) of the Act, Commerce preliminarily determines that Shanghai Wells is not eligible for a separate rate in this administrative review.

Disclosure and Public Comment

Commerce has made no calculations as part of these preliminary results. Accordingly, there will be no disclosure of the calculations performed for these preliminary results of review in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[17] 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.[18] Case and rebuttal briefs should be filed using ACCESS [19] and must be served on interested parties.[20] Executive summaries should be limited to five pages total, including footnotes.

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 Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[21] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal 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 date and time to be determined.[22] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs submitted, no later than 120 days after the date of publication of this notice, unless extended.[23]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[24] 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 for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Shanghai Wells will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the most recently completed period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. 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.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 9, 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. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–26906 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See* 19 CFR 351.309(d).

[18] *See* 19 CFR 351.309(c)(2) and (d)(2).

[19] *See generally* 19 CFR 351.303.

[20] *See* 19 CFR 351.303(f).

[21] *See* 19 CFR 351.310(c).

[22] *See* 19 CFR 351.310(d).

[23] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[24] *See* section 751(a)(2)(C) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–040]

Truck and Bus Tires From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is simultaneously initiating and issuing the preliminary results of a changed circumstances review (CCR) of

the antidumping duty order on truck and bus tires from the People's Republic of China (China) to determine whether Sailun Group Co., Ltd. (Sailun Group) is the successor-in-interest to Sailun Jinyu Group Co., Ltd. (Sailun Jinyu), and whether Sailun (Shenyang) Tire Co., Ltd. (Sailun Shenyang), is the successor-in-interest to Shenyang Peace Radial Tyre Manufacturing Co., Ltd. (Shenyang Peace). Based on the information on the record, we preliminarily determine that Sailun Group is the successor-in-interest to Sailun Jinyu and that Sailun Shenyang is the successor-in-interest to Shenyang Peace for purposes of determining antidumping duty liability. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Lochard Philozin, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4260.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty order on truck and bus tires from China on February 15, 2019.[1] In its October 25, 2019 request for a CCR, Sailun Group informed Commerce that Sailun Jinyu changed its name to Sailun Group, effective October 22, 2018; and Shenyang Peace changed its name to Sailun Shenyang, effective December 3, 2018.[2] Sailun Jinyu was a respondent in the investigation in which it received a separate rate for two exporter/producer combinations: (1) Truck and bus tires produced and exported by Sailun Jinyu to the United States; and (2) truck and bus tires produced by Shenyang Peace and exported by Sailun Jinyu to the United States.[3] Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(c) and 19 CFR 351.221(c)(3), Sailun Group requested that Commerce initiate an expedited CCR and determine that it is the successor-in-interest to Sailun Jinyu; and that its subsidiary, Sailun Shenyang, is the successor-in-interest to Shenyang Peace.

Scope of the Order

The scope of the order covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this order may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol ''DOT'' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and

HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a ''TR'' or ''HC'' suffix in their size designations are covered by this order regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the ''Truck-Bus'' section of the *Tire and Rim Association Year Book,* as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this order are the following types of tires: (1) Pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) The designation ''MH'' is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for ''Mobile Home Use Only;'' and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter ''R.''

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In the past, Commerce has used CCRs to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (''successor-in-interest,'' or ''successorship,'' determinations).[4] Based on the request from Sailun Group and in accordance with section 751(b)(1) of Act and 19 CFR 351.216(b), we are initiating a CCR to determine whether Sailun Group is the successor-in-interest to Sailun Jinyu and whether Sailun Shenyang is the successor-in-interest to Shenyang Peace for purposes of antidumping duty liability.

Preliminary Results of Changed Circumstances Review

If we conclude that an expedited action is warranted, we may combine the notices of initiation and preliminary results of a CCR under 19 CFR 351.221(c)(3)(ii). Commerce has combined the notice of initiation and preliminary results in successor-in-interest cases when sufficient documentation has been provided supporting the request to make a preliminary determination.[5] In this

[1] *See Truck and Bus Tires from the People's Republic of China: Antidumping Duty Order,* 84 FR 4436 (February 15, 2019) (*AD Order*).

[2] *See* Sailun Group's Letter, ''Sailun Request for a Changed Circumstances Review in Truck and Bus Tires From the People's Republic of China, Case No. A–570–040,'' dated October 25, 2019 (CCR Request).

[3] *See Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances,* 82 FR 8599 (January 27, 2017)); *see also AD Order,* 84 FR at 4439–40.

[4] *See, e.g., 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).

[5] *See, e.g., Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review:*

Continued

instance, we have the necessary information on the record to make a preliminary finding. Thus, we find that expedited action is warranted and have combined the notices of initiation and preliminary results pursuant to 19 CFR 351.221(c)(3)(ii).

In making a successor-in-interest determination for purposes of antidumping duty liability, Commerce examines several factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base.[6] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, Commerce will generally consider the new company to be the successor to the previous company if the new company's operations are not materially dissimilar to those of its predecessor.[7] Thus, if the evidence demonstrates that, with respect to the production and sales of the subject merchandise, the new company operates as essentially the same business entity as the former company, Commerce will accord the new company the same antidumping treatment as its predecessor.[8]

In its CCR Request and Supplemental Response,[9] Sailun Group provided documents demonstrating that Sailun Jinyu and Shenyang Peace changed their names.[10] Sailun Group states that the management, production facilities, and customer/supplier relationships of the two companies (Sailun Jinyu and Shenyang Peace) have not changed as a result of changes to the names of the companies. Further, Sailun Group and Sailun Shenyang provided internal documents evidencing that their production facilities and their location and domestic and overseas customers and suppliers were the same before and after the change to the companies' names.[11] Sailun Group also provided a list of members of the management team and supporting documentation indicating that Sailun Group's and Sailun Jinyu's management teams are identical, and Sailun Shenyang is being managed by the same director who was managing Shenyang Peace.[12]

Based on record evidence, we preliminarily determine that Sailun Group is the successor-in-interest to Sailun Jinyu, and that Sailun Shenyang is the successor-in-interest to Shenyang Peace for purposes of antidumping duty liability, because the changes to the names of the companies resulted in no significant changes to management, production facilities, supplier relationships, or customers. As a result, we preliminarily determine that Sailun Group operates as essentially the same business entity as Sailun Jinyu and that Sailun Shenyang operates as essentially the same business entity as Shenyang Peace. Thus, we preliminarily determine that subject merchandise produced and exported by Sailun Group to the United States should receive the same cash deposit rate as subject merchandise produced and exported by Sailun Jinyu to the United States; and subject merchandise produced by Sailun Shenyang and exported by Sailun Group to the United States should receive the same cash deposit rate as subject merchandise produced by Shenyang Peace and exported by Sailun Jinyu to the United States.

If these preliminary results are adopted in our final results of this CCR, effective on the publication date of our final results, we will instruct U.S. Customs and Border Protection to suspend liquidation of entries of subject merchandise produced and exported in the above producer/exporter combinations at the applicable cash deposit rates.

Public Comment

Interested parties may submit case briefs no later than 14 days after the publication of this notice.[13] Rebuttal briefs, which must be limited to issues raised in case briefs, may be filed not later than five days after the deadline for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this changed circumstance review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Interested parties may request a hearing within 14 days of publication of this notice. The hearing request should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 in a room to be determined. Parties will be notified of the time and date of any hearing, if requested.[15]

All submissions, with limited exceptions, must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* An electronically-filed document must be received successfully in its entirety by no later than 5:00 p.m. Eastern Time on the date the document is due.

Notifications to Interested Parties

Unless extended, consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days after the publication of the preliminary results if all parties in this review agree to our preliminary results. The final results will include Commerce's analysis of issues raised in any written comments.

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, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(c)(3).

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, 81 FR 76561 (November 3, 2016).

[6] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape from Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); and *Brake Rotors from the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (November 18, 2005) (*Brake Rotors*), citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992).

[7] *See, e.g., Brake Rotors.*

[8] *Id.; see also, e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 77 FR 64953 (October 24, 2012), unchanged in *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 77 FR 73619 (December 11, 2012).

[9] *See* CCR Request; *see also* Sailun Group's Letter, ''Sailun Supplemental Questionnaire Response: Changed Circumstances Review in Truck and Bus Tires From the People's Republic of China, Case No. A–570–040,'' dated November 14, 2019 (Supplemental Response).

[10] *See, e.g.,* CCR Request at Exhibits 2a, 2b, 3a, and 3b.

[11] *See* CCR Request at Exhibits 2d, 2e, 2f, 3d, 3e and 3f through 6, and Supplemental Response at Exhibits 1, 2, 3, 4, and 7.

[12] *See* CCR Request at Exhibit 2c and 3c and Supplemental Response at Exhibit 5.

[13] *See* 19 CFR 351.309(c)(1)(ii). (''Any interested party may submit a 'case brief within . . . 30 days after the date of publication of the preliminary results of {a changed circumstances} review, *unless the Secretary alters the time limit.* . . .'') (emphasis added).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.310.

Dated: December 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26949 Filed 12–12–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–110, C–570–111]

Vertical Metal File Cabinets From the People's Republic of China: Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing the antidumping duty (AD) and countervailing duty (CVD) orders on vertical metal file cabinets (file cabinets) from the People's Republic of China (China).

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace at (202) 482–6251, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on October 25, 2019, Commerce published its affirmative final determination of sales at less-than-fair-value (LTFV) [1] and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of file cabinets from China.[2]

On December 2, 2019, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of file cabinets from China, within the meaning of section 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[3]

Scope of the Orders

The products covered by these orders are file cabinets from China. For a complete description of the scope of the orders, *see* Appendix I of this notice.

AD Order

On December 2, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of file cabinets from China that are sold in the United States at LTFV.[4] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this AD order. Because the ITC determined that imports of file cabinets from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties, as described below.

In accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the subject merchandise, for all relevant entries of file cabinets from China. Antidumping duties will be assessed on unliquidated entries of file cabinets from China entered, or withdrawn from warehouse, for consumption on or after August 1, 2019, the date of publication of the *LTFV Preliminary Determination* [5] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination, as further described below.

Suspension of Liquidation—AD [6]

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to reinstate suspension of liquidation on all relevant entries of file cabinets from China, effective on the date of the publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise. These instructions suspending liquidation will remain in effect until further notice. For each producer and exporter combination, Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates listed below.

Accordingly, effective on the date of publication of the *ITC Final Determination,* CBP will require, at the same time as an importer of record would normally deposit estimated duties on the subject merchandise, a cash deposit based on the rates listed below.[7] As stated in the *LTFV Final Determination,* Commerce made certain adjustments for export subsidies from the *CVD Final Determination* to the estimated weighted-average dumping margin to determine each of the cash deposit rates.

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash Deposit Rate (percent)
China-Wide Entity	China-Wide Entity	198.50	160.77

[1] *See Vertical Metal File Cabinets from the People's Republic of China: Final Determination of Sales at Less-Than-Fair Value,* 84 FR 57398 (October 25, 2019) (*LTFV Final Determination*).

[2] *See Vertical Metal File Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 84 FR 57394 (October 25, 2019) (*CVD Final Determination*).

[3] *See* ITC Letter dated December 2, 2019 (ITC Notification).

[4] *See* ITC Notification.

[5] *See Vertical Metal File Cabinets from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value,* 83 FR 37618 (August 1, 2019) (*LTFV Preliminary Determination*).

[6] Section 733(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. Commerce published its *LTFV Preliminary Determination* on August 1, 2019. Therefore, the four-month period, beginning on the date of publication of the *LTFV Preliminary Determination,* ends on December 1, 2019.

[7] *See* section 736(a)(3) of the Act.

CVD Order

On December 2, 2019, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of file cabinets from China.[8] Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this CVD order. Because the ITC determined that imports of file cabinets from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties, as described below.

As a result of the ITC's final determination, in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of file cabinets from China. Countervailing duties will be assessed on unliquidated entries of file cabinets from China entered, or withdrawn from warehouse, for consumption on or after August 1, 2019, the date of publication of the *CVD Preliminary Determination,*[9] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination, as further described below.

Suspension of Liquidation—CVD [10]

In accordance with section 705(c)(1)(B) of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of file cabinets from China. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[11] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Companies	Subsidy rate (percent)
Non-Responsive Companies [12] ..	271.79
All Others [13]	271.79

Notifications to Interested Parties

This notice constitutes the AD and CVD orders with respect to file cabinets from China pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 5, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Orders

The scope of these orders covers freestanding vertical metal file cabinets containing two or more extendable file storage elements and having an actual width of 25 inches or less.

The subject vertical metal file cabinets have bodies made of carbon and/or alloy steel and or other metals, regardless of whether painted, powder coated, or galvanized or otherwise coated for corrosion protection or aesthetic appearance. The subject vertical metal file cabinets must have two or more extendable elements for file storage (*e.g.,* file drawers) of a height that permits hanging files of either letter (8.5″ x 11″) or legal (8.5″ x 14″) sized documents.

An ''extendable element'' is defined as a movable load-bearing storage component including, but not limited to, drawers and filing frames. Extendable elements typically have suspension systems, consisting of glide blocks or ball bearing glides, to facilitate opening and closing.

The subject vertical metal file cabinets typically come in models with two, three, four, or five-file drawers. The inclusion of one or more additional non-file-sized extendable storage elements, not sized for storage files (*e.g.,* box or pencil drawers), does not remove an otherwise in-scope product from the scope as long as the combined height of the non-file-sized extendable storage elements does not exceed six inches. The inclusion of an integrated storage area that is not extendable (*e.g.,* a cubby) and has an actual height of six inches or less, also does not remove a subject vertical metal file cabinet from the scope. Accessories packaged with a subject vertical file cabinet, such as separate printer stands or shelf kits that sit on top of the in-scope vertical file cabinet are not considered integrated storage.

''Freestanding'' means the unit has a solid top and does not have an open top or a top with holes punched in it that would permit the unit to be attached to, hung from, or otherwise used to support a desktop or other work surface. The ability to anchor a vertical file cabinet to a wall for stability or to prevent it from tipping over does not exclude the unit from the scope.

The addition of mobility elements such as casters, wheels, or a dolly does not remove the product from the scope. Packaging a subject vertical metal file cabinet with other accessories, including, but not limited to, locks, leveling glides, caster kits, drawer accessories (*e.g.,* including but not limited to follower wires, follower blocks, file compressors, hanger rails, pencil trays, and hanging file folders), printer stand, shelf kit and magnetic hooks, also does not remove the product from the scope. Vertical metal file cabinets are also in scope whether they are imported assembled or unassembled with all essential parts and components included.

Excluded from the scope are lateral metal file cabinets. Lateral metal file cabinets have a width that is greater than the body depth, and have a body with an actual width that is more than 25 inches wide.

Also excluded from the scope are pedestal file cabinets. Pedestal file cabinets are metal file cabinets with body depths that are greater than or equal to their width, are under 31 inches in actual height, and have the following characteristics: (1) An open top or other the means for the cabinet to be attached to or hung from a desktop or other work surface such as holes punched in the top (*i.e.,* not freestanding); or (2) freestanding file cabinets that have all of the following: (a) At least a 90 percent drawer extension for all extendable file storage elements; (b) a central locking system; (c) a minimum weight density of 9.5 lbs./cubic foot; and (d) casters or leveling glides.

''Percentage drawer extension'' is defined as the drawer travel distance divided by the inside depth dimension of the drawer. Inside depth of drawer is measured from the inside of the drawer face to the inside face of the drawer back. Drawer extension is the distance the drawer travels from the closed position to the maximum travel position which is limited by the out stops. In situations where drawers do not include an out stop, the drawer is extended until the drawer back is 3½ inches from the closed position of inside face of the drawer front. The ''weight density'' is calculated by dividing the cabinet's actual weight by its volume in cubic feet (the multiple of the product's actual width, depth, and height). A ''central locking system'' locks all drawers in a unit.

Also excluded from the scope are fire proof or fire-resistant file cabinets that meet Underwriters Laboratories (UL) fire protection standard 72, class 350, which

[8] *See* ITC Notification.

[9] *See Vertical Metal File Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 84 FR 37622 (August 1, 2019) (*CVD Preliminary Determination*).

[10] Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *LTFV Preliminary Determination* on August 1, 2019. Therefore, the four-month period beginning on the date of publication of the *LTFV Preliminary Determination* ends on December 1, 2019.

[11] *See* section 706(a)(3) of the Act.

[12] *See* Appendix II: List of Companies Receiving CVD AFA Rate.

[13] *See* Appendix III: List of Companies Receiving CVD All-Others Rate.

covers the test procedures applicable to fire-resistant equipment intended to protect paper records.

The merchandise subject to the orders is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.10.0020. The subject merchandise may also enter under HTSUS subheadings 9403.10.0040, 9403.20.0080, and 9403.20.0090. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Appendix II

List of Non-Responsive Companies Receiving the CVD AFA Rate

1. Best Beauty Furniture Co., Ltd.
2. Chung Wah Steel Furniture Factory
3. Concept Furniture (Anhui) Co., Ltd.
4. Dong Guan Shing Fai Furniture
5. Dongguan Zhisheng Furniture Co., Ltd.
6. Feel Life Co., Ltd.
7. Fujian lvyer Industrial Co., Ltd.
8. Fuzhou Nu Deco Crafts Co., Ltd.
9. Fuzhou Yibang Furniture Co., Ltd.
10. Gold Future Furnishing Co., Ltd.
11. Guangdong Hongye Furniture
12. Guangxi Gicon Office Furniture Co., Ltd.
13. Guangzhou City Yunrui Imp.
14. Hangzhou Zongda Co., Ltd.
15. Heze Huayi Chemical Co., Ltd.
16. Highbright Enterprise Ltd.
17. Homestar Corp.
18. Honghui Wooden Crafts Co., Ltd.
19. Huabao Steel Appliance Co., Ltd.
20. I.D. International Inc.
21. Jiangmen Kinwai International
22. Jiaxing Haihong Electromechanical Technology Co., Ltd.
23. Long Sheng Office Furniture
24. Louyong Hua Zhi Jie Office Furniture Co., Ltd.
25. Luoyang Hua Wei Office Furniture Co., Ltd.
26. Luoyang Huadu Imp. Exp. Co., Ltd.
27. Luoyang Mas Younger Office Furniture Co., Ltd.
28. Luoyang Shidiu Import & Export Co., Ltd.
29. Luoyang Zhenhai Furniture Co., Ltd.
30. Ningbo Sunburst International Trading Co., Ltd.
31. Ri Time Group Inc. (Szx)
32. Shenzhen Heng Li de Industry Co., Ltd.
33. Shenzhen Zhijuan (Zhiyuan) Technology Co., Ltd.
34. Shiny Way Furniture Co., Ltd.
35. South Metal Furniture Factory
36. Suzhou Jie Quan (Jinyuan) Trading Co., Ltd.
37. T.H.I. Group (Shanghai) Ltd.
38. Tianjin First Wood Co., Ltd.
39. UenJoy (Tianjin) Technology Co., Ltd.
40. Xiamen Extreme Creations
41. Xinhui Second Light Machinery Factory Co., Ltd
42. Yahee Technologies
43. Zhe Jiang Jiayang Imp. & Exp. Co., Ltd.
44. Zhejiang Ue Furniture Co., Ltd.
45. Zhong Shan Yue Qin Imp. & Exp.
46. Zhongshan Fmarts Furniture Co., Ltd.

Appendix III

List of Companies Receiving the CVD All-Others Rate

The companies receiving the all-others rate include:

1. Guangzhou Perfect Office Furniture
2. Guangzhou Textiles Holdings Limited
3. Huisen Furniture (Longnan) Co., Ltd.
4. Invention Global Ltd.
5. Jiangxi Yuanjin Science & Technology Group Co., Ltd.
6. Jpc Co., Ltd. (HK)
7. Leder Lighting Co., Ltd.
8. Luoyang Cuide Imp. & Exp.
9. Ningbo Haishu Spark Imp. & Exp. Co., Ltd.
10. Ningbo Haitian International Co.
11. Qingdao Liansheng
12. Shanxi Ktl Agricultural Technology Co., Ltd.
13. Shanxi Sijian Group Co., Ltd.
14. Shenzhen Zhilai Sci and Tech Co., Ltd.
15. Top Perfect Ltd.
16. Zhengzhou Puhui Trading Co., Ltd.

[FR Doc. 2019–27028 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–889]

Certain Quartz Surface Products From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain quartz surface products (quartz surface products) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is April 1, 2018 through March 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Charles Doss or Jean Valdez, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–3855, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 3, 2019.[1] On October 1, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now December 4, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are certain quartz surface products from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the

[1] *See Certain Quartz Products from India and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 25529 (June 3, 2019) (*Initiation Notice*).

[2] *See Certain Quartz Products from India and the Republic of Turkey: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 84 FR 52062 (October 1, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 84 FR at 25530.

record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for mandatory respondents Pokarna Engineered Stone Limited (Pokarna) or Antique Group [7] or with respect to all other producers/exporters. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Pokarna and Antique Group that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Antique Marbonite Private Limited, India; Shivam Enterprises (Shivam); and Prism Johnson Limited (Prism Johnson)	5.05	5.05
Pokarna Engineered Stone Limited	2.62	0.00
All Others	3.13	0.00

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where we preliminarily make an affirmative determination for countervailable export subsidies, we offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted rates may be found in the ''Preliminary Determination'' section above.[9]

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days

[6] *See* Memorandum, ''Certain Quartz Surface Products: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] The Antique Group is comprised of Antique Marbonite Private Limited, India (Antique Marbonite) and its affiliates Shivam Enterprises (Shivam) and Prism Johnson Limited (Prism Johnson).

[8] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Certain Quartz Surface Products from India: Calculation of All-Others' Rate in Preliminary Determination,'' dated concurrently with this memorandum.

[9] For Antique Group, cash deposit rates are not adjusted for export subsidies, as the subsidy rates found in the companion CVD investigation for the respondent were *de minimis.* For Pokarna and all other producers/exporters, the preliminary dumping margins are adjusted by 83.79 percent, reflecting the total amount of estimated export subsidies found for each in the companion CVD investigation. As this amount exceeds the estimated preliminary weighted-average dumping margin for Pokarna and all other producers/exporters, the preliminary cash deposit rates for Pokarna and all other producers/exporters is zero.

of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Between November 20 and November 26, 2019, pursuant to 19 CFR 351.210(e), Pokarna, Antique Group, and Cambria Company LLC (*i.e.,* the petitioner) requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether subject imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish. In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the quartz surface products. The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* Pokarna's Letter, ''Certain Quartz Surface Products from India: Request for Postponement of Final Determination and Extension of Provisional Measures Period in the Antidumping Duty Investigation,'' dated November 20, 2019; *see also* Petitioner's Letter, ''Quartz Surface Products from India: Request to Extend the Final Determination,'' dated November 20, 2019; and Antique Group's Letter, ''Certain Quartz Surface Products from India (A–533–889): Request for Postponement of Final Determination and Extension of Provisional Measures Period in the Antidumping Duty Investigation,'' dated November 26, 2019.

surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (Glass Pieces); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Postponement of Final Determination and Extension of Provisional Measures
VI. Single Entity Analysis
VII. Discussion of the Methodology
VIII. Date of Sale
IX. Product Comparisons
X. Export Price and Constructed Export Price
XI. Normal Value
XII. Negative Preliminary Determination of Critical Circumstances
XIII. Currency Conversion
XIV. Adjustment to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Investigation
XV. Recommendation

[FR Doc. 2019–26819 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–868]

Utility Scale Wind Towers From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Canada. The period of investigation is January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, Moses Song, and Yasmin Bordas, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121, (202) 482–7885, and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 6, 2019.[1] On September 13, 2019, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), Commerce published its postponement of the deadline for the preliminary determination of the investigation, and the revised deadline is now December 6, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are wind towers from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Accordingly, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice. See* Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of wind towers from Canada based on a request made by the Wind Tower Trade Coalition (the petitioner).[7] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than April 20, 2020, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate

[1] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers From Canada, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 84 FR 48329 (September 13, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Utility Scale Wind Towers from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 84 FR at 38217.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; *see also* section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Petitioner's Letter, ''Utility Scale Wind Towers from Canada: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated November 27, 2019.

for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and de minimis rates and any rates based entirely on facts otherwise available, as outlined under section 776 of the Act.

In this investigation, Commerce calculated an individually-estimated countervailable subsidy rate for the mandatory respondent, Marmen Inc., Marmen Énergie Inc., and Gestion Marmen Inc. (collectively, Marmen), that is not zero, *de minimis,* or based entirely on facts otherwise available. Because Marmen is the only mandatory respondent in this investigation and its individually-calculated rate is not zero, *de minimis,* or determined entirely under section 776 of the Act, Commerce has assigned Marmen's rate as the estimated all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Exporter/producer	Subsidy rate (percent)
Marmen Inc., Marmen Énergie Inc., and Gestion Marmen Inc	1.09
All Others	1.09

Suspension of Liquidation

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for submitting case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. Pursuant to 705(b)(2) of the Act, if the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Dated: December 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by these investigations consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 78 FR 11150 (February 15, 2013).

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Injury Test
V. Subsidies Valuation
VI. Analysis of Programs
VII. Recommendation

[FR Doc. 2019–26945 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 191126–0092]

Request for Information Regarding the Interagency Edison System for Reporting Federally Funded Inventions

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; Request for Information (RFI).

SUMMARY: The National Institute of Standards and Technology (NIST) has been delegated responsibility by the Secretary of Commerce to promulgate regulations concerning the management and licensing of federally funded inventions. Under the Lab-to-Market Cross Agency Priority (CAP) goal co-led with the White House's Office of Science and Technology Policy (OSTP), NIST is initiating an effort to advance the President's Management Agenda and modernize government for the 21st century by assuming the responsibility for and rebuilding the Interagency Edison (iEdison) system for reporting extramural inventions created with federal funding. NIST requests information from the public regarding the current state of the iEdison system, including, but not limited to, specific challenges and recommended improvements. The information received in response to this RFI will inform NIST in developing a redesigned iEdison.

DATES: Comments must be received by 5:00 p.m. Eastern time on January 27, 2020. Written comments in response to the RFI should be submitted according to the instructions in the **SUPPLEMENTARY INFORMATION** section below. Submissions received after that date will be considered to the extent practicable.

ADDRESSES: Electronic comments regarding the RFI should be addressed to Dr. Courtney Silverthorn by email to *courtney.silverthorn@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Courtney Silverthorn, Deputy Director, Technology Partnerships Office, National Institute of Standards and Technology, Technology Partnerships Office, 100 Bureau Drive, MS 2200, Gaithersburg, MD 20899, 301–975–4189, or by email to *courtney.silverthorn@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Government invests approximately $100B each year in extramural research and development at universities, non-profits, and small and large businesses.[1] This results in the creation of thousands of inventions annually, which are required to be reported to the funding agency.[2] Many agencies use the Interagency Edison (iEdison) system,[3] a web-based platform that allows awardees to report federally funded subject inventions, elect rights, request extensions of time requirements, request waivers, demonstrate progress, inform the government of its limited use rights, upload requested documents, and perform other reporting tasks as required by their funding agency. First developed in 1995, the platform is currently used by 32 funding agencies and is hosted by the National Institutes of Health (NIH).

A 2016 report from the National Academies of Science[4] highlighted a number of systemic challenges inherent in the current iEdison platform that have impeded data entry and reporting compliance. The challenges described in the report include the following topics paraphrased below:

- Inadequate staffing and funding
- Cumbersome reporting procedures due to (i) gated features preventing further action if certain requirements are left incomplete, (ii) requiring greater data specificity than that which is required by law, (iii) frequent reporting over the life of even unlicensed patents, and (iv) a complicated document uploading process
- Inconsistent use and reporting requirements amongst funding agencies

Comments received in response to prior Requests for Information on related topics such as rights to federally funded inventions and licensing of government owned inventions[5] as well as federal technology transfer authorities and processes,[6] have noted similar concerns from the public. Addressing these challenges by modernizing the iEdison system to create a secure, interoperable platform that is easy to access, analyze, and use will help reduce administrative burdens on awardees, while further protecting public investment in extramural research and development.

As part of the Lab-to-Market CAP goal[7] to ''support innovative tools and services for technology transfer'', NIST and OSTP have identified a rebuild of the iEdison system as a strategic priority. The rebuild will address transferring the management of iEdison operations from NIH to NIST, implementing Recommendation 10.1 of the 2016 National Academies report. NIST, to which the Secretary of Commerce has delegated responsibility for promulgating regulations implementing the Bayh-Dole Act pertaining to the management and licensing of federally funded inventions, is well-positioned to manage the iEdison platform and to implement changes on an on-going basis.

The objectives for the rebuild of the system are to:

- Modernize the technology stack and provide increased system security
- Re-examine and streamline the system to align with regulatory requirements
- Improve user experience and facilitate user compliance with reporting requirements
- Improve the presentation of pertinent information requiring user action

To respond to this RFI, please submit written comments by email to Dr. Courtney Silverthorn at *courtney.silverthorn@nist.gov* in any of the following formats: ASCII; Word;

[1] National Center for Science and Engineering Statistics. *Survey of Federal Funds for Research and Development: Fiscal Years 2016–2017.* Available at: *https://www.nsf.gov/statistics/srvyfedfunds/.*

[2] 37 CFR 401.14.

[3] *https://public.era.nih.gov/iedison/public/login.do.*

[4] National Academies of Sciences, Engineering, and Medicine. 2016. Optimizing the Nation's Investment in Academic Research: A New Regulatory Framework for the 21st Century. Washington, DC: The National Academies Press. *https://doi.org/10.17226/21824.*

[5] ''Rights to Federally Funded Inventions and Licensing of Government Owned Inventions,'' 81 **Federal Register** 78090 (7 November 2016), pp. 78090–78097. Available at: *https://www.federalregister.gov/documents/2016/11/07/2016-25325/rights-to-federally-funded-inventions-and-licensing-of-government-owned-inventions.*

[6] ''Request for Information Regarding Federal Technology Transfer Authorities and Processes,'' 83 **Federal Register** 19052 (1 May 2018), pp. 19052–19054. Available at: *https://www.federalregister.gov/documents/2018/05/01/2018-09182/request-for-information-regarding-federal-technology-transfer-authorities-and-processes.*

[7] Copan, W. and Kratsios, M. (2018). *Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, September 2019.* Available at: *https://www.performance.gov/CAP/action_plans/sept_2019_Lab_to_Market.pdf.*

RTF; or PDF. Please include your name, organization's name (if any), and cite ''iEdison RFI'' in the subject line of all correspondence.

II. Request for Information

All responses that comply with the requirements listed in the **DATES** and **ADDRESSES** sections of this RFI will be considered.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish comments publicly, unedited and in their entirety. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

The following list of topics covers the major areas about which NIST seeks information. The listed areas are not intended to limit the topics that may be addressed by respondents so long as they address the iEdison system, including, but not limited to, specific challenges and recommended improvements. Responses may include any topic believed to have implications for NIST's development of a redesigned iEdison, regardless of whether the topic is included in this document.

NIST is specifically interested in receiving input from the extramural community pertaining to the following questions:

(1) What, if any, current features of iEdison does your organization believe should be retained in any updated version?

(2) What challenges, if any, is your organization experiencing in reporting inventions in the iEdison system? Where practicable, please provide specific descriptions and/or screenshots of user interface screens or error messages.

(3) What improvements could be made to the iEdison system that would reduce your organization's reporting burdens, improve its experience, and facilitate your organization's ability to comply with reporting requirements?

Authority: 35 U.S.C. 202(c); DOO 30–2A.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–26860 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR043]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Astoria Waterfront Bridge Replacement Phase 2 Project

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the City of Astoria to incidentally harass, by Level A and Level B harassment, marine mammals during construction activities associated with Phase Two of the Astoria Waterfront Bridge Replacement project in Astoria, OR.

DATES: This Authorization is effective from December 9, 2019 through December 8, 2020.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On June 3, 2019 NMFS received a request from the City of Astoria (City) for an IHA to take marine mammals incidental to pile driving and construction work in Astoria, Oregon. The application was deemed adequate and complete on October 17, 2019. The City's request was for take of a small number of California sea lion (*Zalophus californianus*) and harbor seal (*Phoca vitulina richardii*) by Level A and Level B harassment, and a small number of Steller sea lion (*Eumetopias jubatus*) by Level B harassment only. Neither the City nor NMFS expects serious injury or mortality to result from this activity, and, therefore, an IHA is appropriate.

This IHA covers one year of a larger, two-year project that involves removal and replacement of six bridges on the Astoria, Oregon waterfront. NMFS previously issued an IHA to the City for removal and replacement of three bridges (83 FR 19243, May 2, 2018). The City complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Monitoring and Mitigation Section. The monitoring report exposed the need for clarification of monitoring requirements, specifically those involving Protected Species Observer (PSO) coverage of Level A and Level B zones. NMFS clarified those requirements with the applicant.

Description of the Specified Activity

The City of Astoria, Oregon proposes to remove and replace three bridges connecting 6th, 8th, and 10th Streets with waterfront piers near the mouth of the Columbia River. The bridges are currently supported by decayed timber

piles. Among all three bridges, an estimated 150 timber piles will be removed as will other timber structural elements and concrete footings. The contractor will install 65 temporary 36-inch steel casings to help guide the installation of 65 permanent 24-inch steel piles. Pile driving and removal activities will be conducted using a vibratory and impact hammer. The contractor may need to conduct preboring inside of the temporary casings using a vibratory hammer and a 14-inch H-pile to prepare the new pile sites. In the event that preboring is not effective, the contractor may conduct down-the-hole drilling inside of the 36-inch piles to prepare the site for the permanent piles. It is unlikely that the contractor will need to conduct down-the-hole drilling, as it was not necessary during Phase 1. However, in the event that down-the-hole drilling is required, this activity has been analyzed in regard to both potential impulsive and continuous characteristics (Reyff and Heyvaert, 2019) as described in the **Federal Register** notice for the proposed IHA (84 FR 59773; November 6, 2019).) The roadway and railway superstructures will also be replaced, and a temporary, above-water work platform will be created for the construction. The use of vibratory and impact hammers for pile driving and site preparation is expected to produce underwater sound at levels that may result in behavioral harassment or auditory injury of marine mammals. Human presence and use of general construction equipment may also lead to behavioral harassment of sea lions hauled out along the riverbank below the bridges.

The impacted area extends outward from the three bridge sites to a maximum distance of 21.54 km (13.28 mi). The project will occur over one year beginning in December 2019, with in-water activities expected to occur over an estimated 21 days during the months of December through April. Work will occur during daylight hours.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (84 FR 59773; November 6, 2019). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the City was published in the **Federal Register** on November 6, 2019 (84 FR 59773). That notice described, in detail, the City's proposed activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission); the Commission's recommendations and our responses are provided here, and the comments have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-takeauthorizations-construction-activities.*

Comment 1: The Commission stated that harbor seal takes were underestimated given a haulout within the Level B harassment zone (Desdemona Sands) that is larger than a haulout that boarders the Level B harassment zone which was used to estimate take. Based on information NMFS received from the Oregon Department of Fish and Wildlife (ODFW), NMFS estimates that up to 6,400 harbor seals may haul out at Desdemona Sands. As such, the Commission recommends that NMFS authorize the taking of 6,400 individual harbor seals to be taken no more than 21 times each rather than 1,197 harbor seal takes.

Response: NMFS concurs and is authorizing Level B harassment take of up to 6,400 *individuals.* A portion of those individuals will likely be taken on multiple days, but no more than 21 days. For additional information, please see the *Estimated Take* section, below.

Comment 2: The Commission recommends that NMFS obtain more recent pinniped haul-out count data from WDFW and ODFW before processing any additional authorizations for activities occurring in the Columbia River.

Response: When NMFS receives another application for an IHA at a location on the Columbia River we will contact these agencies.

Comment 3: The Commission states that NMFS' standard 7-decibel (dB) source level reduction when bubble curtains are to be used during pile driving is not appropriate because bubble curtains that are placed immediately around the pile do not achieve consistent reductions in sound levels because they cannot attenuate ground-borne sound. The Commission recommends that NMFS consult with the relevant experts regarding the appropriate source level reduction factor to use to minimize far-field effects on marine mammals for all relevant incidental take authorizations and, until the experts have been consulted, refrain from using a source level reduction factor when bubble curtains are to be implemented.

Response: NMFS appreciates the Commission's input and directs the reader to our recent response to a similar comment, which can be found at 84 FR 64833 (November 25, 2019).

Comment 4: The Commission recommends that NMFS condition the final authorization to stipulate that pile driving and removal can occur during daylight hours only and include those conditions consistently in all **Federal Register** notices, draft authorizations, and final authorizations that do not involve activities occurring during nighttime.

Response: The **Federal Register** notice for the proposed action (84 FR 59773, November 6, 2019) did not include a description of the time of day that the activity would take place. NMFS has noted below, in the *Changes from Proposed IHA to Final IHA* section, that the applicant has indeed clarified their intention for pile driving to occur during daylight hours. NMFS agrees that the **Federal Register** notice for a proposed action should detail whether an activity will take place during daylight hours only, or whether an activity may, or will, take place at night. NMFS bases its determinations on how an applicant describes their activities and expects that an applicant will carry out a project as it is described in the associated application and **Federal Register** notices. Additionally, NMFS includes here a requirement that ''should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.'' This requirement implies that a shutdown zone should either be visible due to daylight, or an applicant must illuminate the shutdown zone to allow sufficient visibility. Therefore, NMFS does not agree that it is necessary to stipulate that the activity may only occur during daylight hours.

Comment 5: The Commission recommends that NMFS (1) update its various templates for **Federal Register** notices and draft authorizations to reflect all standard measures and (2) conduct a more thorough review of the notices, draft authorizations, and final authorizations to ensure accuracy, completeness, and consistency.

Response: NMFS thanks the Commission for its recommendation. NMFS makes every effort to keep

templates up-to-date and read notices thoroughly prior to publication and will continue this effort to publish the best possible product for public comment.

Comment 6: The Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process.

Response: NMFS appreciates the streamlining achieved by the use of abbreviated **Federal Register** notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our method for issuing renewals meets statutory requirements and maximizes efficiency, and we plan to continue considering requests for renewals.

Comment 7: The Commission recommends that NMFS stipulate that a renewal is a one-time opportunity in all **Federal Register** notices requesting comments on the possibility of a renewal, on its web page detailing the renewal process, and in all draft and final authorizations that include a term and condition for a renewal.

Response: NMFS thanks the Commission for its recommendation. Currently, **Federal Register** notices announcing proposed IHAs and the potential for a Renewal state, in the **SUMMARY** section, ''NMFS is also requesting comments on a possible *one-year* renewal that could be issued under certain circumstances and if all requirements are met.'' Further, no notice for any additional Renewal is included in the **Federal Register** Notice for proposed Renewals, so the current process already ensures that only one Renewal will be issued.

Comment 8: The Commission recommends that NMFS ensure that action proponents have met all renewal requirements prior to proposing to issue a renewal in the **Federal Register**, and follow the renewal process of informing all commenters on the original authorization of the opportunity to submit additional comments on the proposed renewal.

Response: NMFS carefully considers whether applicants meet the criteria for a renewal upon request. NMFS will ensure that the Commission is contacted alongside other persons who commented on the initial IHA on all future proposed IHA Renewals, but notes that the Commission itself has consistently informally contacted NMFS regarding proposed IHAs and Renewals upon the **Federal Register** notice being posted for public inspection, the day prior to formal publication and the beginning of the public comment period, or the first day of the formal comment period without notification of upcoming proposed IHA from NMFS.

Changes From the Proposed IHA to Final IHA

The most substantive change, which is described above and in the *Estimated Take* section, is the increase in the take numbers for harbor seals, though we note here that these changes do not affect our negligible impact or small numbers determinations. The **Federal Register** notice for the proposed IHA mistakenly noted that in-water demolition work would begin in November 2019. Rather, in-water demolition work will begin in December 2019. The proposed notice also did not explicitly state that pile driving will occur during daylight hours only, which has been stated above in this notice. Additionally, there is a chance that harbor porpoise could be present in the project area, which was not discussed in the proposed **Federal Register** notice. However, harbor porpoise are not expected to occur within the Level A or Level B harassment zones for the reasons explained in the *Description of Marine Mammals in the Area of Specified Activities* section, below. Slight modifications were made to the mitigation measures; please see the *Mitigation Measures* section for additional information. Additionally, minor changes were made to Tables 3, 5, 6, 7, 13 and 14.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find*-species).

Table 1 lists all species with expected potential for occurrence in Astoria and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. For Steller sea lion (*Eumetopias jubatus*) the stock abundance is the best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys. All managed stocks in this region are assessed in NMFS's U.S. 2018 SARs (*e.g.,* Caretta *et al.* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Caretta *et al.* 2019, Muto *et al.* 2019).

TABLE 1—SPECIES WITH EXPECTED POTENTIAL FOR OCCURRENCE IN ASTORIA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						

TABLE 1—SPECIES WITH EXPECTED POTENTIAL FOR OCCURRENCE IN ASTORIA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Humpback whale	*Megaptera novaeangliae*	*Central North Pacific*	*-, -, Y*	*10,103 (0.300, 7,891, 2006).*	*83*	*26*
Humpback whale	*Megaptera novaeangliae*	*California/Oregon/Washington*	*-, -, Y*	*2,900 (0.05, 2,784, 2014).*	*16.7*	*>=40.2*
Harbor porpoise	*Phocoena phocoena*	*Northern OR/WA Coast*	*-, -, N*	*21,487 (0.44, 15,123, 2011).*	*151*	*≥3.0*
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>=321
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-, -, N	41,638 (See SAR, 41,638, 2015).	2498	108
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina richardii*	Oregon/Washington Coast	-, -, N	Unknown (Unknown, Unknown, 1999).	Undetermined	10.6

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note—*Italicized* species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal and spatial occurrence of humpback whales and harbor porpoises is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Humpback whales occasionally enter the Columbia River to feed (Calambokidis, *et al.,* 2017), however their presence is rare. They were not observed during Phase 1 of the City's project (OBEC Consulting Engineers. 2019), and are not expected during Phase 2. Harbor porpoises are regularly observed in the ocean ward waters near the mouth of the Columbia River and are known to occur there year-round. Porpoise abundance peaks when anchovy (*Engraulis mordax*) abundance in the river and nearshore are highest, which is usually between April and August (Litz *et al.* 2008). Harbor porpoise take is not expected because the in-water work is expected to be complete prior to April (unless the entire IWWP extension is exercised), and the ensonified area is contained within the Columbia River. Additionally, harbor porpoise were not observed during Phase 1 of the City's project (OBEC Consulting Engineers. 2019)

A detailed description of the of the species likely to be affected by the project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 59773; November 6, 2019); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Underwater noise from impact and vibratory pile driving and site preparation, as well as potential down-the-hole drilling activities associated with Phase Two of the Astoria Waterfront Bridge Replacement Project have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (84 FR 59773; November 6, 2019) included a discussion of the potential effects of such disturbances on marine mammals and their habitat, therefore that information is not repeated in detail here; please refer to the **Federal Register** notice (84 FR 59773; November 6, 2019) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the vibratory and impact pile hammers, potential drill, and other construction equipment has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to California sea lions and harbor seals because they are more likely to occur closer to the project site, particularly considering the small, nearby California sea lion haulout. Auditory injury is unlikely to occur to

other groups, and the proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality or serious injury is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 μPa (rms).

The City's proposed activity includes the use of continuous (vibratory pile driving, preboring and potential down-the-hole drilling) and impulsive (impact pile driving and potential down-the-hole drilling) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable for in-water noise.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City's proposed activities include the use of impulsive (impact hammers, potential down-the-hole drilling) and non-impulsive (vibratory hammers, potential down-the-hole drilling) sources.

These thresholds are provided in the Table 2. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

PTS onset acoustic thresholds* (received level)	Hearing Group	Impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are

expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, site preparation). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 21.53km (13.38 mi) into the river channel during vibratory installation/removal of the 36-inch temporary steel casings, though this distance does not account for tide levels. There is a chance that pile installation work could be done during low tides, where exposed sand bars could significantly reduce the Level B ZOI.

The project includes vibratory removal of timber piles, vibratory and impact pile installation of steel pipe piles and site preparation using a vibratory hammer and H-pile. Source levels of pile installation/removal activities and site preparation are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and driving method are presented in Table 3. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

The source level for vibratory removal of timber piles is from in-water measurements generated by the Greenbusch Group (2018) from the Seattle Pier 62 project (83 FR 39709; April 10, 2018). Hydroacoustic monitoring results from Pier 62 determined unweighted rms ranging from 140 dB to 169 dB. NMFS analyzed source measurements at different distances for all 63 individual timber piles that were removed at Pier 62 and normalized the values to 10 m. The results showed that the median is 152 dB SPLrms.

TABLE 3—SOUND SOURCE LEVELS FOR IN-WATER ACTIVITIES

Pile size/type	Method	Source level (at 10m)			Literature source
		dB RMS	dB SEL[c]	dB peak	
14-inch Timber	Vibratory	152			The Greenbusch Group, Inc (2018).
14-inch Steel H-pile	Vibratory	[a] 150			CalTrans (2015).
24-inch Steel Pipe	Vibratory	162			WSDOT (2010).
	Impact	[b] 187	[b] 171	[b] 200	Loughlin (2005).
36-inch Steel Pipe	Vibratory	170			CalTrans (2015).

[a] Source level from 12-inch steel H-pile.
[b] Includes 7dB reduction from use of bubble curtain.
[c] Sound exposure level (dB re 1 μPa^2-sec).

It is anticipated that the contractor may employ two crews during construction to keep the project on schedule. This could result in concurrent use of a vibratory hammer and an impact hammer, however, the contractor will not operate two of the same hammer type concurrently. The hammers would be operated at two different bridges. The ensonified zones would likely overlap during concurrent use, but the multiple-source decibel addition method (Table 4) does not result in significant increases in the noise source when an impact hammer and vibratory hammer are operated at the same time, because the difference in noise source levels (Table 3) between the two hammers is greater than 10dB.

TABLE 4—MULTIPLE-SOURCE DECIBEL ADDITION

When two decibel values differ by:	Add the following to the higher level
0–1 dB	3 dB
2–3 dB	2 dB
4–9 dB	1 dB
> 10 dB	0 dB

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

Where
TL = transmission loss in dB
B = transmission loss coefficient
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Astoria are not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 5—IN-WATER ACTIVITY SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile size/type	Method	Source level at 10 m (dB re 1 μPa rms)	Level B threshold (dB re 1 μPa rms)	Propagation (xLogR)	Distance to Level B threshold (m)	Level B harassment ensonified area (km^2)
14-inch Timber	Vibratory	152	120	15	1,359.4	3.2
14-inch Steel H-pile	Vibratory	150	120	15	1,000.0	1.8
24-inch Steel Pipe	Vibratory	162	120	15	6,309.6	55.3
	Impact	187	160	15	631.0	0.8
36-inch Steel Pipe *(and down-the-hole drilling, as necessary)*.	Vibratory	170	120	15	21,544.4	212.3

In-Air Disturbance during General Construction Activities—Behavioral disturbance (Level B harassment take) may occur incidental to the use of construction equipment during general construction that is proposed in the dry, above water, or inland within close proximity to the river banks. These construction activities are associated with the removal and construction of the rail superstructures, removal of the existing concrete foundations, construction of abutment wingwalls, and the construction of a temporary work platform. Possible equipment and sound source levels are included in Table 1 of the **Federal Register** notice for the draft IHA (84 FR 59773; November 6, 2019). Using the Spherical Spreading Loss Model (20logR), a maximum sound source level of 93 dB RMS at 20 m, sound levels in-air would attenuate below the 90dB RMS Level B harassment threshold for harbor seals at 28 m, and below the 100 dB RMS threshold for all other pinnipeds at 9 m. Harbor seals are not expected to occur within 28m of the activity as there are no nearby haulouts, and are, therefore, not expected to be harassed by in-air sound. Additionally, the City is proposing a 10 m shutdown zone (Table 13) for all construction work to prevent injury from physical interaction with equipment. The City would therefore shut down equipment before hauled out sea lions could be acoustically harassed by the sound produced. No Level B harassment is expected to occur due to increased sounds from roadway construction. However, sea lions may be disturbed by the presence of construction equipment and increased human presence during above-water construction.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs entered in the User Spreadsheet (Table 6) and the resulting isopleths are reported below (Table 7).

TABLE 6—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Source level at 10 m	Number of piles within 24-h period	Duration to drive single pile (minutes)	Number of strikes per pile	Propagation (xLogR)	Distance from source level measurement (meters)
14-inch Timber Vibratory.	(A.1) Vibratory pile driving	2.5	152dB RMS SPL	50	20		15	10
14-inch Steel H-Pile.	(A.1) Vibratory pile driving	2.5	150dB RMS SPL	36	25		15	10
24-inch Steel Vibratory.	(A.1) Vibratory pile driving	2.5	162dB RMS SPL	18	20		15	10
36-inch Steel Vibratory.	(A.1) Vibratory pile driving	2.5	170dB RMS SPL	36	8		15	10
24-inch Steel Impact *(and down-the-hole drilling, if necessary).*	(E.1) Impact pile driving	2	171dB SEL/200 PK SPL	23		500	15	10

The applicant may conduct down-the-hole drilling, however a separate analysis is not provided for that activity, as it is was not necessary in Phase 1 of the project, and is not expected to be necessary in Phase 2. Should drilling be necessary, the Level B harassment zone will be considered to be the same as that calculated for vibratory installation/removal of 36-inch steel piles, as that Level B harassment zone is clipped in all directions, and therefore is the most conservative a Level B harassment zone could be. A conservative Level B harassment zone is of particular importance due to the fact that the duration of drilling, should it be necessary, is unknown. The applicant will consider the Level A harassment zone for down-the-hole drilling to be the same as the Level A harassment zones calculated for impact pile driving of the 24-inch steel piles. These are the largest Level A harassment zones.

TABLE 7—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Level A harassment zone (m)	
	Phocids	Otariids
14-inch Timber Vibratory	6.8	0.5
14-inch Steel H-Pile	4.7	0.3
24-inch Steel Vibratory	16	1.1
36-inch Steel Vibratory	47	3.3
24-inch Steel Impact *(and down-the-hole drilling, if necessary)*	431.5	31.4

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals, and how it is brought together with the information provided above to produce a quantitative take estimate. Estimated takes of each species were calculated using information provided by the Oregon Department of Fish and Wildlife (Bryan Wright, pers. comm., August and November 2019), Washington Department of Fish and Wildlife (WDFW, 2014) and the Marine Mammal Commission (Tiff Brookens, pers. comm., March 2018).

Harbor Seal

As noted in the *Comments and Responses* section, above, estimated Level B harassment take of harbor seal was modified based on a comment from the Commission and additional information from ODFW.

The closest harbor seal haulout and pupping area is Desdemona Sands, which is downstream of the Astoria-Megler Bridge. Numbers of harbor seals hauled out at Desdemona Sands have been reported to reach into the thousands (Profita, 2015). While specific counts were unavailable, ODFW advised that the highest counts of harbor seals are in late winter/early spring (over 6,000 at Desdemona Sands in February) (Bryan Wright, pers. comm., November 2019). However, ODFW also provided a harbor seal count of 1,918 non-pups at Desdemona Sands from May 2014 (most recent ODWF survey), and described these as year-round residents. We would expect that the harbor seal counts would decrease from 6,400 individuals on either end of the late winter/early spring period (as low as 1,918 during the summer). Up to 6,400 individuals could be taken on in-water workdays during the late winter/early spring months, but we do not expect that many takes on every in-water work day.

Because there is such a high variability in potential instances of Level B harassment take, NMFS is not authorizing a specific number of instances of Level B harassment take of harbor seals. Rather, NMFS is authorizing Level B harassment take of up to 6,400 *individuals.* A portion of those individuals will likely be taken on multiple days, but none to exceed 21 days. Most individuals will be taken notably fewer times, as NMFS does not expect that number of individuals to haul out at Desdemona Sands for the majority of the in-water work period.

Additionally, while harbor seals are unlikely to occur in the Level A harassment zone during vibratory pile driving (based on Phase 1 monitoring), the applicant is concerned that if a few animals occurred in the Level A harassment zone during impact pile driving, they may need to shut down more frequently than is practical, given the IWWP restrictions previously discussed. As such, NMFS is proposing to observe a shutdown zone that is smaller than the Level A isopleth for impact pile driving and to issue small numbers of Level A harassment take of harbor seals (Table 11). This proposed take would avoid potentially excessive shut downs should a small group of harbor seals enter the project area on each day while impact pile driving activities (or down-the-hole drilling, as necessary) are underway. The Level A harassment take calculation for harbor seals authorizes instances of take, rather than individuals that will be taken as done for the Level B harassment take calculation for harbor seals. Level A harassment take of harbor seals was calculated by multiplying a group of two animals by 14 in-water work days. Level A takes may only occur during the subset of in-water work days when the applicant conducts impact pile driving (or down-the-hole drilling, as required), as the shutdown zone contains the entire Level A harassment zone for all other in-water work activities.

Steller Sea Lion

Counts of Steller sea lions at the East Mooring Basin are typically in the single digits (B. Wright, pers. comm., March 2018), while the average number of Steller sea lions observed at the South Jetty during the in-water work period (including the possible extension) from 2000–2014, was 272 animals (WDFW, 2014). When the applicant consulted ODFW for more recent Steller sea lion data, ODFW advised that there were only three more recent surveys, none of which occurred during the IWWP months (Bryan Wright, pers. comm., September 2019). The Level B harassment zones for Phase 2 extend far beyond the calculated zones for Phase 1, approaching the South Jetty. Therefore, NMFS expects that that average daily count from the South Jetty provides an appropriate daily count to calculate potential Steller sea lion Level B harassment take during Phase 2. Note the calculation is based on the average daily count, not the maximum. The maximum daily count was 606 animals, in the month of April. Considering that work will only occur in April if the entire IWWP extension is exercised, and the large difference between the maximum daily count and the average daily count, NMFS believes that using the maximum daily count would greatly overestimate potential take.

For Phase 1 Level B harassment take calculations of Steller sea lions, daily estimates were based off of observations at Bonneville Dam and Willamette Falls, as these animals must transit past Astoria at some point in their travels from the Pacific to the upper Columbia River (83 FR 19243, May 2, 2018). The daily count was 67 animals, 63 at Bonneville Dam and four at Willamette Falls. However, NMFS believes that South Jetty estimates are more appropriate and more conservative for Phase 2 take calculations, given the larger Level B harassment zones, some of which extend downriver close to the South Jetty.

Level B harassment take was calculated by multiplying the daily counts of Steller sea lions by days of in-water activity (Table 8).

Steller sea lions do not haul out near the construction sites and would only be potentially harassed if they are transiting through the Level B harassment zone during the in-water work period (including the extension, if applicable). Steller sea lions are not expected to occur within the calculated Level A harassment zone for otariids (Table 7). No Level A harassment takes of Steller sea lions are proposed nor expected to be authorized.

TABLE 8—LEVEL B HARASSMENT TAKE CALCULATION FOR STELLER SEA LION

Species	Maximum average/daily count	Days of in-water activity[b]	Total take (Level B)
Steller sea lion	[a] 272	21	5,712

[a] Average number of Steller sea lions observed at the South Jetty during the in-water work period (including the possible extension) from 2000–2014 (WDFW, 2014).

[b] Includes in-water activity for the entire project.

California Sea Lion

Aerial surveys of the East Mooring Basin in Astoria from 2011 to 2018 (Bryan Wright, pers. comm., August 2019) were used to calculate in-water Level B harassment take of California sea lions, as in Phase 1 of this activity (83 FR 19243, May 2, 2018). The data provided to NMFS by ODFW included the maximum California sea lion count observed on a single day for each month throughout the survey period. These maximum counts at the East Mooring Basin ranged from 0 California sea lions on a single day in July 2017 to 3,834 on a single day in March 2016. A ''daily average maximum'' for each IWWP month (Table 9) was calculated by averaging the maximum counts on a single day for each survey month provided by ODFW. In addition to ODFW aerial surveys, the City conducted opportunistic surveys of pinnipeds at the bridge sites in December 2017. A maximum of four California sea lions were observed in the water surrounding the bridges and piers. Additional California sea lions were heard vocalizing from the riverbanks under the bridges but the exact number of sea lions could not be determined.

TABLE 9—DAILY AVERAGE MAXIMUM NUMBER OF CALIFORNIA SEA LIONS AT EAST MOORING BASIN FOR IWWP MONTHS, INCLUDING THE POTENTIAL EXTENSION

Month	Daily Average Maximum [a]
November	141
December	135
January	408
February	893
March	1191
April	982

[a] Daily average maximum was calculated using data from aerial surveys of the East Mooring Basin in Astoria from 2011 to 2018 (Bryan Wright, pers. comm., 2019).

California sea lions are the most commonly observed marine mammal in the area, and are known to haul out on the riverbanks and structures near the bridges, as described above. California sea lions may be harassed by underwater sound resulting from vibratory pile removal and impact pile driving (at the distances listed above) as well as airborne sound resulting from roadway and railway demolition and construction. As such, California sea lions may be subject to harassment throughout the duration of Phase 2 of the project.

NMFS is proposing to authorize 1,056 Level B harassment takes of California sea lions associated with above-water construction activities taking place during the above-water work period, not including the IWWP extension (May to October). Level B harassment takes of California sea lions from above-water activities were calculated by multiplying the maximum estimate from the City's 2017 opportunistic surveys at the bridge sites (16 animals) by the estimated 11 days of work per month during the above-water work period.

NMFS is proposing to authorize 25,011 Level B harassment takes of California sea lions associated with in-water and above-water work during the IWWP. The City expects approximately 21 in-water work days across Phase 2 of the project. However, because the exact construction schedule is unknown, there are uncertainties in how many of the estimated work days will occur during each month. Therefore, estimated Level B harassment take during the IWWP (Table 10) is calculated by multiplying the highest daily average maximum (Table 9) during the IWWP months (including the potential extension) by the estimated 21 in-water work days. California sea lions exposed to in-air sound above Level B harassment threshold during the IWWP are expected to have already been taken by in-water activity, and therefore already be included in the take calculation.

Total California sea lion Level B harassment takes (Table 10) are calculated as the sum of above-water work period and IWWP takes.

TABLE 10—LEVEL B HARASSMENT TAKE CALCULATION OF CALIFORNIA SEA LION.

Work period	Daily average maximum [b]	Potential number of workdays	Takes per month
IWWP [a]	1191	21	25,011
May	16	11	176
June	16	11	176
July	16	11	176
August	16	11	176
September	16	11	176
October	16	11	176
Total			26,067

[a] IWWP includes the potential extension, as the month of March has the highest daily average maximum count.
[b] Daily average maximums during above-water work months are estimates from the City's opportunistic surveys at the Phase 1 bridge sites in December 2017.

Only 4,204 Level B harassment takes of California sea lion were reported for Phase 1; however, the Phase 2 project area is much larger than the area within which marine mammals were reported in Phase 1. Therefore, NMFS expects California sea lion take to be higher for Phase 2 than was reported in the monitoring report for Phase 1.

As discussed above, the City estimates that approximately 16 California sea lions haul out near the project sites based on opportunistic surveys conducted in December 2017. Frequent construction shutdowns are of concern to the applicant, as there is a limited IWWP imposed by the Oregon Department of Fish and Wildlife and, therefore, the proposed mitigation zone does not entirely contain the area within the Level A harassment isopleth for impact pile driving. The applicant has requested Level A harassment takes of California sea lions, as the animals that haulout nearby may enter the Level A harassment zone as they transit between the haulouts and their feeding areas in the Columbia River.

NMFS is proposing to issue 224 Level A harassment takes of California sea lions (Table 11). The Level A harassment takes are calculated by multiplying the 16 animals that haulout

near the project site (City of Astoria December 2017 surveys) by 14 in-water work days. Level A takes may only occur during the subset of in-water work days when the applicant conducts impact pile driving (or down-the-hole drilling, as required), as the shutdown zone contains the entire Level A harassment zone for all other in-water work activities.

TABLE 11—LEVEL A HARASSMENT TAKE CALCULATION OF HARBOR SEAL AND CALIFORNIA SEA LION

Species	Daily count	Estimated number of in-water work days	Level A harassment take
Harbor seal	2	14	28
California sea lion	[a] 16	14	224

[a] December 2017 survey estimates of California sea lions by the City at Phase 1 bridge sites.

TABLE 12—TOTAL LEVEL A AND LEVEL B TAKE PROPOSED FOR AUTHORIZATION

Common name	Stock	Level A harassment take	Level B harassment take	Total take	Stock abundance	Percent of stock
Harbor seal	Oregon/Washington Coast	28	6,400	6,428	[a] 24,732	26.0
Steller sea lion	Eastern U.S.	0	5,712	5,712	41,638	13.7
California sea lion	U.S.	224	26,067	26,291	257,606	10.2

[a] As noted in Table 3, there is no current estimate of abundance available for the Oregon/Washington Coast stock of harbor seal. The abundance estimate from 1999, included here, is the most recent.

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, the City will employ the following standard mitigation measures:

- The City shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and City staff prior to the start of all construction work, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal and drilling will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If observed take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures would apply to the City's mitigation requirements:

Establishment of Shutdown Zones—For all pile driving/removal and drilling activities, the City will establish appropriate shutdown zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). These shutdown zones would be used to prevent incidental Level A exposures from pile driving and removal for Steller sea lions, and to reduce the potential for such take of harbor seals and California sea lions. During all pile driving and removal activities, as well as above-water construction, a minimum shutdown zone of 10m would be enforced (Table 13) for all species to prevent physical injury from interaction with construction equipment. Additionally, a shutdown zone of 32m will be enforced for Steller sea lions during impact pile driving to reduce the likelihood of Level A harassment take (Table 13). The placement of Protected Species Observers (PSOs) during all pile driving and drilling activities (described in detail in the *Monitoring and Reporting Section*) will ensure shutdown zones are visible when they are on site. When PSOs are not on site, the Oregon Department of Transportation (ODOT) inspector will be responsible for ensuring that activities shut down if a

marine mammal enters the shutdown zone.

TABLE 13—SHUTDOWN ZONES

Construction Activity	Shutdown Zone (m)		
	Harbor seal	Steller sea lion	California sea lion
All Vibratory Pile Driving/Removal and Site Preparation	50	10	10
24-inch Steel Impact Pile Driving *(and down-the-hole drilling, as necessary)*		32	
Above-water Construction	10	10	

Establishment of Monitoring Zones for Level B Harassment—The City would establish monitoring zones to correlate with Level B harassment zones or zones of influence. These are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and site preparation. For airborne noise, these thresholds are 90 dB RMS re 20μPa for harbor seals and 100 db RMS re: 20μPa for all other pinnipeds. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The proposed monitoring zones are described in Table 14. Placement of PSOs on the shorelines around the Columbia River allow PSOs to observe marine mammals within the project site, however, due to the size of the Level B harassment zone during some activities, not all Level B harassment takes will be visible to PSOs. Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes, the percentage of the Level B zone that was not visible to PSOs, and the number of construction days when PSOs were not onsite.

TABLE 14—MARINE MAMMAL MONITORING ZONES

Construction activity	Monitoring zone (m)
Above-water Construction.	28 (harbor seal only).
14-inch Timber Vibratory.	1,360.
14-inch Steel H-Pile	1,000.
24-inch Steel Vibratory.	6,310.
36-inch Steel Vibratory *(and down-the-hole drilling, as necessary)*.	21,545.

TABLE 14—MARINE MAMMAL MONITORING ZONES—Continued

Construction activity	Monitoring zone (m)
24-inch Steel Impact	635.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact driving, an initial set of three strikes would be made by the hammer at 40 percent energy, followed by a 1-minute wait period, then two subsequent 3-strike sets at 40 percent energy, with 1-minute waiting periods, before initiating continuous driving. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or site preparation of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has been confirmed to have left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not observed within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B monitoring zone. When a marine mammal permitted for Level B harassment take is present in the Level B harassment zone, activities may begin and Level B take will be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone will commence.

Pile driving energy attenuator—Use of a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) will be implemented by the City during impact pile driving of all steel pipe piles. The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. The City's FAHP permit describes the performance standards for the bubble curtain system.

Poor Visibility—Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine

mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat);
- Mitigation and monitoring effectiveness.

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals, and will implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal and drilling activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Three PSOs will be on-site the first day and every third day thereafter during vibratory hammer installation/removal and site preparation at each bridge. One observer will be stationed at the best practicable land-based vantage point to observe the Shutdown Zone and a portion of the Level A and Level B harassment zones. One observer will be stationed along the north bank of the river at the Washington State Department of Transportation Rest Area: Dismal Nitch. One observer will be stationed at the best practicable land-based vantage point to observe the remainder of the Level A and Level B harassment zones. Likely locations include the 6th Street viewing platform and the Pier 12 parking lot. If vibratory installation of the 36-inch casings occurs, this observer will be positioned along the north bank of the river downstream of the project site within the Chinook County Park. The ODOT on-site inspector will be trained in species identification and monitoring protocol and will be on-site during all vibratory removal and installation activities to confirm that no species enter the Shutdown Zones when PSOs are not onsite.

Two PSOs will be on-site the first day of impact pile driving at each bridge, and every third day thereafter. One observer will be stationed at the best practicable land-based vantage point to observe the Shutdown Zone and a portion of the Level A and Level B harassment zones. One observer will be stationed at the best practicable land-based vantage point to observe the remainder of the Level A and Level B harassment zones. Likely locations include the 6th Street viewing platform, the Pier 12 parking lot, or the Washington State Department of Transportation Rest Area: Dismal Nitch on the north bank of the river. The ODOT on-site inspector will be trained in species identification and monitoring protocol and will be on-site during all impact pile driving activities to confirm that no species enter the respective Shutdown Zones when PSOs are not onsite.

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. The City would adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) The City must submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of site preparation and pile driving and removal activities. It will include an overall description of work completed,

a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations;
- Other human activity in the area; and
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone, the percentage of the Level B harassment zone that was not visible, and the days when monitoring did not occur.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, the City would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the City to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the City would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to the West Coast Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the City to determine whether modifications to the activities are appropriate.

In the event that the City discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to the West Coast Regional Stranding Coordinator, within 24 hours of the discovery. The City would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Phase 1 Monitoring Report

The City's monitoring report from Phase 1 of the project (OBEC, 2019) was frequently consulted in the NMFS evaluation of the City's proposed activities and requested take for Phase 2 of the project. The Phase 1 monitoring report indicated recorded take of California sea lions and harbor seals (Table 18). Steller sea lions were not observed during Phase 1 (Table 15), however, due to their known presence in the area, Level B harassment take was still requested for Phase 2 activities. Additionally, as mentioned above, the calculated Level B harassment zones were significantly smaller for Phase 1 than for Phase 2.

TABLE 15—PHASE 1 MONITORING RESULTS

Species	Number of takes recorded by PSOs	Estimated takes on days PSOs not present	Total estimated Level B harassment takes	Authorized Level B harassment take number	Percent of authorized takes that occurred
California sea lion	604	3600 (240 × 15 days)	4204	33,736	12.5
Steller sea lion	0	0	0	5,360	0
Pacific harbor seal	53	270 (18 × 15 days)	323	4,560	7.1

Level A take was not requested nor authorized for Phase 1 activities, so the City used the calculated Level A isopleth as the shutdown zone to prevent Level A take. Shutdowns occurred on three days during Phase 1 activities. In all instances, shutdowns occurred when one or more California sea lion entered the shutdown zone. The Phase 1 and Phase 2 monitoring reports will provide useful information for analyzing impacts to marine mammals for potential future projects in the lower Columbia River.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information

on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving/removal and drilling activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment, identified above, when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity. Level A harassment is only anticipated for California sea lion and harbor seal. The potential for Level A harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Proposed Mitigation* section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, including Phase 1 of the City's project, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016; OBEC, 2019). Most likely for pile driving, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. Though some individual pinnipeds (especially harbor seals) could be expected to be taken over multiple days, the effects of the exposure are expected to be relatively minor, would not occur to any one individual across more than 21 days at the most, and therefore are not expected to result in impacts on reproduction or survival. The pile driving activities analyzed here are similar to Phase 1 activities and numerous other construction activities conducted in the Pacific Northwest, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving (and potential drilling) associated with the proposed project may produce sound at distances of many kilometers from the project site, the project site itself is located on a busy waterfront and in a section of the Columbia River with high amounts of vessel traffic. Therefore, we expect that animals disturbed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that California sea lions and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Other than feeding and the haulout areas previously described, the project area does not include any areas or times of particular biological significance for the affected species.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No serious injury is anticipated or authorized;
- The Level A harassment exposures are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species;
- The activity is expected to occur over 21 or fewer in-water work days.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether

an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Up to 26.0 percent of the individuals in the harbor seal stock may be taken. When the number of takes of Steller sea lion and California sea lion are compared to the stock abundance, they represent 13.7 and 10.2 percent, respectively—however, the number of takes requested is based on the number of estimated exposures, not necessarily the number of individuals exposed, which could be fewer given that pinnipeds may remain in the general area of the project sites and the same individuals may be harassed multiple times over multiple days, rather than numerous individuals harassed once.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed marine mammals is authorized or expected to result from issuance of this IHA. Therefore, NMFS has determined that formal consultation under Section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the City of Astoria for the incidental take of marine mammal due to in-water and above-water construction work associated with Phase Two of the Astoria Waterfront Bridge Replacement project in in Astoria, OR from December 9, 2019 to December 8, 2020, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: December 9, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–26859 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Antarctic Marine Living Resources Conservation and Management Measures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before February 11, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to MiAe Kim, Office of International Affairs and Seafood Inspection, 1315 East-West Hwy, Silver Spring, MD 20910; (301) 427–8365, *mi.ae.kim@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for revision of an existing information collection.

The 1982 Convention on the Conservation of Antarctic Marine Living Resources established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) for the purpose of protecting and conserving the marine living resources in the waters surrounding Antarctica. The Convention is based upon an ecosystem approach to the conservation of marine living resources and incorporates standards designed to ensure the conservation of individual populations and species and the Antarctic marine ecosystem as a whole.

The United States (U.S.) is a contracting party to the Convention and a member of CCAMLR and the Scientific Committee established by the Convention.

On November 8, 1984, the President signed Public Law 98–623, the Antarctic Marine Living Resources Convention Act (the Act). The Act directs and authorizes the United States to take actions necessary to meet its treaty obligations as a contracting party to the Convention. The regulations implementing the Act are at 50 CFR part 300, subpart G. The record keeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. The reporting requirements included in this collection concern CCAMLR Ecosystem Monitoring Program (CEMP) activities, scientific research in the CAMLR Convention Area, U.S. vessel permit applicants and/or harvesting vessel operators, and U.S. importers, exporters, and re-exporters of AMLR.

U.S. regulations require U.S. individuals engaged in AMLR harvesting, transshipping, and importing or entering and/or conducting activities in a CEMP site to apply for and hold a permit for such activities. Individuals involved in certain scientific research in the CAMLR Convention Area are required to report information.

Members of the Commission are required to provide, in the manner and at such intervals as may be prescribed, information about harvesting activities, including fishing areas and vessels, so as to enable reliable catch and effort statistics to be compiled.

As part of U.S. obligations to monitor and control the import, export, and re-export of Antarctic marine living

resources, NOAA requires dealers to submit applications for pre-approval certifications of imports of frozen Patagonian and Antarctic toothfish (also referred to as Chilean sea bass) and applications for re-exports of these species. These applications are currently available as fillable PDF forms. NOAA is proposing to revise this collection to allow the *Application for Pre-Approval Certificate to Import Frozen Toothfish* and *Application for Re-Export of Toothfish* forms be made available in an on-line format. No other part of this collection will be revised. This revision will not affect the number of respondents, responses, burden costs, or burden hours.

II. Method of Collection

On-line applications would be made available, in addition to the current applications and fillable PDF forms, for use by participants. Methods of transmittal would include the internet and mail or email transmission of forms.

III. Data

OMB Control Number: 0648–0194.

Form Number(s): None.

Type of Review: Regular (Revision of a currently approved collection).

Affected Public: Individuals; business or other for-profit organizations.

Estimated Number of Respondents: 80 dealers.

Estimated Time per Response: 15 minutes to apply for a *Pre-Approval Certificate to Import Frozen Toothfish,* whether using on-line applications or fillable PDF forms; 15 minutes to complete and submit *Application for Re-Export of Toothfish,* whether using on-line applications or fillable PDF forms.

Estimated Total Annual Burden Hours: 260 hours.

Estimated Total Annual Cost to Public: $128,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–26827 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Mammal Health and Stranding Response Program, Level A Stranding Report, Rehabilitation Disposition Data Sheet, and Human Interaction Form

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before February 11, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Stephen Manley, Office of Protected Resources, 1315 East-West Highway, #13604, Silver Spring, MD 20910, (301) 427–8476 or *stephen.manley@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of this previously approved data collection.

Under the Marine Mammal Protection Act (MMPA), the Secretary of Commerce (Secretary), who has delegated responsibility under this Act to the National Oceanic and Atmospheric Administration (NOAA) Assistant Administrator for Fisheries, is charged with the protection and management of marine mammals and is responsible for collecting information on marine mammal strandings, which will be compiled and analyzed, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded animals. The Secretary is also responsible for collection of information on other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals by physical, chemical, and biological environmental parameters.

In addition, determinations must be made on the sustainability of population stocks, on the impact of fisheries and other human activities on marine mammals and endangered species, and on the health of marine mammals and related environmental considerations. NOAA's National Marine Fisheries Service (NMFS) has the responsibility to carry out these mandates. Section 402(b) of the MMPA (16 U.S.C. 1421a) requires the Secretary to collect and update information on strandings. It further provides that the Secretary shall compile and analyze, by region, the species, numbers, conditions, and causes of illnesses and deaths in stranded marine mammals. Section 404(a) of the MMPA (16 U.S.C. 1421c) mandates that the Secretary respond to unusual marine mammal mortality events. Without a historical baseline provided by marine mammal information collected from strandings, detection of such events could be difficult and the investigation could be impeded. Section 401(b) of the MMPA (16 U.S.C. 1421) requires NMFS to facilitate the collection and dissemination of reference data on the health of marine mammal populations in the wild and to correlate health with physical, chemical, and biological environmental parameters. In order to perform this function, NMFS must standardize data collection protocols for health and correlations. Data and samples collected from stranded animals are a critical part of the

implementation of this mandate of the MMPA.

Specifically, the data from the Marine Mammal Stranding Report (MMSR) forms provide NMFS with information on the morphology, life history, biology, general health, health and stranding trends, causes of mortality, and distribution of marine mammal species. These data provide information which may help in making assessments on the status of population stocks. Recording data on gross mortalities may serve as an indicator that a particular population is impacted, threatened or at increased risk, and when provided in a timely manner, aid in dynamic management practices. Stranding data also provide an important baseline for detecting and monitoring the impacts of environmental phenomena, such as El Niño and Harmful Algal Blooms (HABs). Minor edits to the current version of the form are proposed, including beginning to collect live, entangled large whale data in this data collection and streamlining the confidence codes.

The Marine Mammal Rehabilitation Disposition Report (MMRDR) provides NMFS with information on the disposition of animals brought in for rehabilitation, the success of medical treatment, and the number of animals released. This information will assist the Agency in tracking marine mammals that move into captive display and in the monitoring of rehabilitation and release. The data will also be used to assess the burden on stranding network centers. This form will be filled out only in the case of live-stranded marine mammals. The form will be required from rehabilitation centers in all five NMFS Regions. Each of the NMFS regions approves and issues a Letter of Agreement (LOA) or other form of agreement to marine mammal rehabilitation centers under § 112(c) of the MMPA, which allows the Secretary to enter into agreements in order to fulfill the general purposes of the Act, and under § 403 of the MMPA, which provides specific authority to enter into such stranding response agreements. These data will be monitored as part of the Rehabilitation Facilities Inspection (RFI) program. No changes are proposed to this form.

The Human Interaction Data Sheet will provide NMFS with consistent and detailed information on signs of human interaction in stranded marine mammals. This form also includes a subjective section that allows the examiner to evaluate the likelihood that human interaction contributed to the stranding of the animal. This information will assist the Agency in tracking resource conflicts and will provide a solid scientific foundation for conservation and management of marine mammals. With a better understanding of interactions, appropriate measures can be taken to resolve conflicts and stranding data are the best source of information regarding the occurrence of different types of human interaction. No changes are proposed for this form.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include internet through the NMFS National Marine Mammal Stranding Database; facsimile transmission of paper forms; or mailed copies of forms.

III. Data

OMB Number: 0648–0178.

Form Number: None.

Type of Review: Regular submission (revision and extension of a current information collection).

Affected Public: State governments; not-for-profit institutions; business or other for-profits organizations.

Estimated Number of Respondents: 400.

Estimated Time per Response: 30 minutes for Stranding Reports and Rehabilitation Disposition Forms; 45 minutes for the Human Interaction Data Sheet.

Estimated Total Annual Burden Hours: 14,600.

Estimated Total Annual Cost to Public: $203.45.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–26829 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–22–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: Pacific Coast Groundfish Fishery Rationalization Social Study.

OMB Control Number: 0648–0606.

Form Number(s): None.

Type of Request: Regular (extension of an existing collection).

Number of Respondents: 410.

Average Hours per Response: 1.

Burden Hours: 127.

Needs and Uses: NOAA Fisheries needs to comply with legal requirements in the Magnuson Stevens Conservation and Management Act (MSA), the National Environmental Policy Act (NEPA), Executive Order 12898, and the Regulatory Flexibility Act to account for the sustained participation and the impacts of individuals and fishing communities participating in the use of marine resources and fishing activities. In order to fully understand the impacts of fisheries management actions on participating individuals and communities, it is necessary to communicate with them, and maintain a regular standard of monitoring. This is accomplished through surveys to see if any impacts that have been identified have changed or been addressed. This survey identifies sociocultural impacts of the catch shares program, which extends beyond income and fishing indicators, and identifies quality of life and family impacts that can be directly attributed to changes in behaviors related to fishing regulations. Survey participants are able to communicate their successes and concerns. New data collections are compared to past data collections to measure change over time as well as identify new trends occurring

in the fishery. Information obtained through this study informs fisheries managers, is utilized in management reviews, is communicated back to the end users, and is made available to the public. This data collection also complies with the aforementioned legal requirements, and greatly increases our knowledge of fishing communities.

Affected Public: Individuals or Households; Business or other for-profit organizations.

Frequency: Once every 5 years.

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,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–26925 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Programmatic Environmental Impact Statement for the Coral Reef Conservation Program

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability of a draft Programmatic Environmental Impact Statement; Request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management has prepared a draft programmatic environmental impact statement (PEIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) for its Coral Reef Conservation Program (CRCP), which is managed by NOAA's National Ocean Service in Silver Spring, MD, and implemented in coastal areas and marine waters of Florida, Puerto Rico, U.S. Virgin Islands, Gulf of Mexico, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Pacific Remote Islands, and targeted international regions including the wider Caribbean, the Coral Triangle, the South Pacific, and Micronesia. Publication of this document begins the public comment period for the draft PEIS.

DATES: Written comments on the draft PEIS will be accepted on or before January 27, 2020.

ADDRESSES: You may submit comments on the CRCP's draft PEIS by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov/NOAA-NOS-201-0127*. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Please direct written comments to Harriet Nash, Deputy Director, NOAA's Coral Reef Conservation Program, Office for Coastal Management, 1305 East-West Highway, N/OCM6, Room 10404, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Liz Fairey, NMFS Office of Habitat Conservation, NOAA Coral Reef Conservation Program, 1315 East-West Highway, Silver Spring, MD 20910, *liz.fairey@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA has prepared a draft PEIS for coral reef conservation and restoration activities conducted by NOAA's Coral Reef Conservation Program (CRCP) throughout parts of the United States, including the South Atlantic Ocean, Gulf of Mexico, and Remote Pacific Islands, and priority international areas (*i.e.,* wider Caribbean, Coral Triangle, South Pacific, and Micronesia). The draft PEIS assesses the direct, indirect, and cumulative environmental impacts of NOAA's proposed action to continue funding and otherwise conducting coral reef conservation and restoration activities through the CRCP's existing programmatic framework and related procedures. The CRCP is implemented consistently with the requirements of the Coral Reef Conservation Act of 2000 (CRCA) and Executive Order 13089. Projects implemented or funded by NOAA vary in terms of their size, complexity, geographic location, and NOAA involvement, and often benefit diverse coral species, habitats, and ecosystem types. The CRCP conducts research and monitoring to gather data on the existence and condition of coral reef ecosystems to support conservation and restoration efforts. NOAA implements the CRCP across four of its line offices (*i.e.,* National Ocean Service, Office of Oceanic and Atmospheric Research, National Marine Fisheries Service, and National Environmental Satellite, Data, and Information Service) and in coordination with other federal agencies, state and local agencies, private conservation organizations, and research and academic institutions. A significant amount of this support is administered through grants and cooperative agreements. CRCP activities are prioritized based on available funding and the responsiveness to the priorities in its strategic plan, including jurisdictional needs. The draft PEIS identifies and evaluates the general environmental impacts, issues, and concerns related to the comprehensive management and implementation of the CRCP, including potential mitigation. NOAA anticipates that some environmental effects will be caused by site-specific, project-level activities implementing the CRCP; therefore, the final PEIS will be used to support tiered, site-specific National Environmental Policy Act of 1969 (NEPA) reviews by narrowing the scope of environmental impacts and facilitating focused, project-level reviews. NOAA also intends for this draft PEIS to establish a tiered environmental decision-making framework that will support efficient compliance with other statutes protecting natural resources such as the Endangered Species Act (ESA) and Marine Mammal Protection Act to the extent they apply. Since the CRCP will use the Final PEIS to conduct tiered analyses, this document does not evaluate the environmental impacts of any project-level activities. The draft PEIS analyzes three program-level alternatives:

- *No Action Alternative:* The No Action Alternative would involve continued operation of the CRCP based on minimizing the three primary threats to coral reefs (*i.e.,* fishing impacts, land-based sources of pollution, and climate change) and supporting research and possible application of novel coral restoration and intervention techniques to respond rapidly to imminent threats, such as increased bleaching and disease, to corals and coral reef ecosystems. CRCP operations would include monitoring, research activities, watershed and coral reef restoration, reduction of physical impacts to coral reefs, outreach and education, and program support. The CRCP would continue to be implemented using available appropriations, across four NOAA line offices, using a mix of internal and external funding, across existing geographic areas, and in collaboration with similar partners. The CRCP would continue to conduct program activities with mandatory mitigation measures developed in

compliance with applicable environmental laws such as the ESA. For the purposes of this draft PEIS, it is assumed that the activities would be conducted in the same manner as they currently are.

• *Alternative 1:* This alternative would reflect the management of the CRCP to address and minimize the three primary threats but would not include research and possible application of restoration and intervention techniques targeting coral populations. The CRCP would continue to be implemented using available appropriations, across four NOAA line offices, using a mix of internal and external funding, across existing geographic areas, and using similar partners. The CRCP would continue to conduct program activities with mandatory mitigation measures developed in compliance with applicable environmental laws such as the ESA.

• *Alternative 2:* This alternative would continue management of CRCP to address and minimize the three primary threats and support research and possible application of novel coral restoration and intervention techniques to respond rapidly to imminent threats (*i.e.,* the No Action Alternative) plus implement discretionary mitigation measures. The fundamental difference between this alternative and the other alternatives is that Alternative 2 would identify and implement a suite of standard, discretionary conservation and mitigation measures that would supplement mandatory mitigation measures required by statutes.

The fundamental distinction between Alternative 1 and the No Action Alternative is that the No Action Alternative would include research and potential application of novel restoration and intervention techniques as tools to respond to imminent threats to corals. The draft PEIS considers the environmental effects of a suite of these intervention strategies. Implementation could occur through a separate decision-making process. Alternative 1 would not implement restoration and intervention techniques targeting coral populations: It would instead focus resources solely on addressing the three primary threats that CRCP has prioritized over the last several years. Alternative 2 would be identical to the No Action Alternative except that it would call for implementation of not only mitigation measures imposed through statutory and regulatory compliance but also discretionary conservation and mitigation measures designed to further protect and conserve marine and other environmental resources.

The purpose of this NOA is to invite affected federal, state, and local agencies, and interested persons to participate in the draft PEIS process and provide comments on the structure, contents, and analysis in the draft PEIS. The official public review and comment period ends on January 27, 2020. Please visit the CRCP web page for additional information regarding the program: *https://coralreef.noaa.gov/*.

Authority: The preparation of the draft PEIS for the CRCP will be conducted in accordance with the requirements of NEPA, the Council on Environmental Quality's Regulations (40 CFR parts 1500–1508), other applicable regulations, and NOAA's policies and procedures for compliance with those regulations. Written comments must be received on or before January 27, 2020.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–26825 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Technical Information Service

[Docket No. 191122–0088]

Opportunity To Enter Into a Joint Venture Partnership With the National Technical Information Service for Data Innovation Support

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Technical Information Service (NTIS) requests proposals from interested private-sector organizations to assist Federal agencies in the development and implementation of innovative ways to collect, connect, access, secure, analyze, disseminate and enable effective and efficient use of data to address unique and complex national data priorities. Specifically, NTIS is interested in partnering with organizations that have specialized skills and capabilities in applied data science areas, such as artificial intelligence, machine learning, robotics, and cybersecurity, to assist the Federal government in leveraging data as a strategic asset to achieve Federal agency mission outcomes. Organizations that are selected in accordance with the evaluation criteria and selection process set forth in this notice will be invited to enter into a joint venture partnership agreement with NTIS to be eligible to compete for Federal data service opportunities identified by NTIS in cooperation with other Federal agencies.

DATES: Proposals will be received and evaluated on an ongoing basis. Proposals will not be accepted after December 13, 2022.

ADDRESSES: Submit proposals electronically, with the subject line ''Opportunity to Enter into a Joint Venture Partnership with the National Technical Information Service for Data Innovation Support'', by emailing both *OpportunityAnnouncement@ntis.gov* and Randy Caldwell at *rcaldwell@ntis.gov.*

FOR FURTHER INFORMATION CONTACT: Randy Caldwell at (703) 605–6321, or by email at *rcaldwell@ntis.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction/Background for Potential Joint Venture Partners (JVPs)

NTIS, an agency of the U.S. Department of Commerce, is seeking proposals from potential JVPs that can work with NTIS to assist Federal agencies to leverage innovative ways to collect, connect, access, secure, analyze, disseminate and enable effective and efficient use of data to address unique and complex national data priorities.

Federal agencies are currently addressing national issues in such areas as fraud detection, improper payments, public services, health and safety, cybersecurity, technology transfer, supply chain optimization, and internal requirements to operate more effectively and efficiently. Addressing these mission-critical data issues requires new capabilities in machine learning, artificial intelligence, predictive analytics and other advanced data science expertise. *See* OMB M–19–18 [1] and Executive Order 13859.[2] Federal agencies that need the data services of NTIS and its JVPs require holistic solutions that may require the application of multiple data and technological capabilities in new and innovative ways in order to support the agencies' strategic plans and mission-critical priorities. Many of the challenges facing Federal agencies are at the intersection of data science and information technology (IT) modernization. Solutions often require related capabilities in emerging technologies, innovation, change management, and agile delivery methods. Mission areas that NTIS supports include, but are not limited to, fraud detection, public services, health

[1] *https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-18.pdf.*

[2] *https://www.federalregister.gov/documents/2019/02/14/2019-02544/maintaining-american-leadership-in-artificial-intelligence.*

and safety, technology transfer, and national security.

Activities conducted by NTIS and its JVPs in support of other Federal agencies may include: (1) Designing, testing, analyzing, or demonstrating the application of Federal data and data services, either alone or in combination with non-Federal data; (2) based on Federal data or the use of Federal data in some combination with open Federal data and non-Federal data, facilitating the creation of suites of products, platforms, and services that assist Federal agencies in meeting the needs of businesses, innovators, government agencies, and others; and (3) otherwise enhancing data discovery and usability, data interoperability and standards, data analytics and forecasting, or data infrastructure and security. Projects that can be accomplished by a Federal agency via a commercial-off-the-shelf (COTS) procurement or acquisition action will not be conducted by NTIS with its JVPs.

Organizations that enter into joint venture partnership agreements with NTIS, pursuant to this notice, will have opportunities to engage in early discussions about projects with NTIS and the sponsoring Federal agencies and may subsequently compete for the opportunity to work with NTIS to provide data services on specific projects under a merit-based selection process established by NTIS.

NTIS intends to extend all of its existing technology innovation joint venture partnership agreements until September 30, 2021. Existing technology innovation JVPs who wish to be considered for partnerships with NTIS beyond September 30, 2021, must submit proposals for entering into new partnerships pursuant to this notice.

Under a separate notice that will be published in the **Federal Register** (''assistive technologies JVPs notice''), NTIS will accept proposals from interested private-sector organizations to become a JVP eligible to work with NTIS on projects involving assistive technologies. JVPs selected under the instant notice will not be eligible to compete for assistive technology project opportunities with NTIS unless they also apply and are selected under the assistive technologies JVPs notice. Organizations that enter into JVP agreements with NTIS pursuant to the assistive technologies notice will not be eligible to compete for data innovation opportunities with NTIS unless they also apply and are selected under the instant notice. Organizations selected under the instant notice will be eligible to work with NTIS on projects involving the types of data innovation described in this notice.

The Secretary of Commerce (Secretary) has delegated to NTIS authority to operate as a permanent clearinghouse of scientific, technical, and engineering information and to collect and disseminate such information. 15 U.S.C. 1152. The National Technical Information Act of 1988, codified at 15 U.S.C. 3704b, additionally accorded the Secretary, acting through NTIS, the authority to enter into joint ventures, and declared the clearinghouse to be a permanent Federal function that could not be privatized without Congressional approval. The National Technical Information Act of 1988 was amended by section 506(c) of the American Technology Preeminence Act of 1991 (Pub. L. 102–245), which directed NTIS to focus on developing new electronic methods and media for information dissemination.

As the nature and scope of information and data dissemination have changed, NTIS has continued to focus on innovations to address these changes. New capabilities are available in application program interfaces (APIs) as conduits for data dissemination that have significantly improved data use, interoperability, and accessibility. Artificial intelligence, machine learning, and predictive analytics are transforming how data are analyzed and managed to support national priorities in fraud detection, emergency preparedness, cybersecurity, citizen services, and in promoting health and public safety.

Using its joint venture authority, NTIS has established a unique joint venture partnership program that has resulted in a number of innovative data service projects across the Federal government that allow other Federal agencies to address national priorities more efficiently and effectively.

Specifically, through NTIS' joint venture partnership program, NTIS will (1) accelerate private-sector use of Federal government data, either alone or in combination with non-Federal data, for the development and use of new and improved data products and services, and (2) accelerate the Federal government's use of data to improve the effectiveness and efficiency of Federal programs and thus improve mission outcomes.

The NTIS joint venture partnership program enables NTIS to structure joint venture partnership agreements with the private sector and interagency agreements with Federal agencies that offer the best combination of speed, agile applications development, and performance for delivering integrated innovative data services and solutions. NTIS manages joint venture projects in a highly flexible, interactive, and collaborative manner with its customer Federal agencies and JVPs throughout the project lifecycle.

Joint ventures are not procurements or acquisitions and do not result in contracts under the Federal Acquisition Regulation (FAR). Joint ventures involve the investment of resources by NTIS and its JVPs, with a formal agreement for the sharing of revenues associated with the venture. The joint venture partnerships provide data services that allow customer Federal agencies to accelerate the time it takes to achieve mission outcomes. The joint venture partnerships accomplish this by using innovative and creative methods of collecting, connecting, accessing, securing, analyzing, disseminating and enabling effective and efficient use of Federal data and non-Federal data.

II. General Scope

Technical Requirements

Proposals must address at least one of the following two technical requirements by demonstrating the proposer's capabilities to deliver data-driven innovations. The proposer must explicitly state in the proposal which area(s) are addressed.

1. *Innovations in the use of data and data services to leverage data as a strategic asset to improve business processes and mission outcome.* The proposal must include a description of how the proposer would contribute innovations in the use of data and data services. The scope of this area includes data science and engineering innovations and the ability to integrate and deliver complete data-driven solutions associated with (a) making it easier to use data through data cleansing and improved interoperability; (b) searching, discovering, combining, analyzing, disseminating, and using Federal government data, either alone or in combination with non-Federal data, in new ways; and (c) implementing innovative and secure data infrastructures to advance artificial intelligence (AI) and machine learning for enabling cybersecurity, and creating cloud based analytic data platforms that deliver capabilities for data analytics through highly scalable infrastructure.

2. *Analysis, interpretation, and understanding of data, as well as meaningful application of the analysis and interpretation, to automate business processes, predict future events and prescribe potential solutions.* The proposal must describe how the

proposer would use AI, machine learning, and robotics to improve the analysis, interpretation, understanding, and application of either static or real time data to achieve innovations in business processes automation, supply chains, and overall mission outcome.

Additional Requirements

NTIS will enter into joint venture partnership agreements in accordance with all relevant provisions of applicable Federal law. Any proposal that has the appearance of circumventing the FAR or other agency acquisition requirements will be determined to be non-responsive to this notice during the initial phase of the selection process and will not be considered further. Proposers must acknowledge and address the following terms in their proposals:

- Data received from a Federal agency and from non-Federal organizations as part of a project performed by NTIS with a JVP may only be accessed and utilized for project purposes consistent with all applicable statutory and regulatory provisions and all relevant agreements.
- Federal agencies and private-sector organizations that provide data as part of a project performed by NTIS with a JVP will retain ownership of the data rights. Federal agencies and private-sector organizations may be requested to provide licenses to use the data for the purposes of a project.
- At a minimum, systems, programs, and applications included in the proposal must comply with the documented security assessment and authorization (A&A) policies issued by the Office of Management and Budget (OMB), standards and guidance issued by the National Institute of Standards and Technology (NIST), and the Federal Information Security Modernization Act of 2014 (FISMA) (44 U.S.C. 3551 *et seq.*), before the systems, programs, and applications are offered to Federal agencies under a joint venture partnership.
- JVPs who are selected and enter into joint venture partnership agreements pursuant to this notice will be eligible to submit proposals for specific project opportunities. Eligible JVPs interested in such opportunities will be required to submit a proposal in response to an opportunity announcement for specific projects within a short time period, typically two to three weeks.
- Proposers must have the ability to accept electronic fund transfers.
- NTIS will not guarantee that any revenue will be generated for the JVP merely by entering into a joint venture partnership agreement with NTIS.
- Proposers must have the ability to fund their portion of any projects commenced pursuant to a joint venture partnership agreement for a period of time, which may differ for individual projects, due to Federal accrual accounting practices. NTIS does not allow (and has never offered) financial incentives for entering into joint venture partnership agreements. NTIS will not provide advance payments to JVPs.

III. Requested Response

NTIS seeks to enter into joint venture partnership(s) with one or more partners to assist Federal agencies in furthering their missions in innovative and creative ways by enabling government agencies and the public with improved access to, or analysis, collection, or use of Federal data and data services, either alone or in combination with non-Federal data. NTIS and its JVPs provide data services for speedy execution of innovative projects, typically involving one or more of the following attributes: (a) First or early use of emerging technology; (b) complexity of solution architecture, interoperability, and/or security; (c) agile applications development and systems operations, which require adaptive scoping; or (d) custom solutions to meet unique requirements without COTS solutions.

Proposers are encouraged to include proposed teams of private-sector organizations, which may include small and medium-size enterprises and start-ups that bring unique and innovative capabilities for delivering data science capabilities. Proposals should describe any proposed teaming arrangements and solution integration capabilities, including the relationships among the parties, how the team would function, and how the team may be augmented to fill missing capabilities. Although teaming arrangements are encouraged, the JVP itself will be expected to provide at least 50 percent of the labor on each project for which it is selected. NTIS will evaluate each proposal and may solicit oral presentations from some or all proposers. Where appropriate, NTIS, in its discretion, may reach out to selected JVPs for teaming arrangements on future projects that involve emerging and/or cutting-edge capabilities that fall within NTIS' mission.

Proposal Submission Information

The proposal is a word-processed document of no more than fifteen (15) single-spaced pages responsive to the evaluation criteria set forth below. Any pages submitted beyond the 15- page limit will not be considered. Each proposal page layout should be 8.5 inches by 11 inches with 1-inch margins. The font for the proposal should be Times New Roman 12 point or similar font in readable size (no less than 10 point). All submissions must be made in electronic format and submitted in accordance with the **ADDRESSES** section above. All proposals are subject to the False Claims Amendments Act of 1986, 31 U.S.C. 3729 and 18 U.S.C. 287, as well as the False Statements Accountability Act of 1996, 18 U.S.C 1001. In accordance with Federal appropriations law, an authorized representative of the selected proposer(s) may be required to provide certain certifications regarding Federal felony and Federal criminal tax convictions, unpaid Federal tax assessments, and delinquent Federal tax returns.

Proposal Technical, Administrative and Business Information

The proposal must address each of the evaluation criteria set forth in the following section and should include all of the information set forth in this section in a manner sufficient to allow each section to be reviewed against the evaluation criteria set forth below. Each section of the proposal should include a brief title or description of its content.

(1) The proposal to become a JVP must include a capability statement that describes the nature and scope of the organization's expertise to perform data services to address mission-critical Federal data requirements. The proposal must include: (a) A description of technical capabilities in each area of data innovation that the proposer and, where applicable, its team, will address; (b) examples of up to three major projects where the proposer and, where applicable, its team, have demonstrated data innovations using the technical capabilities; if the proposer and, where applicable, its team, have not conducted projects in which they have demonstrated data innovations using the technical capabilities, the proposer should include instead a description of how it would go about doing so; (c) a description of the professional accomplishments, skills, certifications, and training of the personnel proposed to provide the technical capabilities and perform the work proposed in the proposal, including each individual whose innovative technical capabilities are critical to the development or execution of joint venture projects in a substantive and measurable way; and (d) a description of the resources, such as staff, partnerships, integration and project management capabilities, contracts, or technologies, that the

proposer would use to achieve these innovations. This information will be considered against evaluation criteria 1 through 3 below.

(2) The proposal may include any other information that the proposer thinks will assist reviewers in their evaluation of the proposal against the evaluation criteria described below.

To the extent permitted by law, including the Freedom of Information Act (FOIA), 5 U.S.C. 552, NTIS will not disclose confidential or proprietary information provided and clearly marked in any proposal submitted in response to this notice without providing the organization that submitted such information the opportunity to object to the potential release of the information. If NTIS receives a request for disclosure of confidential or proprietary information, it will promptly notify the submitting organization in writing and give it an opportunity to demonstrate that NTIS should withhold the information in accordance with Department of Commerce FOIA regulations (15 CFR part 4).

Evaluation Criteria

The evaluation criteria for the proposals are as follows:

(1) Rationality (0–35 Points)

The extent to which the logic and soundness of the proposer's approach to enable data innovations that will address Federal data priorities by (a) advancing the use of data as a strategic asset to achieve mission outcome and support evidence-based policies; (b) transforming and optimizing supply chains through the use of data science capabilities; (c) promoting data governance and standardization; and (d) creating new capabilities for data discovery, data set search, and interoperability to connect and derive new insights for predictive analytics and prescriptive actions.

(2) Technical Merit of Contribution (0–30 Points)

The technical effectiveness and innovation of the proposed capabilities and past work or plans for providing such capabilities described in the proposal and the extent to which they would contribute to the fields of data science, AI, engineering, or best practices relevant to the services to be provided by NTIS and its JVPs as described in the General Scope section of this announcement.

(3) Organizational Qualifications and Resource Availability (0–35 Points)

The likelihood that the professional accomplishments, data services and solution integration delivery experience, skills, certifications, and training of the personnel proposed to provide the technical capabilities and perform the work proposed in the proposal, including all individuals whose innovative technical capabilities are critical to the development or execution of joint venture projects in a substantive and measurable way as identified in the proposal, will contribute to the successful execution of projects; and the extent to which the proposer has access to the necessary equipment, tools, facilities, technologies, and overall support and resources to accomplish proposed objectives and work jointly with NTIS to accomplish project goals.

Evaluation and Selection Process

All proposals received before the end date set forth in the **DATES** section of this notice will be reviewed to determine whether they are submitted by a private-sector organization (eligible), contain all required technical, business and administrative information (complete), and are responsive to this notice. Proposals determined to be ineligible, incomplete, and/or non-responsive based on the initial screening will be eliminated from further review. However, NTIS, in its sole discretion, may continue the review process for a proposal that is missing non-substantive information that can easily be rectified or cured.

All proposals that are determined to be eligible, complete, and responsive will proceed for full reviews in accordance with the review and selection process set forth below.

At least three (3) objective individuals, knowledgeable about the particular technical areas described in the proposal, will review the merits of each proposal based on the evaluation criteria. The reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. NTIS may solicit oral presentations from some or all proposers.

The Selecting Official, who is the NTIS Deputy Director or designee, will make final proposal selections, taking into consideration the results of the reviewers' evaluations, relevance to the scope and objectives described in this notice, the distribution of proposals across technical areas, and the distribution of proposers among a diverse set of qualified organizations. A diverse set of qualified organizations would include large, medium, and small organizations that may be for-profit or non-profit and that have both unique and discrete data science capabilities and specialized expertise and experience in integrating such capabilities for holistic, complete solutions.

Notification of Results

Unsuccessful proposers will be notified in writing. Proposers whose proposals are selected will be notified and will be provided with a standard NTIS joint venture partnership agreement for execution. Each joint venture partnership agreement entered into between a selected proposer and NTIS will incorporate the selected proposer's proposal by reference. NTIS will not be responsible for any costs incurred by any proposer prior to execution of a joint venture partnership agreement.

Gregory Capella,

Deputy Director, National Technical Information Service.

[FR Doc. 2019–26891 Filed 12–12–19; 8:45 am]

BILLING CODE 3510–04–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: *Comments must be received on or before:* January 12, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type: Custodial Service
Mandatory for: Department of Defense Education Activity, Fort Campbell Schools, Fort Campbell, KY
Mandatory Source of Supply: Global Connections to Employment, Inc., Pensacola, FL
Contracting Activity: DEPT OF DEFENSE EDUCATION ACTIVITY (DODEA), DOD EDUCATION ACTIVITY

Service Type: Information Technology Support
Mandatory for: U.S. Air Force, 96th Medical Group, Eglin AFB, FL
Mandatory Source of Supply: Global Connections to Employment, Inc., Pensacola, FL
Contracting Activity: DEPT OF THE AIR FORCE, FA2823 AFTC PZIO

Service Type: Conference Center Management
Mandatory for: DHS, Transportation Security Administration Headquarters, Springfield, VA
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: TRANSPORTATION SECURITY ADMINISTRATION, WEO

Service Type: Centralized Appointment Call Center
Mandatory for: U.S. Air Force, Medical Treatment Facility, Eglin Air Force Base, FL
Mandatory Source of Supply: Bobby Dodd Institute, Inc., Atlanta, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA2823 AFTC PZIO

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
MR 11052—Grocery Shopping Tote Bag, Laminated, Spring, Yellow, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s):
6530–00–761–0932—Urine Collection Bag, 32 oz. Capacity
6530–00–761–0936—Urine Collection Bag, 26 oz. Capacity
6530–00–NSH–0028—Bag, Urine Collection, Enhanced, Large, 32 oz.
6530–00–NSH–0029—Bag, Urine Collection, Enhanced, Medium, 26 oz.
6530–00–NSH–0030—Bag, Urine Collection, Enhanced, Moleskin Backing, Large, 32 oz.
6530–00–NSH–0031—Bag, Urine Collection, Enhanced, Inlet Extension, Large, 32 oz.
6530–00–NSH–0032—Bag, Urine Collection, Enhanced, Drain Extension, Large, 32 oz.
6530–00–NSH–0033—Bag, Urine Collection, Enhanced, Moleskin Backing, Inlet Extension, Large, 32 oz.
6530–00–NSH–0034—Bag, Urine Collection, Enhanced, Moleskin, Drain Extension, Large, 32 oz.
6530–00–NSH–0035—Bag, Urine Collection, Enhanced, Inlet and Drain Extension, Large, 32 oz.
6530–00–NSH–0036—Bag, Urine Collection, Enhanced, Moleskin, Inlet and Drain Extension, Large, 32 oz.
6530–00–NSH–0037—Bag, Urine Collection, Enhanced, Moleskin, Medium, 26 oz.
6530–00–NSH–0038—Bag, Urine Collection, Enhanced, Inlet Extension, Medium, 26 oz.
6530–00–NSH–0039—Bag, Urine Collection, Enhanced, Drain Extension, Medium, 26 oz.
6530–00–NSH–0040—Bag, Urine Collection, Enhanced, Moleskin, Inlet Extension, Medium, 26 oz.
6530–00–NSH–0041—Bag, Urine Collection, Enhanced, Moleskin, Drain Extension, Medium, 26 oz.
6530–00–NSH–0042—Bag, Urine Collection, Enhanced, Inlet and Drain Extension, Medium, 26 oz.
6530–00–NSH–0043—Bag, Urine Collection, Enhanced, Moleskin, Inlet and Drain Extension, Medium, 26 oz.
6530–00–NSH–0044—Fecal Incontinence Collection Bag, Clear Plastic, Small, 10 oz.
6530–00–NSH–0045—Fecal Incontinence Collection Bag, Clear Plastic, Large, 19 oz.
Mandatory Source of Supply: Work, Incorporated, Dorchester, MA
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s):
6515–00–481–2049—Bag, Gravity Enteral Feeding
Mandatory Source of Supply: Work, Incorporated, Dorchester, MA
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

Services

Service Type: Recycling Service
Mandatory for: Cape Cod National Seashore, Wellfleet, MA
Mandatory Source of Supply: capeAbilities, Inc., Hyannis, MA
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Toner Cartridge Remanufacturing
Mandatory for: Bighorn National Forest, Sheridan, WY
Mandatory Source of Supply: Community Option Resource Enterprises, Inc. (COR Enterprises), Billings, MT
Contracting Activity: AGRICULTURE, DEPARTMENT OF, PROCUREMENT OPERATIONS DIVISION

Service Type: Janitorial/Custodial
Mandatory for: Blue Mountain: Crazy Canyo, Pattee Canyon and Howard Creek, Missoula, MT
Contracting Activity: AGRICULTURE, DEPARTMENT OF, PROCUREMENT OPERATIONS DIVISION

Service Type: Document Destruction
Mandatory for: Department of Agriculture, Farm Service Agency, Farm Service Agency: 6501 Beacon Drive, Kansas City, MO
Mandatory Source of Supply: JobOne, Independence, MO
Contracting Activity: FARM SERVICE AGENCY, KANSAS CITY ACQUISITION BRANCH

Service Type: Mailing Services
Mandatory for: Government Printing Office—Laurel Warehouse: 8610 & 8660 Cherry Lane, Laurel, MD
Mandatory Source of Supply: Alliance, Inc., Baltimore, MD
Contracting Activity: Government Printing Office

Service Type: Grounds Maintenance
Mandatory for: The Kennedy Center, Washington, DC
Mandatory Source of Supply: Lt. Joseph P. Kennedy Institute, Washington, DC
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Operation of Postal Service Center
Mandatory for: Andrews Air Force Base, Andrews AFB, MD
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Service Type: Grounds Maintenance
Mandatory for: Fort McPherson, Fort McPherson, GA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FDO FT SAM HOUSTON

Service Type: Custodial Services
Mandatory for: DHS—Customs & Border Protection: 5401 Coffee Drive, New Orleans, LA
Mandatory Source of Supply: Goodworks, Inc., New Orleans, LA
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, PROCUREMENT DIRECTORATE

Service Type: Janitorial Services
Mandatory for: USDA, ARS Grassland, Soil and Water Research Laboratory, 808 East Blackland Road, Temple, TX
Mandatory Source of Supply: Rising Star Resource Development Corporation, Dallas, TX

Contracting Activity: AGRICULTURAL RESEARCH SERVICE, USDA ARS SPA 7MN1

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2019–26939 Filed 12–12–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* January 12, 2020

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/11/2019 and 10/25/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN(s)—Product Name(s):
6510–01–540–6484—Bandage, Compression ''H''
6510–01–549–0939—Dressing, Chest Seal, Bolin
Mandatory For: 100% of the requirement of the Defense Logistics Agency Troop Support Medical Kitting
Mandatory Source of Supply: Lighthouse Works, Orlando, FL
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

NSN(s)—Product Name(s):
7510–00–SAM–1696—Pushpins, Magnetic, Assorted Colors
Mandatory For: Total Government Requirement
Mandatory Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2)

Deletions

On 11/8/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Administrative Services
Mandatory for: GSA, Federal Technology Service: 10304 Eaton Place, Fairfax, VA
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Custodial Services
Mandatory for: Harley O. Staggers Federal Building, Morgantown, WV
Mandatory Source of Supply: PACE Enterprises of West Virginia, Inc., Morgantown, WV
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2019–26940 Filed 12–12–19; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Wednesday, December 18, 2019.

PLACE: CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- *Final Rule:* Amendments to Derivatives Clearing Organization General Provisions and Core Principles;
- *Proposed Rule:* Prohibition on Post-Trade Name Give-Up on Swap Execution Facilities;
- *Proposed Rule:* Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants; and
- Request for Comment on Designated Foreign Sovereign Debt as Collateral and Acceptable Currencies for Collateral and Settlement.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time,

date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

(Authority: 5 U.S.C. 552b.)

Dated: December 11, 2019.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2019–27077 Filed 12–11–19; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, December 11, 2019; 1:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Matter: Staff will brief the Commission on a status of compliance matters.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: December 11, 2019.

Alberta E. Mills,

Secretary.

[FR Doc. 2019–26993 Filed 12–11–19; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

U.S. Army Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal Advisory Committee meeting of the U.S. Army Science Board (ASB). This meeting is open to the public.

DATES: Tuesday, January 7, 2020 to Thursday, January 9, 2020: Time: 8:00 a.m. to 5:00 p.m.

ADDRESSES: University of Texas System, 210 West 7th Street, Austin, Texas 78701.

FOR FURTHER INFORMATION CONTACT: Ms. Heather J. Gerard, (703) 545–8652 (Voice), *heatherj.gerard.civ@mail.mil* (Email), Army Science Board Designated Federal Officer, or Ms. Lisa Hoskins at (703) 554–5687 or email: *lisa.k.hoskins.civ@mail.mil.* Alternate Designated Federal Officer. Mailing address is Army Science Board, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202. Website: *https://asb.army.mil/.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for ASB members to review, deliberate, and vote on the findings and recommendations presented for a Fiscal Year 2019 (FYI9) ASB study.

Agenda: The board will present findings and recommendations for deliberation and vote on the following FYI 9 study: ''An Independent Assessment of the 'U.S. Army Corps of Engineers' (USACE) Effectiveness in Delivering the Nation's Civil Works Program''. This study is unclassified and will be presented on January 7, 2020 from 10:00 a.m.–11:30 a.m.

Public Accessibility to the Meeting: Pursuant to 5 U.S. Code 552b, as amended, 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 to arrive basis. Because the meeting will be held in a Federal Government facility, security screening is required. A photo ID is required to enter the facility. To enter the facility, visitors must follow the procedures for 210 West 7th Street, Austin, Texas 78701. For additional information about public access procedures, contact the Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and sec. 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the ASB about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the ASB. All written statements must be submitted to the Designated Federal Officer (DFO) at the address listed above, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements not received at least 10 calendar days prior to the meeting may not be considered by the ASB prior to its scheduled meeting. After reviewing written comments, the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

Dated: November 22, 2019.

James E. McPherson,

Senior Official Performing the Duties of the Under Secretary of the Army.

[FR Doc. 2019–26890 Filed 12–12–19; 8:45 am]

BILLING CODE 5001–03–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: These appointments were effective on December 3, 2019.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Vanessa D. Prout by telephone at (202) 694–7021 or by email at *VanessaP@dnfsb.gov.*

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of the senior executives' performance, the executives' responses, and the higher level officials' comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review

* The Commission unanimously determined by recorded vote that Agency business requires calling the meeting without seven calendar days advance public notice.

Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

David M. Capozzi, Director of Technical and Information Services, United States Access Board

Dolline L. Hatchett, Director, Office of Safety Recommendations and Communications, National Transportation Safety Board

Jessica S. Bartlett, Regional Director, Federal Labor Relations Authority, Washington Regional Office

Authority: 5 U.S.C. 4314.

Dated: December 9, 2019.

Bruce Hamilton,

Chairman.

[FR Doc. 2019–26824 Filed 12–12–19; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2020 for the Native Hawaiian Education (NHE) program, Catalog of Federal Domestic Assistance (CFDA) number 84.362A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: December 13, 2019.

Deadline for Transmittal of Applications: February 11, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E306, Washington, DC 20202. Telephone: (202) 401–1265. Email: *Hawaiian@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the NHE program is to support innovative projects that recognize and address the unique educational needs of Native Hawaiians. These projects must include the activities authorized under section 6205(a)(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and may include one or more of the activities authorized under section 6205(a)(3) of the ESEA.

Note: The construction of facilities that support the operation of Native Hawaiian education programs will be a permissible activity only if Congress specifically authorizes the use of FY 2020 funds for this purpose.

Background: The NHE program serves the unique educational needs of Native Hawaiians and recognizes the roles of Native Hawaiian languages and cultures in the educational success and long-term well-being of Native Hawaiian students. The program supports effective supplemental education programs that maximize participation of Native Hawaiian educators and leaders in the planning, development, implementation, management, and evaluation of programs designed to serve Native Hawaiians. The statute identifies as priority areas activities that include beginning reading and literacy among students in kindergarten through third grade, the needs of at-risk children and youth, needs in fields or disciplines in which Native Hawaiians are underemployed, and the use of the Hawaiian language in instruction. The NHE program requires that grantees focus on one or more of these priority areas.

In addition, NHE grantees may undertake a broad array of activities to achieve these purposes, as described in section 6205(a)(3) of the ESEA, including several that are consistent with the Administration's policy focus areas as expressed in the Department's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096). For example, section 6205(a)(3)(F) of the ESEA authorizes the development of academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian traditions and culture. Similarly, Supplemental Priority 6 calls for projects in science, technology, engineering, and math (STEM) education, including computer science, that support student mastery of key prerequisites to ensure success in all STEM fields and expose students to building-block skills such as critical thinking and problem-solving, gained through hands-on, inquiry-based learning.

As a second example, ESEA section 6205(a)(2)(C) prioritizes programs that are designed to support projects that address needs in fields or disciplines in which Native Hawaiians are underemployed. Similarly, Supplemental Priority 3(c) is designed to support projects providing work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sector or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014 (WIOA)).

These two areas of alignment between the ESEA and the Supplemental Priorities will receive competitive preference points in this competition.

We note that, under ESEA section 6205(b), no more than five percent of funds awarded for a grant for any fiscal year under this program may be used for administrative costs. Pursuant to this statutory language, in this and future competitions under this program, this five percent limit must include both direct and indirect administrative costs. The administrative cost cap will limit the amount of indirect costs that a grantee can charge to this grant to no more than five percent. We will provide guidance and webinars on this topic for potential applicants, following the publication of this notice. For more information, see the *Funding Restrictions* section of this notice.

Priorities: This notice contains one absolute priority and two competitive preference priorities. Consistent with 34 CFR 75.105(b)(2)(v), the absolute priority is from section 6205(a)(2) of the ESEA. In accordance with 34 CFR 75.105(b)(2)(ii), the two competitive preference priorities are from the Supplemental Priorities.

Absolute Priority: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

An applicant may address one or more parts of the absolute priority. An applicant must clearly identify in its application which part or parts of the absolute priority its project will address.

This priority is:

Eligible applicants must propose a project that is designed to address one or more of the following:

(a) Beginning reading and literacy among students in kindergarten through third grade.

(b) The needs of at-risk children and youth.

(c) Needs in fields or disciplines in which Native Hawaiians are underemployed.

(d) The use of the Hawaiian language in instruction.

Competitive Preference Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five points to an application, depending on how well the application meets Competitive Preference Priority 1, and up to an additional five points to an application, depending on how well the application meets Competitive Preference Priority 2.

We will award a maximum of 10 points to an application that addresses both of the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Promoting Science, Technology, Engineering, or Math (STEM) Education, with a Particular Focus on Computer Science (up to five points).

Projects designed to improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science (as defined in this notice). These projects must address the following priority area: Increasing access to STEM coursework, including computer science (as defined in this notice), and hands-on learning opportunities, such as through expanded course offerings, dual-enrollment, high-quality online coursework, or other innovative delivery mechanisms.

Competitive Preference Priority 2—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills (up to five points).

Projects that are designed to address providing work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sectors or occupations (as defined in section 3(23) of WIOA).

Definitions: The definitions below are from 34 CFR 77.1(c); sections 4310(2), 6207, and 8101 of the ESEA; the Supplemental Priorities; and section 3(23) of WIOA. These definitions apply to the FY 2020 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Charter school means a public school that—

(a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act;

(h) Is a school to which parents choose to send their children, and that (1) admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or (2) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(m) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Computer science means the study of computers and algorithmic processes and includes the study of computing principle and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications. Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information. In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world. Computer science does not include using the computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects. (Supplemental Priorities)

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes. (34 CFR 77.1(c))

Dual or concurrent enrollment program means a program offered by a partnership between at least one institution of higher education and at least one local educational agency through which a secondary school student who has not graduated from high school with a regular high school diploma is able to enroll in one or more postsecondary courses and earn postsecondary credit that—(a) is transferable to the institutions of higher

education in the partnership; and (b) applies toward completion of a degree or recognized educational credential as described in the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*). (Section 8101(15) of the ESEA)

In-Demand industry sector or occupation means an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of such industry sectors; or an occupation that currently has, or is projected to have, a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate. The determination of whether an industry sector or occupation is in-demand under this definition shall be made by the State board or local board, as appropriate, using State or regional business and labor market projections, including the use of labor market information. (Section 3(23) of WIOA)

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1(c))

Native Hawaiian means any individual who is—

(a) A citizen of the United States; and

(b) A descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—

(1) Genealogical records;

(2) Kupuna (elders) or Kamaaina (long-term community residents) verification; or

(3) Certified birth records. (Section 6207(2) of the ESEA)

Native Hawaiian community-based organization means any organization that is composed primarily of Native Hawaiians from a specific community and that assists in the social, cultural, and educational development of Native Hawaiians in that community. (Section 6207(3) of the ESEA)

Native Hawaiian educational organization means a private nonprofit organization that—

(a) Serves the interests of Native Hawaiians;

(b) Has Native Hawaiians in substantive and policymaking positions within the organization;

(c) Incorporates Native Hawaiian perspective, values, language, culture, and traditions into the core function of the organization;

(d) Has demonstrated expertise in the education of Native Hawaiian youth; and

(e) Has demonstrated expertise in research and program development. (Section 6207(4) of the ESEA)

Native Hawaiian language means the single Native American language indigenous to the original inhabitants of the State of Hawaii. (Section 6207(5) of the ESEA)

Native Hawaiian organization means a private nonprofit organization that—

(a) Serves the interests of Native Hawaiians;

(b) Has Native Hawaiians in substantive and policymaking positions within the organization; and

(c) Is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portions of programs) for the benefit of Native Hawaiians. (Section 6207(6) of the ESEA)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1(c))

Regular high school diploma (a) means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in ESEA section 1111(b)(1)(E); and (b) does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. (Section 8101(43) of the ESEA)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1(c))

Application Requirement: The following application requirement is from section 6206(b) of the ESEA and applies to the FY 2020 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition:

Each applicant for a grant under this program must submit the application for comment to the local educational agency serving students who will participate in the program to be carried out under the grant, and include those comments, if any, with the application to the Secretary.

Program Authority: Section 6205 of the ESEA (20 U.S.C. 7515).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2020 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program. Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $250,000–$950,000 for each 12-month budget period.

Estimated Average Size of Awards: $780,000 for each 12-month period.

Estimated Number of Awards: 33.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible to apply under this competition:

(a) Native Hawaiian educational organizations.

(b) Native Hawaiian community-based organizations.

(c) Public and private nonprofit organizations, agencies, and institutions

with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language.

(d) Charter schools.

(e) Consortia of the organizations, agencies, and institutions described in paragraphs (a) through (c).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Performance Reports:* If you receive an award under this program, you are required to provide copies of the performance reports (see section VI of this document below) to the Native Hawaiian Education Council (authorized under section 6204 of the ESEA (20 U.S.C. 7514)).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the NHE program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* No more than five percent of funds awarded for a grant under this program may be used for administrative costs (ESEA section 6205(b)). This five-percent limit must include both direct and indirect administrative costs.

Note: Pursuant to ESEA section 6205(b), in this and future competitions under this program the five-percent limit must include both direct and indirect administrative costs. The term ''administrative purposes'' has its common sense meaning, which is that it includes not only those administrative costs that are charged directly, but also those administrative costs that are shared entity-wide (*e.g.,* overhead and accounting costs) and included in an indirect cost rate. Additionally, Congress has explicitly specified in legislation authorizing other grant programs when it wishes for an administrative cost cap to refer to only direct administrative costs. It did not do so here. Thus, the administrative cost cap in this program will limit the amount of indirect costs that a grantee can charge to this grant to no more than five percent.

Please see the application package for more information about the administrative cost limit. We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 120 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

The selection criteria are as follows:

(a) *Need for project* (up to 20 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 10 points).

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (up to 10 points).

(b) *Quality of the project design* (up to 20 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (up to 10 points).

(ii) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (up to 10 points).

(c) *Quality of project services* (up to 30 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 10 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project

reflect up-to-date knowledge from research and effective practice (up to 10 points).

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services (up to 10 points).

(d) *Quality of project personnel* (up to 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel (up to 5 points).

(e) *Quality of the management plan* (up to 30 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 15 points).

(ii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project (up to 15 points).

(f) *Quality of the project evaluation* (up to 10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

Note: The selection criterion for project evaluation relates to performance measure (1) under the *Performance* Measures section of this notice.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure

information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* We have established four performance measures for this program: (1) The number of grantees that attain or exceed the targets for the outcome indicators for their projects that have been approved by the Secretary; (2) the percentage of Native Hawaiian children participating in early education programs who consistently demonstrate school readiness in literacy as measured by the Hawaii School Readiness Assessment (HSRA); (3) the percentage of students in schools served by the program who graduate from high school with a regular high school diploma (as defined in this notice) in four years; and (4) the percentage of students participating in a Native Hawaiian language (as defined in this notice) program that is conducted under the NHE program who meet or exceed proficiency standards in reading on a test of the Native Hawaiian language.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 10, 2019.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–26944 Filed 12–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2019–004; EERE–2019–BT–WAV–0009]

Notice of Petition for Waiver of GD Midea Air Conditioning Equipment Co. LTD. from the Department of Energy Room Air Conditioner Test Procedure and Notice of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and grant of an interim waiver, and request for comments.

SUMMARY: This document announces receipt of and publishes a petition for waiver from GD Midea Air Conditioning Equipment Co. LTD. (''Midea''), which seeks an exemption from the U.S. Department of Energy (''DOE'') test procedure when determining the efficiency of listed room air conditioner basic models. Midea seeks to use an alternate test procedure to address issues involved in testing the basic models listed in its petition. According to Midea, the current DOE test procedure for room air conditioners, which provides for testing at full-load performance only, does not take into account the benefits of room air conditioners that use variable-speed compressors (''variable-speed room air conditioners''), with their part-load performance characteristics, and misrepresents their actual energy consumption. Midea requests that DOE permit Midea to test the basic models listed in its petition using the alternate test procedure in the interim waiver granted to LG Electronics USA, Inc. (''LG'') on June 29, 2018, which requires testing units at four rating conditions instead of a single rating condition and calculating each test unit's weighted-average combined energy efficiency ratio (''CEER''), which is compared to the expected performance of a theoretical comparable single-speed room air conditioner across the same four rating conditions. The measured performance of the variable-speed room air conditioner when tested under the high-temperature rating condition of the DOE test procedure for room air conditioners would be scaled by the same relative performance improvement to determine the test unit's final rated CEER value. DOE grants Midea an interim waiver from DOE's room air conditioner test procedure for the basic models listed in the Interim Waiver Order, subject to use of the alternate test procedure as set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning Midea's petition and its suggested alternate test procedure to inform its final decision on Midea's waiver request.

DATES: Written comments and information will be accepted on or before January 13, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2019–004'', and Docket number ''EERE–2019–BT–WAV–0009,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: MideaAmerica2019WAV0009@ee.doe.gov* Include the case number [Case No. 2019–004] in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2019–004, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

• *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. If possible, please submit all items on a ''CD'', in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0009.* The docket web page contains simple instruction on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. E-mail: *AS_Waiver_Request@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–1777. E-mail: *Sarah.Butler@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Energy Policy and Conservation Act (''EPCA'' or ''the Act''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), authorizes DOE to regulate the energy efficiency of certain consumer products and industrial equipment. Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes room air conditioners, which are the focus of this document. (42 U.S.C. 6292(a)(2))

DOE regulations set forth at 10 CFR 430.27 contain provisions that allow any interested person to seek a waiver from test procedure requirements for a particular basic model when the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that either (1) prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedure to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that DOE will grant the underlying petition for waiver and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

II. Midea's Petition for Waiver and Petition for Interim Waiver

On March 25, 2019, Midea filed a petition for waiver and a petition for interim waiver from the test procedure applicable to room air conditioners set forth in appendix F.[3] According to Midea, the current DOE test procedure for room air conditioners, which provides for testing at full-load performance only (*i.e.,* at a single indoor and high-temperature outdoor operating condition), does not take into account the benefits of variable-speed room air conditioners, with their part-load performance characteristics, and misrepresents their actual energy consumption.[4] Appendix F requires testing room air conditioners only with full-load performance, in part, as a result of DOE having previously concluded that widespread use of part-load technology in room air conditioners was not likely to be stimulated by the development of a part-load metric. 76 FR 972, 1016 (January 6, 2011).

Midea states that, to operate in the most efficient possible manner, variable-speed room air conditioners adjust the compressor rotation speed based upon demand to maintain the desired temperature in the home without turning the compressor and blower motor(s) on and off. Midea claims that, compared to room air conditioners without variable-speed compressors, this ability to adjust to conditions results in both significant energy savings and faster cooling. Midea asserts that because the DOE test procedure does not account for part-load characteristics, the results of the test procedure are not representative of the benefits of variable-speed room air conditioners.

Midea asserts that the suggested approach is consistent with an interim waiver issued to LG Electronics USA, Inc. (''LG'') on June 29, 2018. 83 FR 30717.

Midea also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(e)(2).

DOE understands that, absent an interim waiver, the test procedure does not accurately measure the energy

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] Midea's petition for a waiver and petition for an interim waiver is provided in the docket located at: *https://www.regulations.gov/document?D=EERE-2019-BT-WAV-0009-0001.*

[4] The specific basic models for which the petition applies are room air conditioner basic models Midea MAW08V1DWT, Midea MAW08V1QWT, Midea MAW10V1DWT, Midea MAW10V1QWT, Midea MAW12V1DWT, and Midea MAW12V1QWT. These basic model names were provided by Midea in its March 25, 2019 petition.

consumption of variable-speed room air conditioners, and without waiver relief, the part-load characteristics of the basic models identified in Midea's petition would not be captured.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy efficiency or energy consumption and corresponding costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, and after consideration of public comments on the petition, DOE in a subsequent Decision and Order will consider setting an alternate test procedure for the basic models listed by Midea.

Midea requests testing the basic models listed in its petition according to the test procedure for variable-speed room air conditioners prescribed by DOE in an interim waiver granted to LG. That waiver required testing variable-speed room air conditioners according to the test procedure in appendix F, except instead of a single rating condition, testing of a variable-speed room air conditioner occurred at four rating conditions. 83 FR 30717 (''LG Interim Waiver''). DOE later issued a Decision and Order to LG that supersedes the interim waiver. The four test conditions Midea suggested, identical to those in the LG Decision and Order, are presented in Table III.1.

TABLE III.1—INDOOR AND OUTDOOR INLET AIR TEST CONDITIONS—VARIABLE-SPEED ROOM AIR CONDITIONERS

Test condition	Evaporator inlet (indoor) air, °F		Condenser inlet (outdoor) air, °F		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
Test Condition 1	80	67	95	75	Full.
Test Condition 2	80	67	92	72.5	Full.
Test Condition 3	80	67	87	69	Intermediate.
Test Condition 4	80	67	82	65	Low.

Under the suggested test procedure, the test unit's weighted-average combined energy efficiency ratio (CEER) metric is calculated from the individual CEER values obtained at the four rating conditions. DOE based the room air conditioner weighting factors for each rating temperature on the fractional temperature bin hours provided in Table 19 of DOE's test procedure for central air conditioners (10 CFR part 430, subpart B, appendix M (''appendix M'')). This weighted-average value is adjusted to normalize it against the expected weighted-average CEER under the same four rating conditions of a theoretical comparable single-speed room air conditioner. This theoretical air conditioner is one that at the 95 degree Fahrenheit (°F) test condition performs the same as the variable-speed test unit, but with differing performance at the other rating conditions. The differing performance is due to optimization of the refrigeration system efficiency through compressor speed adjustments to eliminate cycling losses and better match the cooling load. To determine the test unit's final rated CEER value, Midea would multiply a performance adjustment factor and the measured performance of the variable-speed room air conditioner when tested at the 95 °F rating condition according to appendix F. The factor reflects the average performance improvement due to the variable-speed compressor across multiple rating conditions. Midea states that this approach takes into account performance and efficiency improvements associated with variable-speed room air conditioners as compared to room air conditions with single-speed compressors and isolates the effects just attributable to the variable speed operation.

IV. Grant of an Interim Waiver

DOE has reviewed Midea's petition for an interim waiver and the alternate test procedure requested by Midea. These materials that DOE reviewed support Midea's assertion of the part-load characteristics of the listed basic models and that the DOE test procedure may evaluate the basic models in a manner unrepresentative of their true energy consumption characteristics. In particular, the DOE test procedure does not capture the relative efficiency improvements that can be achieved by variable-speed room air conditioners over a range of operating conditions compared to single-speed room air conditioners. In the absence of an alternate test procedure, the CEER values of variable-speed room air conditioners would suggest they consume at least as much energy annually as a comparable single-speed room air conditioner, despite the anticipated benefits of improved performance under part-load conditions. Furthermore, DOE has reviewed the alternate procedure suggested by Midea, along with the additional performance modeling and analysis performed by DOE conducted in evaluation of the LG Interim Waiver.[5] Based on this review it appears that the suggested alternate test procedure, with the changes described below, will allow for a more accurate measurement of efficiency of the listed basic models of variable-speed room air conditioners, while alleviating the testing problems associated with Midea's testing those basic models.

DOE incorporated the following changes into the suggested alternate test procedure, based on further review undertaken for the alternate test procedure in the waiver DOE granted to LG in a Decision and Order published in the **Federal Register** on May 8, 2019. 82 FR 20111 (''LG Decision and Order''). First, DOE is providing compressor speed definitions to harmonize the alternate test procedure with industry standards. Second, because fixed compressor speeds are critical to the repeatability of the alternate test procedure, Midea provided DOE all necessary instructions to maintain the compressor speeds required for each test condition (Docket No. EERE–2019–BT–WAV–0009–0003). This includes the compressor frequency set points at each test condition, instructions necessary to maintain the compressor speeds required for each test condition, and the control settings used for the variable

[5] The modeling and analysis conducted in evaluation of the LG Interim Waiver is available at: *https://www.regulations.gov/docket?D=EERE-2018-BT-WAV-0006.*

components.[6] Third, DOE modified the annual energy consumption and corresponding cost calculations by specifying the correct method to incorporate electrical power input data in 10 CFR 430.23(f), to ensure EnergyGuide labels present consistent and appropriate information to consumers. Fourth, DOE adjusted the CEER calculations in appendix F for clarity. Fifth, as discussed in the LG Decision and Order, DOE is not providing the option provided in the LG Interim Waiver to test the specified variable-speed room air conditioners using the air-enthalpy method. There are two reasons for this. One is that, compared to the calorimeter method, the air-enthalpy method's measured results differ. The other is that there is heat transfer within and through the unit chassis that the calorimeter method captures but the air-enthalpy method does not. 84 FR 20111, 20117. Sixth, to ensure that the low and intermediate compressor speeds result in representative cooling capacity under reduced loads, the low compressor speed definition requires that the test unit's measured cooling capacity at the 82 °F rating condition be no less than 47 percent and no greater than 57 percent of the measured cooling capacity when operating at the full compressor speed at the 95 °F rating condition.[7]

DOE has found that the suggested alternate test procedure, with the discussed modifications, will produce more accurate final CEER values for the variable-speed room air conditioners under the DOE test procedure's existing rating condition. The more accurate results reflect the average performance improvement associated with variable-speed compressors relative to comparable single-speed room air conditioners at differing operating conditions (*i.e.,* optimization of the refrigeration system efficiency through compressor speed adjustments to better match the cooling load and eliminate cycling losses). Consequently, it appears likely that DOE will grant Midea's petition for waiver. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Midea immediate relief pending a determination of the petition for waiver.

For the reasons stated, DOE has granted an interim waiver to GD Midea Air Conditioning Equipment Co. LTD (''Midea'') for the room air conditioner basic models listed in paragraph (1)(A) below. Therefore, DOE has issued an *order* stating:

(1) Midea must test and rate the following room air conditioner basic models with the alternate test procedure set forth in paragraph (2):

Brand	Basic model
Midea	MAW08V1DWT
Midea	MAW08V1QWT
Midea	MAW10V1DWT
Midea	MAW10V1QWT
Midea	MAW12V1DWT
Midea	MAW12V1QWT

(2) The alternate test procedure for the Midea basic models listed in paragraph (1) is the test procedure for room air conditioners prescribed by DOE at appendix F to subpart B of 10 CFR part 430 (Appendix F) and 10 CFR 430.23(f), except (i) determine the combined energy efficiency ratio (''CEER'') as detailed below, and (ii) calculate the average annual energy consumption referenced in 10 CFR 430.23(f)(3) as detailed below. In addition, for each basic model listed in paragraph (1), maintain compressor speeds at each test condition and set control settings for the variable components, according to the instructions GD Midea Air Conditioning Equipment Co. LTD submitted to DOE (*https://www.regulations.gov/document?D=EERE-2019-BT-WAV-0009-0003*). All other requirements of Appendix F and DOE's regulations remain applicable.

In 10 CFR 430.23, in paragraph (f) revise paragraph (3)(i) to read as follows:

The electrical power input in kilowatts as calculated in section 5.2.1 of appendix F to this subpart, and

In 10 CFR 430.23, in paragraph (f) revise paragraph (5) to read as follows:

(5) Calculate the combined energy efficiency ratio for room air conditioners, expressed in Btu's per watt-hour, as follows:

(i) Calculate the quotient of:

(A) The cooling capacity as determined at the 95 °F outdoor test condition, $Capacity_1$, in Btus per hour, as determined in accordance with section 5.1 of appendix F to this subpart multiplied by the representative average-use cycle of 750 hours of compressor operation per year, divided by

(B) The combined annual energy consumption, in watt hours, which is the sum of the annual energy consumption for cooling mode, calculated in section 5.4.2 of appendix F to this subpart for test condition 1 in Table 1 of appendix F to this subpart, and the standby mode and off mode energy consumption, as determined in accordance with section 5.3 of appendix F to this subpart. Multiply the sum of the annual energy consumption in cooling mode and standby mode and off mode energy consumption by a conversion factor of 1,000 to convert kilowatt-hours to watt-hours.

(ii) Multiply the quotient calculated in paragraph (f)(5)(i) of this section by (1 + Fp), where Fp is the variable-speed room air conditioner unit's performance adjustment factor as determined in section 5.4.8 of appendix F to this subpart.

(iii) Round the resulting value from paragraph (f)(5)(ii) of this section to the nearest 0.1 Btu per watt-hour.

[6] Pursuant to 10 CFR 1004.11, if the manufacturer submits information that it believes to be confidential and exempt by law from public disclosure, the manufacturer should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

[7] Two aspects of the cooling load range are important: (1) The cooling load at 82 °F should be no more than 57 percent of the full-load cooling capacity according to the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 210/240–2017, ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,'' and (2) a 10-percent tolerance on the measured cooling capacity is necessary because some variable-speed room ACs adjust speed in discrete steps, so it may not be possible to achieve the 57-percent condition exactly. To provide for the 10-percent tolerance, DOE requires the 57-percent cooling load condition as the upper end of the range and allows down to a 47-percent cooling load. This ensures the cooling load never exceeds 57 percent. The compressor speed nomenclature and definition clarifications are derived from AHRI 210/240–2017 and adapted to be applicable to room ACs. Equation 11.60 in AHRI 210/240–2017 relates the building load to an AC's full-load cooling capacity and outdoor temperature, and assumes full-load operation at 98 °F outdoor temperature. To provide consistency with the full-load test condition for room ACs, DOE adjusted (*i.e.,* normalized) this equation to reflect full-load operation at 95 °F outdoor temperature. Using the adjusted equation suggests that the representative cooling load at the 82 °F rating condition would be 57 percent of the full-load cooling capacity for room air conditioners. DOE recognizes that variable-speed room ACs may use compressors that vary their speed in discrete steps and may not be able to operate at a speed that provides exactly 57 percent cooling capacity. Therefore, the defined cooling capacity associated with the low compressor speed is presented as a 10-percent range rather than a single value. 57 percent cooling load is the upper bound of the 10-percent range defining the cooling capacity associated with the lower compressor speed (*i.e.,* the range is defined as 47 to 57 percent). This ensures that the variable-speed room AC is capable of matching the representative cooling load (57 percent of the maximum) at the 82 °F rating condition, while providing the performance benefits associated with variable-speed operation. In contrast, if the 10-percent range were to be defined as, for example, 52 to 62 percent (with 57 percent as the midpoint), a variable-speed room AC could be tested at 60 percent, for example, without demonstrating the capability to maintain variable-speed performance down to 57 percent.

In appendix F:

Add in Section 1, *Definitions:*

1.8 ''Single-speed'' means a type of room air conditioner that cannot automatically adjust the compressor speed based on detected conditions.

1.9 ''Variable-speed'' means a type of room air conditioner that can automatically adjust the compressor speed based on detected conditions.

1.10 ''Full compressor speed (full)'' means the compressor speed specified by Midea (Docket No. EERE–2019–BT–WAV–0009–0003) at which the unit operates at full load testing conditions.

1.11 ''Intermediate compressor speed (intermediate)'' means the compressor speed higher than the low compressor speed by one third of the difference between low compressor speed and full compressor speed with a tolerance of plus 5 percent (designs with non-discrete compressor speed stages) or the next highest inverter frequency step (designs with discrete compressor speed steps).

1.12 ''Low compressor speed (low)'' means the compressor speed specified by Midea (Docket No. EERE–2019–BT–WAV–0009–0003) at which the unit operates at low load test conditions, such that $Capacity_4$, the measured cooling capacity at test condition 4 in Table 1 of this appendix, is no less than 47 percent and no greater than 57 percent of $Capacity_1$, the measured cooling capacity with the full compressor speed at test condition 1 in Table 1 of this appendix.

1.13 ''Theoretical comparable single-speed room air conditioner'' means a theoretical single-speed room air conditioner with the same cooling capacity and electrical power input as the variable-speed room air conditioner unit under test, with no cycling losses considered, at test condition 1 in Table 1 of this appendix.

Add to the end of Section 2.1 *Cooling:*

For the purposes of this waiver, test each unit following the cooling mode test a total of four times: One test at each of the test conditions listed in Table 1 of this appendix, consistent with section 3.1 of this appendix.

Revise Section 3.1, *Cooling mode,* to read as follows:

Cooling mode. Establish the test conditions described in sections 4 and 5 of ANSI/AHAM RAC–1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3), with the following exceptions: Conduct the set of four cooling mode tests with the test conditions in Table 1 of this appendix. Set the compressor speed required for each test condition in accordance with instructions Midea provided to DOE (Docket No. EERE–2019–BT–WAV–0009–0003).

TABLE 1—INDOOR AND OUTDOOR INLET AIR TEST CONDITIONS—VARIABLE-SPEED ROOM AIR CONDITIONERS

Test condition	Evaporator inlet (indoor) air, °F		Condenser inlet (outdoor) air, °F		Compressor speed
	Dry Bulb	Wet Bulb	Dry Bulb	Wet Bulb	
Test Condition 1	80	67	95	75	Full.
Test Condition 2	80	67	92	72.5	Full.
Test Condition 3	80	67	87	69	Intermediate.
Test Condition 4	80	67	82	65	Low.

Replace Section 5.1 to read as follows:

Calculate the condition-specific cooling capacity (expressed in Btu/h), $Capacity_{tc}$, for each of the four cooling mode rating test conditions (tc), as required in section 6.1 of ANSI/AHAM RAC–1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3). Notwithstanding the requirements of 10 CFR 430.23(f), when reporting cooling capacity pursuant to 10 CFR 429.15(b)(2) and calculating energy consumption and costs pursuant to 10 CFR 430.23(f), use the cooling capacity determined for test condition 1 in Table 1 of this appendix.

Replace Section 5.2 to read as follows:

Determine the condition-specific electrical power input (expressed in watts), P_{tc}, for each of the four cooling mode rating test conditions, as required by section 6.5 of ANSI/AHAM RAC–1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3). Notwithstanding the requirements of 10 CFR 430.23(f), when reporting electrical power input pursuant to 10 CFR 429.15(b)(2) and calculating energy consumption and costs pursuant to 10 CFR 430.23(f)(5), use the electrical power input value measured for test condition 1 in Table 1 of this appendix. Notwithstanding the requirements of 10 CFR 430.23(f), when calculating energy consumption and costs pursuant to 10 CFR 430.23(f)(3), use the weighted electrical power input, P_{wt}, calculated in section 5.2.1 of this appendix, as the electrical power input.

Insert a new Section 5.2.1:

5.2.1 *Weighted electrical power input.* Calculate the weighted electrical power input in cooling mode, P_{wt}, expressed in watts, as follows:

$$P_{wt} = \Sigma_{tc} P_{tc} \times W_{tc}$$

Where:

P_{wt} = weighted electrical power input, in watts, in cooling mode.

P_{tc} = electrical power input, in watts, in cooling mode for each test condition in Table 1 of this appendix.

W_{tc} = weighting factors for each cooling mode test condition: 0.05 for test condition 1, 0.16 for test condition 2, 0.31 for test condition 3, and 0.48 for test condition 4.

tc represents the cooling mode test condition: ''1'' for test condition 1 (95 °F condenser inlet dry-bulb temperature), ''2'' for test condition 2 (92 °F), ''3'' for test condition 3 (87 °F), and ''4'' for test condition 4 (82 °F).

Add a new Section 5.4, following Section 5.3 *Standby mode and off mode annual energy consumption:*

5.4 *Variable-speed room air conditioner unit's performance adjustment factor.* Calculate the performance adjustment factor (Fp) as follows:

5.4.1 *Theoretical comparable single-speed room air conditioner.* Calculate the cooling capacity, expressed in British thermal units per hour (Btu/h), and electrical power input, expressed in watts, for a theoretical comparable single-speed room air conditioner at all cooling mode test conditions.

$$Capacity_{ss_tc} = Capacity_1 \times (1 + (M_c \times (95 - T_{tc})))$$

$$P_{ss_tc} = P_1 \times (1 - (M_p \times (95 - T_{tc})))$$

Where:

$Capacity_{ss_tc}$ = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, calculated for each of the cooling mode test conditions in Table 1 of this appendix.

$Capacity_1$ = variable-speed room air conditioner unit's cooling capacity, in Btu/h, determined in section 5.1 of this appendix for test condition 1 in Table 1 of this appendix.

P_{ss_tc} = theoretical comparable single-speed room air conditioner electrical power input, in watts, calculated for each of the

cooling mode test conditions in Table 1 of this appendix.

P_1 = variable-speed room air conditioner unit's electrical power input, in watts, determined in section 5.2 of this appendix for test condition 1 in Table 1 of this appendix.

M_c = adjustment factor to determine the increased capacity at lower outdoor test conditions, 0.0099.

M_p = adjustment factor to determine the reduced electrical power input at lower outdoor test conditions, 0.0076.

T_{tc} = condenser inlet dry-bulb temperature for each of the test conditions in Table 1 of this appendix (in °F).

95 is the condenser inlet dry-bulb temperature for test condition 1 in Table 1 of this appendix, 95 °F.

tc as explained in section 5.2.1 of this appendix.

5.4.2 *Variable-speed room air conditioner unit's annual energy consumption for cooling mode at each cooling mode test condition.* Calculate the annual energy consumption for cooling mode under each test condition, AEC_{tc}, expressed in kilowatt-hours per year (kWh/year), as follows:

$$AEC_{tc} = 0.75 \times P_{tc}$$

Where:

AEC_{tc} = variable-speed room air conditioner unit's annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix.

P_{tc} as defined in section 5.2.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 is 750 annual operating hours in cooling mode multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.

5.4.3 *Theoretical comparable single-speed room air conditioner annual energy consumption for cooling mode at each cooling mode test condition.* Calculate the annual energy consumption for a theoretical comparable single-speed room air conditioner for cooling mode under each test condition, AEC_{ss_tc}, expressed in kWh/year.

$$AEC_{ss_tc} = 0.75 \times P_{ss_tc}$$

Where:

AEC_{ss_tc} = theoretical comparable single-speed room air conditioner annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix.

P_{ss_tc} = theoretical comparable single-speed room air conditioner electrical power input, in watts, in cooling mode for each test condition in Table 1 of this appendix, determined in section 5.4.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.4 *Variable-speed room air conditioner unit's combined energy efficiency ratio at each cooling mode test condition.* Calculate the variable-speed room air conditioner unit's combined energy efficiency ratio, $CEER_{tc}$, for each test condition, expressed in Btu/Wh.

$$CEER_{tc} = \frac{Capacity_{tc}}{\left(\frac{AEC_{tc} + E_{TSO}}{0.75}\right)}$$

Where:

$CEER_{tc}$ = variable-speed room air conditioner unit's combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$Capacity_{tc}$ = variable-speed room air conditioner unit's cooling capacity, in Btu/h, for each test condition in Table 1 of this appendix, determined in section 5.1 of this appendix.

AEC_{tc} = variable-speed room air conditioner unit's annual energy consumption, in kWh/yr, in cooling mode for each test condition in Table 1 of this appendix, determined in section 5.4.2 of this appendix.

E_{TSO} = standby mode and off mode annual energy consumption for room air conditioners, in kWh/year, determined in section 5.3 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.5 *Theoretical comparable single-speed room air conditioner combined energy efficiency ratio at each cooling mode test condition.* Calculate the combined energy efficiency ratio for a theoretical comparable single-speed room air conditioner, $CEER_{ss_tc}$, for each test condition, expressed in Btu/Wh.

$$CEER_{ss_tc} = \frac{Capacity_{ss_tc}}{\left(\frac{AEC_{ss_tc} + E_{TSO}}{0.75}\right)}$$

Where:

$CEER_{ss_tc}$ = theoretical comparable single-speed room air conditioner combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$Capacity_{ss_tc}$ = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, for each test condition in Table 1 of this appendix, in Btu/h, determined in section 5.4.1 of this appendix.

AEC_{ss_tc} = theoretical comparable single-speed room air conditioner annual energy consumption for each test condition in Table 1 of this appendix, in kWh/year, determined in section 5.4.3 of this appendix.

E_{TSO} = standby mode and off mode annual energy consumption for room air conditioners, in kWh/year, determined in section 5.3 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.6 *Theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio for each cooling mode test condition.* Calculate the adjusted combined energy efficiency ratio for a theoretical comparable single-speed room air conditioner, $CEER_{ss_tc_adj}$, with cycling losses considered, expressed in Btu/Wh.

$$CEER_{ss_tc_adj} = CEER_{ss_tc} \times CLF_{tc}$$

Where:

$CEER_{ss_tc_adj}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$CEER_{ss_tc}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix, determined in section 5.4.5 of this appendix.

CLF_{tc} = cycling loss factor for each cooling mode test condition: 1 for test condition 1, 0.971 for test condition 2, 0.923 for test condition 3, and 0.875 for test condition 4.

tc as explained in section 5.2.1 of this appendix.

5.4.7 *Weighted combined energy efficiency ratio.* Calculate the weighted combined energy efficiency ratio for the variable-speed room air conditioner unit, $CEER_{wt}$, and theoretical comparable single-speed room air conditioner, $CEER_{ss_wt}$, expressed in Btu/Wh.

$$CEER_{wt} = \sum_{tc} CEER_{tc} \times W_{tc}$$

$$CEER_{ss_wt} = \sum_{tc} CEER_{ss_tc_adj} \times W_{tc}$$

Where:

$CEER_{wt}$ = variable-speed room air conditioner unit's weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{ss_wt}$ = theoretical comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{tc}$ = variable-speed room air conditioner unit's combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1 of this appendix, determined in section 5.4.4 of this appendix.

$CEER_{ss_tc_adj}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1 of this appendix, determined in section 5.4.6 of this appendix.

W_{tc} as defined in section 5.2.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

5.4.8 *Variable-speed room air conditioner unit's performance adjustment factor.* Calculate the variable-speed room air conditioner unit's performance adjustment factor, F_p.

$$F_p = \frac{(CEER_{wt} - CEER_{ss_wt})}{CEER_{ss_wt}}$$

Where:

F_p = variable-speed room air conditioner unit's performance adjustment factor.

$CEER_{wt}$ = variable-speed room air conditioner unit's weighted combined energy efficiency ratio, in Btu/Wh, determined in section 5.4.7 of this appendix.

$CEER_{ss_wt}$ = theoretical comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh, determined in section 5.4.7 of this appendix.

(3) *Representations.* Midea may not make representations about the efficiency of any basic model listed in paragraph (1) for any purpose, including, for example, compliance and marketing, unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.15(a).

(4) This interim waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) DOE issues this interim waiver to Midea on the condition that the statements, representations, and information provided by Midea are valid. Any modifications to the controls or configurations of a basic model subject to this waiver will render the waiver invalid with respect to that basic model, and Midea will either be required to use the current Federal test procedure or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, Midea may request that DOE rescind or modify the interim waiver if Midea discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Midea remains obligated to fulfill the certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically listed in the petition, not future models that may be manufactured by the petitioner. Midea may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of room air conditioners. Alternatively, if appropriate, Midea may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) listed in the original petition consistent with 10 CFR 430.27(g).

V. Request for Comments

DOE is publishing Midea's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv).[8] The petition includes a suggested alternate test procedure, as specified in the petition and summarized in section III of this document, to determine the efficiency of Midea's listed room air conditioners. DOE may consider including the alternate procedure specified in the Interim Waiver Order, specified in section IV of this document, in a subsequent Decision and Order.

DOE invites all interested parties to submit in writing January 13, 2020, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Phil Hombroek, Midea America Research Center, 2700 Chestnut Station Court, Louisville, KY 40299.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or

[8] The petition did not identify any of the information contained therein as confidential business information.

financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signed in Washington, DC, on November 18, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Midea America Research Center
2700 Chestnut Station Court
Louisville, KY 40299

3/25/2019

Via Email:
AS__Waiver__Requests@ee.doe.gov

Assistant Secretary of Energy Efficiency and Renewable Energy
U.S. Department of Energy
Building Technologies Program, Test Procedure Waiver
1000 Independence Avenue, SW
Mailstop EE-5B,
Washington, DC 20585
Daniel Simmons

Re: Petition for Waiver & Application for Interim Waiver Regarding Test Procedure for Room Air Conditioners, Using 10 CFR part 430, subpart B, Appendix F.

On behalf of GD Midea Air Conditioning Equipment Co. LTD. (**Midea**), Midea America Research Center respectfully submits this Petition for Waiver (''**Waiver**''), and Application for Interim Waiver (''**Interim Waiver**'') regarding the Department of Energy (''DOE'') Test Procedures for room air conditioners (RACs), pursuant to 10 CFR 430.27 Appendix F.

Midea requests that DOE grant Midea a Waiver and Interim Waiver because the current test procedure does not accurately measure the energy consumption of RACs with variable-speed compressors (''VSC''). Midea requests expedited treatment of this Petition and Application. Midea submits that this request is fully consistent with the approach used in the ***previously granted Interim Waiver*** by LG Electronics Inc. (''LG'') [Case Number 2018–003; EERE–2018–BT–WAV–006] dated June 29, 2018. Midea notes that this request is consistent with DOE's authority to grant a Waiver. Midea further submits that it is within the DOE's authority to grant an Interim Waiver to avoid economic hardship and competitive disadvantage of Midea.

1. About Midea

Midea is the world's largest producer of major appliances, and the world's No.1 brand of air-treatment products, air-coolers, kettles, and rice cookers. Midea Group is a world leading technologies group in consumer appliances, HVAC systems, robotics and industrial automation systems, and smart supply chain (logistics). Midea offers diversified products, comprised of consumer appliances (kitchen appliances, refrigerators, laundry appliances, and various small home appliances), HVAC (residential air-conditioning, commercial air-conditioning, heating & ventilation), and robotics and industrial automation (Kuka Group and Yaskawa joint venture). Midea is committed to improving lives by adhering to the principle of ''Creating Value for Customers''. Midea focuses on continuous technological innovation to improve products and services to make life more comfortable and pleasant.

Midea's United States affiliate is ***Midea America Corp***, with headquarters at 5 Sylvan Way, Suite 100, Parsippany, NJ 07054 (tel. 973–539–5330) URL: *www.us.midea.com/.*

Its worldwide headquarters are located at ***Midea Group*** headquarter building, No. 6 Midea Avenue, Beijiao, Shunde, Foshan, Guangdong, 528311 P.R. China; (tel. 011–86–757–2633–888); URL: *www.midea.com/global*. ***Midea America Research Center***, at 2700 Chestnut Station Court, Louisville, KY 40299, (tel. 502–709–6067). Its Room Air Conditioner headquarters is located at ***GD Midea Air Conditioning Equipment Co. LTD***, No 6. Midea Avenue, Shunde Foshan, Guangdong 528311

2. Basic models subject to the Waiver request

This Petition for Waiver and Application for Interim Waiver is for all of the following basic models of residential room air conditioners manufactured by Midea. All models are in product class 3.

The following Midea Branded Basic Models are listed below:

In Product Class 3. Without reverse cycle, with louvered sides and 8,000 to 13,999 British Thermal Units (BTU)/hour (hr).

MAW08V1DWT (TENTATIVE 8,000 BTU/HR CAPACITY INVERTER)
MAW08V1QWT (TENTATIVE 8,000 BTU/HR CAPACITY INVERTER)
MAW10V1DWT (TENTATIVE 10,000 BTU/HR CAPACITY INVERTER)
MAW10V1QWT (TENTATIVE 10,000 BTU/HR CAPACITY INVERTER)
MAW12V1DWT (TENTATIVE 12,000 BTU/HR CAPACITY INVERTER)
MAW12V1QWT (TENTATIVE 12,000 BTU/HR CAPACITY INVERTER)

3. Requested Waiver

Midea requests the approval to test the energy consumption of the above residential room air conditioners using the same methodology and test procedure detailed in the granted interim waiver by LG Electronics [Case Number 2018–003; EERE–2018–BT–WAV–006] dated June 29, 2018.

Strong demand for advanced energy efficient room air conditioners have led, Midea to design room air conditioners with dramatic energy savings, and the ability to maintain the desired temperature in the home without cycling the compressor motor and fans on and off. In this case, the compressor responds automatically to surrounding conditions by adjusting the compressor rotational speed from low to high based upon demand. This results in faster cooling and much more efficient operation through optimizing the speed of the compressor to make minimal adjustments as the room temperature rises and falls.

As LG mentions in their initial waiver, the current DOE test procedure requires that room air conditioners be tested only at full-load performance. As such, the test procedure does not take into account the benefits of a VSC accounting for partial load conditions.

Midea requests that the alternate test procedure detailed in section III of the granted interim waiver by LG Electronics [Case Number 2018–003; EERE–2018–BT–WAV–006] dated June 29, 2018 be used to determine the energy consumption of the specific models identified above. The four cooling mode tests highlighted in Table 1 are the best and most appropriate method to capture the actual energy usage of this product.

4. Regulatory framework

DOE's regulations found in 10 CFR 430.27, provide that the Assistant Secretary will grant a Petition to a manufacturer upon, ***"determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data."***

Midea believes that this Petition meets conditions stated above for when DOE will grant a Petition. The current DOE test procedure, 10 CFR 430 Appendix F, requires that RACs be tested at full load conditions and does not make any account for RACs offering variable-speed operation based upon different air test conditions. As a result, Midea's new VSC RACs cannot be tested to the most appropriate test procedure taking full advantage of the benefits of VSC technology. If Midea were to test its VSC RACs to the current test procedure the results of energy would be wholly unrepresentative of the true energy consumption characteristics of the new models.

5. Other manufacturers with similar design characteristics

To Midea's knowledge, the only other models with similar design characteristic are those listed in the appendix of LG Electronics granted Waiver [Case Number 2018–003; EERE–2018–BT–WAV–006] dated June 29, 2018.

6. Additional justification for Interim Waiver Application

a. Strong likelihood that the waiver will be granted

Midea has provided strong evidence that the waiver should be granted. A petition for waiver is appropriate because the VSC RACs should not be tested with the current test procedure that does not accurately test VSC by testing only in the full load condition. These compressors can vary the speed of the compressor based upon the surrounding air conditions and will optimize the energy usage based on these conditions. A RAC without a VSC cannot operate in this fashion. In these RACs the compressor is either on at full capacity or off. The test procedure granted in the waiver provided by LG Electronics on dated June 29, 2018 will appropriately account for energy being used at different test conditions.

Midea has also demonstrated that this approach is consistent with past waiver approaches that other manufacturers have taken to receive DOE waivers.

b. Economic hardship & competitive disadvantage.

In the absence of an Interim Waiver, Midea will lack certainty as to whether it can launch these VSC RACs. Midea predicts strong consumer demand for these VSC RACs, and the inability to market through denial of an Interim Waiver will cause economic hardship and competitive disadvantage to Midea.

There are exceptionally long lead times and significant expenses associated with the design and manufacturer of RACs. Compliance with federally mandated energy consumption standards is a critical design factor for all of Midea's RACs. Any delay in obtaining clarity on this issue will cause Midea to postpone key decisions regarding its investments to build, launch and market these RACs. In the event that this Waiver is not approved, Midea would not be able to move forward with the launch of these models, which would be a multi-million-dollar impact to the company and would require costly contingency plans and put us at a competitive disadvantage to competitors that market VSC RACs.

7. Certification of notice to other manufacturers

Midea is providing concurrent notice of this Petition for Waiver & Application for Interim Waiver to the other known manufacturers of Room Air Conditioners made or sold in the United States and to the Association of Home Appliance Manufacturers. The cover

letters, including names and addresses of other known manufacturers and the industry association, is included in Exhibit A.

8. Conclusion

Midea respectfully requests that the DOE grant the above Petition for Waiver and Interim Waiver. By granting this Waiver, DOE will ensure that consumers will have access to new, innovative and energy efficient variable-speed compressors RACs and Midea will avoid economic hardship and competitive disadvantage.

Thank you in advance for your consideration and prompt response.

Sincerely,

/s/

Phil Hombroek

Manager, Government Relations, Midea America Research Center

Exhibit A

Arctic Wind, 5401 Dansher Rd., Countryside, IL 60525.

Brothers Air Conditioning, ATTN: J. McFadden, 1320 E Main St., Rock Hill, SC 29730–5950.

CLASSIC, 7101 NW 43rd Street, Miami, Florida 33166.

Comfortaire Customer Service, P.O. Box 9219, Greenville, SC 29604.

Continental Electric c/o CEM Global, ATTN: Customer Service CE North America, LLC, 6950 NW 77th Court, Miami, FL 33166.

Cool-Living, P.O. Box 893838, Mililani, HI 96789.

Costa Mechanical and Air, 613 SW Pine Island Rd., Unit 17, Cape Coral, FL 33991.

Crosley, 952 Copperfield Blvd. NE, Concord, NC 28025.

Danby, ATTN: Greg Hall, 5070 Whitelaw Rd., Guelph, ON N1G 6Z9 CANADA.

DELLA, 19395 E Walnut Dr. N, City of Industry, CA 91748–1436.

Friedrich, ATTN: Stephen Pargeter, 10001 Reunion Pl., Ste., 500, San Antonio, TX 78216.

Electrolux Home Products, North America, P.O. Box 3900, Peoria, IL 61612.

Garrison Heating and Cooling Products, c/o Interline Brands, 801 West Bay Street, Jacksonville, FL 32204.

Global Industrial, 11 Harbor Park Dr., Port Washington, NY 11050.

GREE, ATTN: Huang Hui, West Jinji West Road, Qian Shan GNG, Zhuhai, Guangdong, 519070 CHINA.

Haier, ATTN: Earl F. Jones Appliance Park, Building 2 Room 131, Louisville, KY 40225.

Kenmore, ATTN: Martin Olson, 3333 Beverly Rd., DC–201–B, Hoffman Estates, IL 60179.

Kenmore Elite, ATTN: Martin Olson, 3333 Beverly Rd., DC–201–B, Hoffman Estates, IL 60179.

Koldfront, 500 N Capital of Texas Hwy., Building 5, Austin, TX 78746.

Master Craft, 19000 Cleaton Dr., Edmon, OK 73012.

NORPOLE, 940 N Central Ave., Wood Dale, IL 60191–2802.

Perfect Aire, 5401 Dansher Rd., Countryside, IL 60525.

RCA, 180 Marcus Blvd., Hauppauge, New York, New York 11788.

Rowa, Shounan Industry Park Ningbo, China.

Sea Breeze, 3725 Commercial Way, Spring Hill, FL 34606.

SOLEUSAIR, 20035 E Walnut Dr. N, Industry, CA 91789.

TCL, 1255 Graphite Dr., Corona, CA 92881.

Thermal Zone, c/o United Refrigeration, 11401 Roosevelt Blvd., Philadelphia, PA 19154.

TOSOT, 5965 chemin de la cote de liesse, Montréal, QC H4T 1C3.

Westpointe, 4849 Laurel Ridge Dr., Riverside, CA 92509.

[FR Doc. 2019–26904 Filed 12–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Financial Assistance Information Collection, OMB Control Number 1910–0400. This information collection request covers information necessary to administer and manage DOE's financial assistance programs.

DATES: Comments regarding this collection must be received on or before January 13, 2020. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503.

And to: Richard Bonnell, U.S. Department of Energy, Office of Acquisition Management, 1000 Independence Avenue SW, Washington, DC 20585–0121, Or by email at *Richard.bonnell@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Bonnell by email at *richard.bonnell@hq.doe.gov* or telephone (202) 287–1747. Please put ''2020 DOE Agency Information Collection Renewal-Financial Assistance'' in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–0400 (Renewal); (2) *Information Collection Request Title:* DOE Financial Assistance Information Clearance; (3) *Type of Request:* Renewal; (4) *Purpose:* This information collection package covers mandatory information collections necessary to annually plan, solicit, negotiate, award, administer, and closeout grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) *Annual Estimated Number of Respondents:* 10,125; (6) *Annual Estimated Number of Total Responses:* 36,714; (7) *Estimated Number of Burden Hours:* 524,040; and (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308.

Signed in Washington, DC, on November 26, 2019.

John Bashista,

Director, Office of Acquisition Management, Department of Energy.

[FR Doc. 2019–26908 Filed 12–12–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9048–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/02/2019 10 a.m. ET Through 12/09/2019 10 a.m. ET

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190288, Draft, USFS, AZ, Pinto Valley Mine, *Comment Period Ends:* 01/27/2020, *Contact:* Judd Sampson 602–525–1914.

EIS No. 20190289, Draft, NOAA, FL, Coral Reef Conservation Program Programmatic Environmental, Impact Statement, *Comment Period Ends:* 01/27/2020, *Contact:* Elizabeth Fairey 301–427–8632.

EIS No. 20190290, Draft, USACE, NE, US–275 West Point to Scribner Expressway, *Comment Period Ends:* 01/27/2020, *Contact:* Phil Rezac 402–896–0896.

EIS No. 20190291, Draft, USFS, AZ, Tonto National Forest Plan Revision, *Comment Period Ends:* 03/12/2020, *Contact:* Kenna Belsky 602–225–5200.

EIS No. 20190292, Draft, USACE, LA, West Bank and Vicinity, Louisiana, General Re-Evaluation Report, *Comment Period Ends:* 02/07/2020, *Contact:* Bradley Drouant 504–862–1516.

EIS No. 20190293, Draft, USACE, LA, Lake Pontchartrain and Vicinity Draft General Re-Evaluation Report with Integrated EIS, *Comment Period Ends:* 02/07/2020, *Contact:* Bradley Drouant 504–862–1516.

Amended Notice

EIS No. 20190256, Draft Supplement, NASA, CA, Draft Supplemental Environmental Impact Statement for Soil Cleanup Activities at Santa Susana Field Laboratory, *Comment Period Ends:* 01/08/2020, *Contact:* Peter Zorba *msfc-ssfl-information@mail.nasa.gov,* Revision to FR Notice Published 10/25/2019; Extending the Comment Period from 12/9/2019 to 1/8/2020.

EIS No. 20190261, Draft, USAF, NM, Special Use Airspace Optimization Holloman Air Force Base, New Mexico, *Comment Period Ends:* 01/31/2020, *Contact:* Robin Divine 210–925–2730, Revision to FR Notice Published 11/01/2019; Extending the Comment Period from 12/16/2019 to 1/31/2020.

EIS No. 20190282, Draft, USA, LA, Amite River and Tributaries East of Mississippi River, Louisiana, *Comment Period Ends:* 01/13/2020, *Contact:* US Army Corps of Engineers 504–862–1014, Revision to FR Notice Published 11/29/2019; Correcting Lead Agency from USA to USACE.

Dated: December 9, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–26879 Filed 12–12–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2019–6028]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before February 11, 2020 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Smaro Karakatsanis, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

SUPPLEMENTARY INFORMATION: The Export-Import Bank has made changes to the form to reflect an application process decoupled from the SBA's export working capital program. EXIM will also be moving forward to an electronic application submission process, which results in a stand-alone application versus the previous joint application with the SBA. Therefore, all references and information previously required from the SBA have been removed. There is one material change in the application to reflect EXIM's local cost support on short-term transactions, including working capital. Local costs are costs incurred in the buyer's country (*i.e.* local delivery, installation, taxes), eligible for EXIM cover, provided that: U.S. content requirements are met; included within the contracts; do not exceed 15% of export contract; and no local goods are included. Therefore, three questions are added to the application: Are local costs to be included under the working capital loan facility; if yes, how much in terms of USD or percentage per contract or invoice; and what is the nature of the local costs to be supported?

The application tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib84-01.pdf.*

Title and Form Number: EIB 84–01 Application for Export Working Capital Guarantee.

OMB Number: 3048–0013.

Type of Review: Renewal.

Need and Use: This form provides EXIM Bank staff with the information necessary to determine if the application and transaction is eligible for EXIM Bank assistance under their export working capital guarantee program.

Affected Public

This form affects entities involved in the export of U.S. goods and services.

EXIM Bank

Annual Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 400 hours.

Frequency of Reporting of Use: Annually.

Government Expenses

EXIM Bank

Reviewing time per year: 300 hours.

Average Wages per Hour: $42.50.

*Average Cost per Year (time * wages):* $12,750.00.

Benefits and Overhead: 20%.

Total Government Cost: $15,300.00.

Bassam Doughman,

IT Project Manager, Office of the Chief Information Officer.

[FR Doc. 2019–26516 Filed 12–12–19; 8:45 am]

BILLING CODE 6690–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No: 112102019–1111–01]

Senior Executive Service Performance Review Board Membership

AGENCY: Gulf Coast Ecosystem Restoration Council (GCERC).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: This notice announces the members of the Senior Executive Service (SES) Performance Review Board. The PRB is comprised of a Chairperson and a mix of state representatives and career senior executives that meet annually to review and evaluate performance appraisal documents and provide a written recommendation to the Chairperson of the Council for final approval of each executive's performance rating, performance-based pay adjustment, and performance award.

DATES: The board membership is applicable beginning on 12/01/2019 and ending on 11/30/2020.

FOR FURTHER INFORMATION CONTACT: Mary C. Pleffner, Chief Financial Officer and Director of Assistance, Gulf Coast Ecosystem Restoration Council, telephone 813–394–2185.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the persons named below have been selected to serve on the PRB:

Gulf Coast Ecosystem Restoration Council, Scaggs, Benjamin, Executive Director, *Ben.scaggs@restorethegulf.gov*, (228) 679–5900

Environmental Protection Agency, Banister, Beverly, Deputy Regional Administrator, Region 4, *Banister.Beverly@epa.gov*, (404) 562–8357

National Oceanic and Atmospheric Administration, Montanio, Patricia A., Director, Office of Habitat Conservation, NOAA/National Marine Fisheries Service, *pat.montanio@noaa.gov*, (301) 775–9080

State of Alabama, Blankenship, Christopher, Commissioner of Conservation and Natural Resources, *chris.blankenship@dcnr.alabama.gov*, (334) 242–3486

State of Louisiana, Barnes, Chris, Legal Advisor, Coastal Activities, *chris.barnes@la.gov*, (225) 342–9036

Keala J. Hughes,

Director of External Affairs & Tribal Relations, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2019–26885 Filed 12–12–19; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Evaluation of Patient-Centered Outcomes Research Trust Fund—Training Program.''

DATES: Comments on this notice must be received by 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by emails at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of Patient-Centered Outcomes Research Trust Fund—Training Program

AHRQ Authorization To Provide Researcher Training in Comparative Effectiveness Research/Patient-Centered Outcomes Research (CER/PCOR) Methods

Section 6301(b) of the Patient Protection and Affordable Care Act, Public Law 111–148 (the ''Affordable Care Act''), enacted section 937(e) of the Public Health Service Act (''PHS Act''), which authorizes AHRQ to build capacity for comparative effectiveness research (CER) by establishing grant programs that provide training for researchers in methods used to conduct research. It also notes that, ''[at] a minimum, such training shall be in methods that meet the methodological standards adopted [by the Patient Centered Outcomes Research Institute (PCORI)] under section 1181(d)(9) of the Social Security Act.'' In addition, section 937(a) of the PHS Act charges AHRQ with disseminating patient-centered outcomes research (PCOR) and CER findings into practice. AHRQ's PCOR Trust Fund Training Program (PCORTF–TP) invests in training grants that build researchers' skills and enhance research capacity in these practice areas.

PCOR is research that assesses the benefits and harms of preventive, diagnostic, therapeutic, palliative, or health delivery system interventions. This research helps clinicians, patients, and caregivers make decisions about health care choices by highlighting comparisons and outcomes that matter to people, such as survival, function, symptoms, and health-related quality of life. The AHRQ PCORTF–TP supports individuals and academic institutions to train researchers and clinicians in CER methods applied within the context of CER/PCOR via mentored career development award mechanisms for emerging independent investigators, as well as targeted skill development and applied experiences via research grant mechanisms for independent researchers. PCORTF–TP grants support training for recent graduates, mid-career professionals, and established professionals in research and clinical settings. The program prioritizes expanding capacity in underserved and predominantly minority communities.

AHRQ recognizes the importance of ensuring that its training activities are useful, well implemented, and effective in achieving their intended goals. Therefore, the PCORTF–TP evaluation reflects AHRQ's commitment to ensuring responsible stewardship. The PCORTF–TP evaluation comprises analysis of grantee progress reports, a bibliometric analysis of grantee publications, key informant interviews with AHRQ program staff responsible for managing PCORTF–TP grants, focused discussions with the PCORTF–TP evaluation Stakeholder Working Group, and surveys of grantees and mentors.

The purpose of this evaluation is to assess the outputs, outcomes, and impact of AHRQ's PCORTF–TP. The evaluation will address the following questions:

- What is the nature of PCORTF–TP activities for scholar/investigator development?
- Which activities for PCORTF–TP scholars/investigators have the greatest influence on intended outcomes (*e.g.,* PCOR careers)?
- How have PCORTF–TP and partner institutions developed the capacity for

PCOR training and mentoring, and in what ways is this sustainable?

• What do mentors and mentees perceive to be the most important ways that the program has contributed to the field of CER/PCOR?

This evaluation is being conducted by AHRQ through its contractor, AFYA, Inc., pursuant to AHRQ's authority to carry out the activities described in section 937 of the PHS Act. 42 U.S.C. 299b–37.

Method of Collection

To achieve the goals of this project, the evaluator will survey PCORTF–TP awardees, scholars, and mentors. Online surveys: K Awardee Survey/K12 Scholar Survey and K Awardee/K12 Scholar Primary Mentor Survey will be used to: (1) Collect non-identifying demographic information; and (2) ask respondents about their training activities and outcomes. Key informant interviews: Key Informant Interview Guide will be used to collect qualitative data about program processes, outcomes, and lessons learned from K12 scholar program directors.

AHRQ will use the information collected through this Information Collection Request to assess progress toward achieving the PCORTF–TP aims. The information collected will facilitate program planning. Results will indicate whether grantees are conducting activities relevant to CER/PCOR training and whether those activities are increasing CER/PCOR capacity. Two surveys, each tailored for four respective PCORTF–TP respondent groups as well as key informant interviews will yield data on training activities, trainees' career plans, trainees' research and clinical activities relevant to CER/PCOR, and primary mentor experiences. The surveys are designed to capture primarily quantitative data with some qualitative data. The interview guide is designed to collect qualitative data.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this evaluation. The survey will be completed by approximately 288 awardees, scholars, principal investigators (PI), and mentors. The surveys will each require approximately 30 minutes to complete. The key informant interview will be conducted with approximately 13 PIs. These interviews are expected to take one hour each. The total hour burden is expected to be 150.5 hours for this participant data collection effort.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
K Awardee/K12 Scholar * Survey	147	1	0.5	73.5
K Awardee/K12 Primary Mentor Survey	128	1	0.5	64
Key Informant Interview Guide for K12 Program Directors	13	1	1	13
Total	288			150.5

* K Awardee/K12 Scholar survey = K01/K08/K99/K18 Awardees and K12 Scholars.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in this project. The total cost burden is estimated to be $11,134.34.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
K Awardee/K12 Scholar Survey	147	73.5	* $74.43	$5,434.59
K Awardee/K12 Primary Mentor Survey	128	64	* $74.43	4,732.16
Key Informant Interview Guide for K12 Program Directors	13	13	* $74.43	967.59
	288	150.5		11,134.34

* Average hourly wage ($73.94) based on the average annual salary for three categories of Health Specialties Teachers, Postsecondary (25–1071; Scientific Research and Development Services—$178,090; General Medical and Surgical Hospitals—$153,790; and Colleges, Universities, and Professional Schools—$126,890). *Data Source:* National Occupational Employment and Wage Estimates in the United States, May 2018, "U.S. Department of Labor, Bureau of Labor Statistics" (available at *http://www.bls.gov/oes/current/naics4_621400.htm*).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 9, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–26864 Filed 12–12–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Clinical Laboratory Improvement Advisory Committee (CLIAC)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on CLIAC. CLIAC, consisting of 20 members including the Chair, represents a diverse membership across laboratory specialties, professional roles (laboratory management, technical specialists, physicians, nurses) and practice settings (academic, clinical, public health), and includes a consumer representative. In addition, the Committee includes three ex officio members (or designees), including the Director, CDC; the Administrator, Centers for Medicare and Medicaid Services (CMS); and the Commissioner, Food and Drug Administration (FDA). A nonvoting representative from the Advanced Medical Technology Association (AdvaMed) serves as the industry liaison. The Designated Federal Officer or their designee and the Executive Secretary are present at all meetings to ensure meetings are within applicable statutory, regulatory and HHS General Administration manual directives.

DATES: Nominations for membership on CLIAC must be received no later than March 1, 2020. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Nancy Anderson, MMSc, MT(ASCP), CLIAC Secretary, Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4027; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov* or faxed to (404) 471–2706.

FOR FURTHER INFORMATION CONTACT: Heather Stang, MS, Deputy Branch Chief, Quality and Safety Systems Branch, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4027; telephone: (404) 498–2769; email: *HStang@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of microbiology (including bacteriology, mycobacteriology, mycology, parasitology, and virology), immunology (including histocompatibility), chemistry, hematology, pathology (including histopathology and cytology), or genetic testing (including cytogenetics); from representatives in the fields of medical technology, public health, and clinical practice; and from consumer representatives. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms.

Selection of members are based on candidates' qualifications to contribute to the accomplishment of CLIAC objectives (*https://www.cdc.gov/cliac/*).

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for CLIAC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–26921 Filed 12–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Breast Cancer in Young Women (ACBCYW); Meeting

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Advisory Committee on Breast Cancer in Young Women (ACBCYW). This meeting is open to the public, limited only by audio and web conference lines (80 audio and web conference lines available). The public is welcome to listen to the meeting by accessing the call-in number, 1–888–606–5944, and the passcode 8340472, (80 lines are available). The web conference access is *https://adobeconnect.cdc.gov/rwa641n3jrry/.* Online Registration Required: All ACBCYW Meeting participants must register for the meeting online at least 5

business days in advance at *https://www.cdc.gov/cancer/breast/what_cdc_is_doing/conference.htm.* Please complete all the required fields before submitting your registration and submit no later than January 31, 2020.

DATES: The meeting will be held on February 6, 2020, 9:00 a.m. to 1:00 p.m., EST.

ADDRESSES: The meeting will be held by teleconference and web conference. The teleconference access is 1–888–606–5944; and the passcode is 8340472. The web conference access is *https://adobeconnect.cdc.gov/rwa641n3jrry/.*

FOR FURTHER INFORMATION CONTACT: Temeika L. Fairley, Ph.D., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 5770 Buford Highway NE, Mailstop S107–4, Atlanta, Georgia 30341; Telephone (770) 488–4518; Fax: (770) 488–4760; Email: *acbcyw@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

Matters To Be Considered: The agenda will include discussions on current topics related to breast cancer in young women. These will include Mental/Behavioral Health, Sexual Health, Genetics and Genomics, and Provider Engagement. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–26919 Filed 12–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Generic Program-Specific Performance Progress Report (0970–0490)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: This Notice describes the proposal to extend data collection under the Administration for Children and Families (ACF) Generic Program-Specific Performance Progress Report (PPR) (0970–0490). This overarching generic allows ACF program offices to collect performance and progress data from recipients and sub-recipients who receive funding from ACF under a discretionary grant or cooperative agreement. This information is required under 45 CFR 75.342, monitoring and reporting program performance. The generic program-specific PPR was originally approved in January 2017.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF is primarily a grant-making agency that promotes the economic and social well-being of families, children, individuals and communities with partnerships, funding, guidance, training and technical assistance.

Prior to the use of this generic program-specific PPR, a standard ACF PPR (#0970–0406) was used for all ACF discretionary grant and cooperative agreement awards for post award reporting. Historically, on the standard ACF PPR form, ACF required grantees to only respond to a common set of broad questions, which often solicited qualitative or incomplete information. This one-size-fits-all approach did not adequately collect the specific data needed for particular grant programs or allow program offices to assess continuous quality improvement. Different grant programs vary in purpose, target population, and activities. Therefore, a need for program offices to customize performance measurements was identified and the generic program-specific PPR was developed.

ACF program offices have benefited from the ability to create and use a program-specific PPR that is more effective and includes specific data elements that reflects a specific program's indicators, demographics, priorities and objectives. This extension includes extension of previously approved program-specific PPRs under this OMB #. A generic program-specific PPR that can be tailored for program-specific needs allows program offices to collect useful data in a uniform and systematic manner. The reporting format allows program offices to gather uniform program performance data from each grantee, allowing aggregation at the program level to calculate outputs and outcomes, providing a snapshot and allowing for longitudinal analysis.

Data from a tailored program-specific PPR that demonstrates a program's successes and challenges have been useful for accountability purposes, such as required reports to Congress. Moreover, it has been useful for program management and oversight, such as identifying grantees' technical assistance needs and ensuring compliance with Federal and programmatic regulations and policies.

Respondents: ACF Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hour per response	Total burden hours
New Program Specific PPRs	600	2	4	4,800

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–26913 Filed 12–12–19; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Request for Information: Family Caregiving Advisory Council; Correction

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of correction.

SUMMARY: The Administration for Community Living (ACL) published a document in the **Federal Register** on December 9, 2019, requesting information to the Advisory Council to Support Grandparents Raising Grandchildren seeking information to be used in the development of the Initial Report, as required by the Supporting Grandparents Raising Grandchildren Act (SGRG). The ACL wishes to change a line in the titling of the notice in order to avoid confusion for potential commenters.

SUPPLEMENTARY INFORMATION: Correction: In the **Federal Register** of December 9, 2019, in FR doc. 2019–26437, on page 67270, in the second column, the second line should be changed to ''Request for Information: Advisory Council to Support Grandparents Raising Grandchildren.'' In addition, the **DATES** section due date is incorrect. It should read as follows: ''**DATES:** Comments on the request for information must be submitted by 11:59 p.m. (EST) on February 7, 2019.''

FOR FURTHER INFORMATION CONTACT: *SGRG.Act@acl.hhs.gov*

Dated: December 9, 2019.

Lance Robertson,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2019–26880 Filed 12–12–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4751]

Food and Drug Administration Reauthorization Act Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs; 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 ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' This draft guidance addresses early planning for pediatric evaluation of certain molecularly targeted oncology drugs, including biological products, for which original new drug applications (NDAs) and biologics license applications (BLAs) are expected to be submitted to FDA on or after August 18, 2020, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) as amended by the FDA Reauthorization Act of 2017 (FDARA). This guidance addresses the implementation of amendments made by FDARA to the FD&C Act regarding molecularly targeted oncology drugs.

DATES: Submit either electronic or written comments on the draft guidance by February 11, 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–4751 for ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' 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 Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; Division of Drug Information, Center for Drug Evaluation and Research (CDER), 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. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Gregory Reaman, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2202, Silver Spring, MD 20993–0002, 301–796–0785; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs: Amendments to Sec. 505B of the FD&C Act.'' This draft guidance addresses early planning for pediatric evaluation of certain molecularly targeted oncology drugs (including biological products) for which original NDAs and BLAs are expected to be submitted to FDA on or after August 18, 2020, in accordance with the provisions of section 505B of the FD&C Act. Section 505B of the FD&C Act (21 U.S.C. 355c) (also referred to as the Pediatric Research Equity Act or PREA (Pub. L. 108–155)), was amended by FDARA.

The amendments provide a new mechanism to expedite the evaluation of certain novel drugs with the potential to address an unmet medical need of pediatric patients with cancer. Specifically, FDARA amended the requirement for pediatric investigations of certain new targeted cancer drugs to be based on molecular mechanism of action rather than clinical indication. For original NDAs and BLAs submitted on or after August 18, 2020, if the application is for a new active ingredient, and the drug or biological product that is the subject of the application is intended for treatment of an adult cancer and directed at a molecular target FDA determines to be substantially relevant to the growth or progression of a pediatric cancer, reports of molecularly targeted pediatric cancer investigations must be submitted with the marketing application, unless the required investigations are waived or deferred (section 505B(a)(1)(B) of the FD&C Act).

This draft guidance provides recommendations on regulatory considerations related to the amendments to section 505B of the FD&C Act, including information on molecular targets, factors FDA intends to consider in the determination of whether a molecular target is substantially relevant to the growth or progression of a pediatric cancer, the molecular target lists, content of the initial pediatric study plan and description of recommended studies, additional considerations for rare cancers, and considerations for planned waivers and deferrals. In addition, the draft guidance includes information regarding global implications and international collaboration.

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 ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' 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 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 312 have been approved under OMB control numbers 0910–0014. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, or https://www.regulations.gov.*

Dated: December 9, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26877 Filed 12–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Bureau of Primary Health Care Uniform Data System, OMB No. 0915–0193—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than January 13, 2020.

ADDRESSES: Submit your comments, including the ICR title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Bureau of Primary Health Care (BPHC) Uniform Data System (UDS), OMB No. 0915–0193—Revision

Abstract: The Health Center Program, administered by HRSA, is authorized under section 330 of the Public Health Service (PHS) Act, most recently amended by section 50901(b) of the Bipartisan Budget Act of 2018, Public Law 115–123. Health centers are community-based and patient-directed organizations that deliver affordable, accessible, quality, and cost-effective primary health care services to patients regardless of their ability to pay. Nearly 1,400 health centers operate approximately 12,000 service delivery sites that provide primary health care to more than 27 million people in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. HRSA uses the Uniform Data System (UDS) for annual reporting by certain HRSA award recipients, including Health Center Program awardees (those funded under section 330 of the PHS Act), Health Center Program look-alikes, and Nurse Education, Practice, Quality and Retention Program awardees (specifically those funded under the practice priority areas of section 831(b) of the PHS Act).

Need and Proposed Use of the Information: HRSA collects UDS data annually to ensure compliance with legislative and regulatory requirements, improve clinical and operational performance, and report overall program accomplishments. HRSA aligns several clinical measures reported in UDS with the Centers for Medicare & Medicaid Services' (CMS) electronic specified clinical quality measures (eCQM). These data help to identify trends over time, enabling HRSA to establish or expand targeted programs and to identify effective services and interventions that will improve the health of medically underserved communities. HRSA analyzes UDS data with other national health-related data sets to compare the Health Center Program patient populations and the overall U.S. population.

HRSA received comments on the BPHC UDS **Federal Register** notice published on July 26, 2019, vol. 84, No. 144; pp. 36108. We have taken the commenter's suggestions into consideration and have made appropriate adjustments to the draft instruments. The 2020 UDS data collection will be updated in the following ways:

- *Retiring CMS126 Use of Appropriate Medications for Asthma:* The CMS eCQM is no longer being updated when new asthma medications are approved for use. This measure was also retired from the Healthcare Effectiveness Data and Information Set, is no longer endorsed by the NQF, and there is currently no comparable eCQM for asthma. Thus, no replacement measure is planned at this time.
- *Retaining CMS277v0—Dental Sealants for Children Between 6–9 years:* Based upon public feedback, HRSA has decided to retain the dental sealant measure for 2020 UDS reporting. HRSA has also decided to not add the fluoride varnish measure for 2020 UDS.
- *Adding CMS159v8 Depression Remission at Twelve Months:* The addition of the CMS depression remission measure at 12 months provides complementary mental health outcome data on how well health centers help patients reach remission. Improvement in the symptoms of depression and an ongoing assessment of the current treatment plan are crucial to the reduction of symptoms and psychosocial well-being of patients. The addition of *CMS159v8* further supports HRSA's commitment to HHS' strategic objective to ''Reduce the impact of mental and substance use disorders through prevention, early intervention, treatment, and recovery support.''
- *Revising the HIV linkage to care measure:* The HIV linkage to care measure captures the percentage of patients whose first ever HIV diagnosis was made by health center staff between October 1 of the prior year and September 30 of the measurement year and who were seen for follow-up treatment within 90 days of that first-ever diagnosis. This measure will be modified to change the follow-up treatment from 90 days to 30 days aligning with Centers for Disease Control and Prevention's guidance.[1]
- *Adding CMS349v2 HIV Screening:* The addition of the CMS HIV screening measure will enable HRSA to better identify priority geographic locations, assist high risk groups among health center patients, and more effectively deploy interventions and resources in support of the ''Ending the HIV Epidemic'' Initiative.
- *Adding Prescription for Pre-Exposure Prophylaxis International Classification of Diseases (ICD) 10 Codes and Current Procedural Terminology codes:* The addition of the Prescription for Pre-Exposure Prophylaxis ICD–10 and Current Procedural Terminology codes will allow for the collection of this HIV prescription prevention data in health centers and further supports the ''Ending the HIV Epidemic'' Initiative's goal of reducing new HIV infections.
- *Refraining from including additional diabetes measures:* Based upon public feedback, HRSA will not be adding CMS131v8 Diabetes Eye Exam, CMS123v7 Diabetes Foot Exam, or CMS134v8 Diabetes Medial Attention to Nephropathy to the 2020 UDS.
- *Adding CMS125v8 Breast Cancer Screening:* There is substantial geographic and demographic variation in breast cancer death rates, suggesting that there are social and non-economic obstacles that affect breast cancer screening.[2] Preventive screening through timely access to mammograms can lead to early detection, better treatment prognosis, and potential to reduce health disparities.[3]
- *Adding a Prescription Drug Monitoring Programs (PDMPs) Question to Appendix D: Health Center Health Information Technology Capabilities:* PDMPs are effective tools for reducing prescription drug abuse and diversion. Improving provider utilization and access to real-time data has demonstrated meaningful results in

[1] *https://www.cdc.gov/hiv/pdf/library/factsheets/cdc-hiv-care-continuum.pdf.*

[2] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4540479/.*

[3] *https://www.thecommunityguide.org/findings/cancer-screening-reducing-structural-barriers-clients-breast-cancer.*

reducing over-prescribing of medication.[4]

• *Revising the Social Determinants of Health Question in Appendix D: Health Center Health Information Technology Capabilities:* There is strong evidence that social and economic factors influence an individual's health.[5] Several health care systems are exploring how to collect information on the social determinants of health (SDOH). The inclusion of these questions into Appendix D allows HRSA to see how health centers are approaching this challenge and how many of their vulnerable patients are experiencing social and economic risks associated with poor health. For health centers that are using a standardized screener, there is one additional question asking for the total number of patients that screen positive for food insecurity, housing insecurity, financial strain, and lack of transportation/access to public transportation.

• *Adding ICD–10 Codes to Capture Human Trafficking and Intimate Partner Violence:* HRSA is aware that human trafficking[6] and intimate partner violence[7] are part of the SDOH that can affect a wide range of health and quality of life outcomes. Addressing SDOH is a HRSA objective to improve the health and well-being of health center patients and the broader community in which they reside.

• *Utilizing the Uniform Data System Test Cooperative (UTC):* As part of HRSA's efforts to modernize the UDS HRSA is establishing the UTC as an enduring testing and piloting capability. The UTC consists of three main components: (1) A steering committee, (2) a coordinating entity, and (3) health center test participants. Through this cooperative, HRSA will be able to pilot test innovative information technology and software, streamlining of clinical quality measures, and alternative data collection methodologies to reduce reporting burden and improve data quality and integrity.

The total number of estimated respondents changed from 2,075 to 2,134. The reason for the increase in the number of respondents for the UDS Report from 1,471 to 1,503 is because this number was previously based on 2018 UDS data that HRSA had available in July 2019. Since then, HRSA has been able to update the respondents that we anticipate for 2019 UDS reporting due to the incremental increase of awardees in the Health Center Program. The increase in the number of Grant Reports for Vulnerable Populations from 504 to 531 is due to an increase in a subset of awardees who receive Migrant Health Center, Health Care for the Homeless, and Health Centers for Residents of Public Housing funding.

The average burden hours per response changed from 223 to 238 as a result of comments received on the 60-day **Federal Register** Notice and additional consultation with external stakeholders. These stakeholders stated that the inclusion of additional clinical quality measures in the UDS would slightly increase the reporting burden. While these measures are already included in most electronic health records, there is some additional work that health centers will need to do in order to incorporate the measures into their workflows and their annual reporting. In addition to these changes, the names of the forms *Universal Report* and *Grant Report* were updated to provide greater specificity.

Likely Respondents: Likely respondents will include Health Center Program award recipients, Health Center Program look-alikes, and Nurse Education, Practice, Quality and Retention Program awardees funded under the practice priority areas of section 831(b) of the PHS Act.

Burden Statement: Burden includes the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purpose of: Collecting, validating, and verifying information, processing and maintaining information, disclosing and providing information. It also accounts for time to train personnel, respond to a collection of information, search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. It will also include testing information necessary to support the UTC. No more than three tests would be conducted each calendar year and no more than one hundred health centers would participate in one test. Participation is voluntary and will not affect health centers' funding status. This sample size is sufficient to conduct a pilot test and determine if proposed innovations should be scaled across the Health Center Program.

The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Uniform Data System (UDS) Report	1,503	1	1,503	238	357,714
Grant Report for Vulnerable Populations	531	1	531	30	15,930
UTC Tests	100	3	300	80	24,000
Total	2,134		2,334		397,644

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–26876 Filed 12–12–19; 8:45 am]

BILLING CODE 4165–15–P

[4] *https://www.pdmpassist.org/content/prescription-drug-monitoring-frequently-asked-questions-faq.*

[5] *https://www.countyhealthrankings.org/explore-health-rankings/measures-data-sources/county-health-rankings-model/health-factors/social-and-economic-factors.*

[6] *https://www.acf.hhs.gov/otip/about/what-is-human-trafficking.*

[7] *https://www.hrsa.gov/sites/default/files/hrsa/HRSA-strategy-intimate-partner-violence.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Opportunity to Co-Sponsor Office of Disease Prevention and Health Promotion Healthy Aging Summit and Regional Workshops

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of Disease Prevention and Health Promotion (ODPHP) announces the opportunity for non-Federal public and private sector organizations and entities to co-sponsor the 2020 Healthy Aging Regional Workshops (Workshops) and/or the 2021 Healthy Aging Summit (HAS).

Opportunity A: 2020 Healthy Aging Regional Workshop co-sponsorship will involve executing a single or series of financially self-sustaining (no federal funds will be provided to the co-sponsor) meetings or workshops to convene healthy-aging stakeholders to support regional action planning and dissemination of information on healthy aging, aging in place, and age-friendly public health systems.

Opportunity B: 2021 Healthy Aging Summit co-sponsorship will involve executing a single financially self-sustaining (no federal funds will be provided to the co-sponsor) conference and related activities focused on health promotion and disease prevention research across the lifespan. This Summit will identify critical research needs and highlight the latest science of creating livable communities and improving healthy aging.

This co-sponsorship opportunity is not a grant or contract award program and each partner will be responsible for financially supporting its own activities. Potential co-sponsors must have demonstrated interest in and experience with coordinating healthy aging-focused activities, be capable of managing the day-to-day operations associated with the proposed activities, and be willing to participate substantively in the execution of the co-sponsored activity.

DATES: To receive consideration, proposals for co-sponsoring Healthy Aging Regional Workshops and/or the 2021 Healthy Aging Summit must be received via email or postmarked mail at the addresses listed below, by 5:00 p.m. EST on January 17, 2020. Proposals will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be accepted as proof of timely mailing. Hand-delivered proposals must be received by 5:00 p.m. EST on January 17, 2020. Proposals that are received after the deadline will not be considered.

ADDRESSES: Expressions of interest for healthy-aging co-sponsorships should be submitted via email to *HP2030@hhs.gov* with the subject line ''Co-sponsorship Opportunity for Healthy Aging'' or by mail to Ayanna Johnson, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ayanna Johnson, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852; Telephone: (240) 453–8280; Email: *HP2030@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

ODPHP is a program office within the Office of the Assistant Secretary for Health (OASH), Office of the Secretary of the U.S. Department of Health and Human Services (HHS). ODPHP was established by Congress in 1976 with a mission to provide leadership for disease prevention and health promotion efforts for all Americans. To promote the health of the country, ODPHP sets national health goals and supports programs, services, and educational activities. ODPHP leads Healthy People 2020/2030, Dietary Guidelines for Americans, Physical Activity Guidelines for Americans, National Clinical Care Commission, National Youth Sports Strategy, President's Council on Sports, Fitness and Nutrition, and *healthfinder.gov.*

The percentage of the population age 65 or older in the United States is growing. It is estimated that by 2050, 20.9% of the population will be over age 65, compared to 13.7% in 2012. This group is living and working longer, redefining later life, and enriching our communities and society in new and vital ways. Improvements in the delivery of preventive services and care coordination, and a greater understanding of the social, environmental and emotional factors that influence health in the later years of life could help reduce health care costs and improve quality of life for older Americans.

Preparing regional public health and aging services leaders, to ensure that our public health system is equipped to support the unique health needs of older Americans, is of utmost importance. To further address the health needs of Americans as they age, ODPHP organized Healthy Aging Summits in 2015 and 2018. The Summits provided an opportunity to share the state-of-the-science in healthy aging, identify knowledge gaps, promote prevention and support livable communities for aging in place. Following the Summits, one-day national workshops convened state aging directors and state health officers to develop state-level priorities and action plans to promote healthy aging. The 2018 workshop expanded convened both state and local public health leaders to explore issues affecting older adults.

Building on the Healthy People model, ODPHP projects use a social-determinants-of-health (SDOH) framework to strengthen public health. The framework calls for looking at upstream conditions that impact health. The SDOH framework was adapted to each of the Summits through the conference tracks which included: Maximizing Quality of Life, Social and Community Context, Health and Health Care, and Neighborhood and Built Environment.

Requirements of the Co-Sponsorship

Consistent with ODPHP's mission and the applicable statutory authority, Title XVII of the Public Health Service Act, the Healthy Aging Regional Workshops and Healthy Aging Summit aim to support the dissemination of relevant information and convene experts to share best practices for disease prevention and health promotion. The Workshops convene over 1 day, and typically have 50 attendees. The Summit convenes over 3 days, and typically has 600 attendees.

ODPHP is seeking organizations capable of managing the development and execution of healthy aging research-sharing conferences or workshops and programming. Co-sponsors will assist with workshop and/or summit and agenda development, coordination, financial management, and meeting logistics in conjunction with ODPHP staff.

Approved proposals will require a co-sponsorship agreement signed by both the co-sponsor and ODPHP that outlines the terms and parameters of the agreement. The co-sponsorship will be

in place for 6 months after the conclusion on the workshop or Summit.

Healthy Aging Workshops and Summit

Opportunity A—Healthy Aging Regional Workshops will involve executing a single or series of financially self-sustaining workshops that convene aging and public health stakeholders to support regional action planning and dissemination of information on healthy aging, aging in place, and age-friendly public health systems. ODPHP plans to hold four workshops. Each workshop will be held in a city located in one of the designated HHS Regional pairs—Regions 3 & 4 (Atlanta), Regions 6 & 9 (Phoenix or Albuquerque), Regions 5 & 7 (Kansas City or Chicago), and Regions 8 & 10 (Denver).

Opportunity B—2021 Healthy Aging Summit—The collaborative project will involve executing a single financially self-sustaining conference that supports research and information-sharing on health promotion and disease prevention research across the lifespan. This conference draws more than 600 stakeholders, every three years, to examine the state of the science and best practices in healthy aging through a social determinants of health lens. Past conference information can be found here: *https://www.eventscribe.com/2018/ACPM-HAC/index.asp?launcher=1.*

Eligibility for Co-Sponsorships

To be eligible, a collaborating organization shall: (1) Have a demonstrated interest in, understanding of, and experience with managing the development and execution of engaging programs, activations and/or other activities related to disease prevention and health promotion; (2) participate substantively in the co-sponsored activity (not only logistical support) including helping plan the 2020 Healthy Aging Regional workshops and/or 2021 Healthy Aging Summit; (3) have an organizational or corporate mission that is aligned with the mission of ODPHP and HHS; and (4) sign a co-sponsorship agreement with ODPHP that will set forth the details of the Healthy Aging Regional Workshop and/or Summit, including the requirements that any registration fees raised should not exceed the collaborating organization's costs, and fees collected by the co-sponsor should be limited to the amount necessary to cover the co-sponsor's event-related operating expenses. Co-sponsors are solely responsible for collecting and handling any fees to cover their costs.

The co-sponsor will furnish the necessary personnel, materials, services, and facilities to administer its responsibility for the proposed Healthy Aging Regional Workshops and/or Summit. These duties will be determined and outlined in a co-sponsorship agreement with ODPHP. This co-sponsorship agreement does not represent an endorsement by ODPHP of an individual co-sponsor's policies, positions, or activities.

Co-Sponsorship Proposal

Each potential co-sponsor's proposal shall contain a description of:

(1) The entity or organization's interest and goals in healthy aging;

(2) Prior experience and current readiness to undertake the responsibilities for planning and organizing a Healthy Aging Regional workshop(s) and/or Summit;

(3) Requester's information: Name, professional qualifications and specific expertise of key personnel who would be available to work on the project;

(4) The type of event(s), *i.e.,* Workshop or 2021 Summit, that the entity is interested in co-sponsoring with ODPHP;

(5) Facilities available for the event(s);

(6) Description of financial management: Discussion of experience in developing a project budget and collecting and managing monies from organizations and individuals;

(7) For the Healthy Aging Summit only: Proposed plan for managing Summit, including, but not limited to participant recruitment, call for abstracts distribution/review, ability to provide CEs, website development and/or enhancement, cost of materials, and distribution of those items.

Proposals should be no more than four (4) pages, 12 point font, double spaced.

Dated: November 29, 2019.

Donald Wright,

Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.

[FR Doc. 2019–26821 Filed 12–12–19; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on the Development of the Fiscal Year 2021–2025 Trans-NIH Strategic Plan for Sexual & Gender Minority Health Research

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Through this Request for Information (RFI), the Sexual & Gender Minority Research Office (SGMRO) in the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH), invites feedback from stakeholders throughout the scientific research community, clinical practice communities, patient and family advocates, scientific or professional organizations, federal partners, internal NIH stakeholders, and other interested constituents on the development of the fiscal years (FY) 2021–2025 Trans-NIH Strategic Plan for Sexual and Gender Minority Health Research. This plan will describe future directions in sexual and gender minority (SGM) health and research to optimize NIH's research investments.

DATES: The SGMRO's Request for Information is open for public comment for a period of 6 weeks. Comments must be received on or before COB (5:00 p.m. ET) January 24, 2020 to ensure consideration. After the public comment period has closed, the comments received by SGMRO will be considered in a timely manner for the development of the FY 2021–2025 Trans-NIH Strategic Plan for SGM Health Research.

ADDRESSES: Please see the supplementary information to view the draft scientific and operational goals. Comments are strongly encouraged to be submitted by email to *SGMRO@nih.gov* or by mail to: SGMRO, DPCPSI, NIH, 6555 Rock Spring Drive, Suite 220, Rm. 2SE31J, Bethesda, MD 20817. Please include strategic plan in the subject line.

FOR FURTHER INFORMATION CONTACT: Karen Parker, Ph.D., MSW, Director, Sexual & Gender Minority Research Office (SGMRO), 6555 Rock Spring Drive, Suite 220, Rm 2SE31K, Bethesda, MD 20817, *klparker@mail.nih.gov,* 301–451–2055.

SUPPLEMENTARY INFORMATION:

Background: ''Sexual and gender minority'' is an umbrella term that includes, but is not limited to, individuals who identify as lesbian, gay, bisexual, asexual, transgender, two-spirit, queer, and/or intersex. Individuals with same-sex or -gender attractions or behaviors and those with a difference in sex development are also included. These populations also encompass those who do not self-identify with one of these terms but whose sexual orientation, gender identity or expression, or reproductive development is characterized by non-

binary constructs of sexual orientation, gender, and/or sex.

The Sexual and Gender Minority Research Office (SGMRO) coordinates sexual and gender minority (SGM)-related research and activities by working directly with the NIH Institutes, Centers, and Offices. The Office was officially established in September 2015 within the NIH Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI) in the Office of the Director.

In accordance with the 21st Century Cures Act, NIH is required to regularly update their strategic plans. In 2015, the NIH launched the NIH FY 2016–2020 Strategic Plan to Advance Research on the Health and Well-being of Sexual and Gender Minorities. The current strategic plan has provided the NIH with a framework to improve the health of SGM populations through increased research and support of scientists conducting SGM-relevant research. In January 2019, SGMRO published a mid-course review of the current NIH SGM strategic plan that provided recommendations to support further progress on the goals described therein. To establish NIH priorities in SGM health research for the next five years, SGMRO requests input from SGM health, research, and related communities in refining the goals of the FY 2021–2025 strategic plan.

Request for Comment on Draft Goals: The NIH is developing a strategic plan to advance SGM research over the next five years. The SGMRO invites input from stakeholders throughout the scientific research community, clinical practice communities, patient and family advocates, scientific or professional organizations, federal partners, internal NIH stakeholders, and other interested members of the public on the proposed framework. This input is a valuable component in developing the SGM research strategic plan, and the community's time and consideration are appreciated.

The populations considered under the SGM umbrella term are inclusive and captures all individuals and populations who do not self-identify with binary constructs of sexual orientation, gender, and/or sex. For the FY 2021–2025 strategic plan, the scientific goals will include a focus on specific populations on which the lack of research remains significant. Examples of such populations may include persons with differences in sex development (DSD), intersex, bisexual, transgender, gender nonconforming, persons who have detransitioned/desisted people, and SGM populations in Native communities.

In addition, overarching topics will be considered across all scientific research goal areas in order to help foster a deeper understanding of SGM health disparities. Topics to be considered include health equity, research across the life span, trauma-informed research, community and culturally grounded research, and strengths-based approaches. Scientific goal areas will also take into consideration intersectionality by recognizing overlapping and interconnected systems of oppression across different social categories and how they may compound health inequities. Examples of such categories may include ability status, age, race, ethnicity, incarceration status, veteran status, income level, and more.

The NIH has identified four scientific research goal areas:

- *Clinical Research:* Examples include outcomes related to various DSDs, and sexual reproduction and pregnancy outcomes
- *Social & Behavioral Research:* Examples include the coming out process, healthy sexuality, interpersonal violence, mental health, substance use and abuse (opioids, tobacco use, other drugs), suicide risk and prevention, and stigma and discrimination
- *Chronic Diseases and Comorbidities Research:* Examples include Alzheimer's Disease and Related Dementias (ADRD), cancer, diabetes, heart disease, HIV/AIDS, and infectious diseases
- *Methods and Measures Research:* Examples include culturally humble psychometrics, research on recruitment and sampling methods, particularly for most understudied SGM subgroups, and factors related to disclosure on surveys

The NIH has also identified four operational goal areas:

- Advance rigorous research on the health of SGM populations in both the extramural and intramural research communities
- Expand SGM health research by fostering partnerships and collaborations with a strategic array of internal and external stakeholders
- Foster a highly skilled and diverse workforce in the SGM health research
- Encourage data collection related to SGM populations in research and in the biomedical research workforce

The NIH seeks comments and/or suggestions from all interested parties on the proposed strategic plan goals.

Responses to this RFI are voluntary. Do not include any proprietary, classified, confidential, trade secret, or sensitive information in your response. The responses will be reviewed by NIH staff, and individual feedback will not be provided to any responder. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public NIH websites; in reports; in summaries of the state of the science; in any possible resultant solicitation(s), grant(s), or cooperative agreement(s); or in the development of future funding opportunity announcements.

This RFI is for information and planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal Government, the NIH, or individual NIH Institutes, Centers, and Offices to provide support for any ideas identified in response to it. The Federal Government will not pay for the preparation of any information submitted or for the Government's use of such information. No basis for claims against the U.S. Government shall arise as a result of a response to this RFI or from the Government's use of such information. Additionally, the Government cannot guarantee the confidentiality of the information provided.

Dated: December 6, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019–26915 Filed 12–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0098]

Agency Information Collection Activities: NAFTA Regulations and Certificate of Origin

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be

submitted (no later than February 11, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0098 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: CBP Forms 434, 446, and 447.

Abstract: On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, ''the North American Free Trade Agreement'' (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act. Public Law 103–182, 107 Stat. 2057 (1993).

CBP Form 434, *North American Free Trade Agreement Certificate of Origin,* is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11, 181.22 and is accessible at: *https://www.cbp.gov/newsroom/publications/forms.*

CBP Form 446, *NAFTA Verification of Origin Questionnaire,* is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA as stated on the Certificate of Origin pertaining to the good. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: *https://www.cbp.gov/newsroom/publications/forms.*

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election,* is used to gather information required by 19 CFR 181 Appendix § 11(2). This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: *https://www.cbp.gov/newsroom/publications/forms.*

Current Actions: This submission is being made to extend the expiration dates for CBP Forms 434, 446, and 447 with no change to the estimated burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Form 434, NAFTA Certificate of Origin

Estimated Number of Respondents: 40,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Number of Responses: 120,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 240,000.

Form 446, NAFTA Questionnaire

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Responses: 400.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 800.

Form 447, NAFTA Motor Vehicle Averaging Election

Estimated Number of Respondents: 11.

Estimated Number of Responses per Respondent: 1.28.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 14.

Dated: December 10, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–26894 Filed 12–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0027]

Agency Information Collection Activities: Record of Vessel Foreign Repair or Equipment Purchase

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than February 11, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0027 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1651–0027.

Form Number: CBP Form 226.

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel documented under the laws of the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: *https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 11.

Estimated Number of Total Annual Responses: 1,100.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,200.

Dated: December 10, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–26893 Filed 12–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of May 1, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified

flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(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
Grundy County, Missouri and Incorporated Areas Docket Nos.: FEMA–B–1851 and FEMA–B–1910	
City of Galt	City Hall, 102 South Main Street, Galt, MO 64641.
City of Laredo	City Hall, 213 East Main Street, Laredo, MO 64652.
City of Spickard	City Hall, 303 Jefferson Street, Spickard, MO 64679.
City of Tindall	Grundy County Courthouse, 700 Main Street, Trenton, MO 64683.
City of Trenton	City Hall, 1100 Main Street, Trenton, MO 64683.
Unincorporated Areas of Grundy County	Grundy County Courthouse, 700 Main Street, Trenton, MO 64683.
Randolph County, Missouri and Incorporated Areas Docket No.: FEMA–B–1906	
City of Clark	City Hall, 401 Main Street, Clark, MO 65243.
City of Huntsville	City Hall, 205 South Main Street, Huntsville, MO 65259.
City of Moberly	City Hall, 101 West Reed Street, Moberly, MO 65270.
Unincorporated Areas of Randolph County	Randolph County Courthouse, 372 Highway JJ, Suite A, Huntsville, MO 65259.
Village of Cairo	Village Hall, 202 West Martin Street, Cairo, MO 65239.
Village of Renick	Randolph County Courthouse, 372 Highway JJ, Suite A, Huntsville, MO 65259.
Vernon County, Missouri and Incorporated Areas Docket Nos.: FEMA–B–1853 and FEMA–B–1910	
City of Bronaugh	City Hall, 178 East 4th Street, Bronaugh, MO 64728.
City of Nevada	City Hall, 110 South Ash Street, Nevada, MO 64772.
City of Schell City	City Hall, 134 South Main Street, Schell City, MO 64783.
Village of Metz	Vernon County Courthouse, 100 West Cherry Street, Suite 6, Nevada, MO 64772.
Village of Richards	Vernon County Courthouse, 100 West Cherry Street, Suite 6, Nevada, MO 64772.
Village of Stotesbury	Vernon County Courthouse, 100 West Cherry Street, Suite 6, Nevada, MO 64772.
Unincorporated Areas of Vernon County	Vernon County Courthouse, 100 West Cherry Street, Suite 6, Nevada, MO 64772.
Seward County, Nebraska and Incorporated Areas Docket No.: FEMA–B–1908	
City of Milford	City Hall, 505 1st Street, Milford, NE 68405.
City of Seward	City Hall, 537 Main Street, Seward, NE 68434.
Unincorporated Areas of Seward County	Seward County Courthouse, 529 Seward Street, Seward, NE 68434.
Village of Beaver Crossing	Village Hall, 800 Dimery Street, Beaver Crossing, NE 68313.
Village of Bee	Village Office, 220 Elm Street, Bee, NE 68314.
Village of Cordova	Village Records Office, 310 Hector Street, Cordova, NE 68330.
Village of Garland	Garland Fire Department, 170 4th Street, Garland, NE 68360.
Village of Goehner	Village Office, 1140 May Street, Goehner, NE 68364.
Village of Pleasant Dale	Community Hall, 110 Ash Street, Pleasant Dale, NE 68423.
Village of Staplehurst	Community Hall, 155 South 3rd Street, Staplehurst, NE 68439.
Village of Utica	Village Office, 466 1st Street, Utica, NE 68456.

[FR Doc. 2019–26888 Filed 12–12–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.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: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 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.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, 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.

This new or modified 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, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(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	Date of modification	Community No.
Arkansas: Benton (FEMA Docket No.: B–1952).	City of Bentonville (18–06–3818P).	The Honorable Stephanie Orman, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	Department of Public Works, 3200 Southwest Municipal Drive, Bentonville, AR 72712.	Nov. 25, 2019	050012
Colorado:					
Adams (FEMA Docket No.: B–1954).	City of Thornton (18–08–1051P).	The Honorable Heidi Williams, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 12450 Washington Street, Thornton, CO 80241.	Nov. 29, 2019	080007
Adams (FEMA Docket No.: B–1954).	City of Westminster (18–08–1051P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	Nov. 29, 2019	080008
Chaffee (FEMA Docket No.: B–1943).	City of Salida (19–08–0038P).	The Honorable P.T. Wood, Mayor, City of Salida, 448 East 1st Street, Suite 112, Salida, CO 81201.	City Hall, 448 East 1st Street, Suite 112, Salida, CO 81201.	Oct. 10, 2019	080031
Connecticut: New Haven (FEMA Docket No.: B–1958).	Town of Branford (19–01–0945P).	The Honorable James B. Cosgrove, First Selectman, Town of Branford, Board of Selectmen, 1019 Main Street, Branford, CT 06405.	Engineering Department, 1019 Main Street, Branford, CT 06405.	Nov. 15, 2019	090073
Florida:					
Duval (FEMA Docket No.: B–1958).	City of Jacksonville (18–04–6836P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Department, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	Nov. 21, 2019	120077
Hendry (FEMA Docket No.: B–1954).	Unincorporated areas of Hendry County, (18–04–7584P).	The Honorable Mitchell Wills, Chairman, Hendry County, Board of Commissioners, P.O. Box 1760, LaBelle, FL 33975.	Hendry County, Engineering Department, 99 East Cowboy Way, LaBelle, FL 33935.	Nov. 22, 2019	120107

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Lee (FEMA Docket No.: B–1954).	Unincorporated areas of Lee County (18–04–7584P).	The Honorable Roger Desjarlais, Lee County Manager, P.O. Box 398, Fort Myers, FL 33902.	Lee County, Department of Community Development, 1500 Monroe Street, Fort Myers, FL 33901.	Nov. 22, 2019	125124
Lee (FEMA Docket No.: B–1958).	Town of Fort Myers Beach (19–04–4644P).	The Honorable Anita Cereceda, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Nov. 18, 2019	120673
Miami-Dade (FEMA Docket No.: B–1952).	City of Doral (19–04–0513P).	The Honorable Juan C. Bermudez, Mayor, City of Doral, 8401 Northwest 53rd Terrace, 3rd Floor, Doral, FL 33166.	City Hall, 8401 Northwest 53rd Terrace, 3rd Floor, Doral, FL 33166.	Nov. 18, 2019	120041
Monroe (FEMA Docket No.: B–1958).	Village of Islamorada (19–04–3903P).	The Honorable Deb Gillis, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	Nov. 29, 2019	120424
Sarasota (FEMA Docket No.: B–1952).	City of Sarasota (19–04–3550P).	The Honorable Liz Alpert, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	Nov. 13, 2019	125150
Georgia:					
DeKalb (FEMA Docket No.: B–1954).	City of Dunwoody (18–04–6945P).	The Honorable Denis Shortal, Mayor, City of Dunwoody, 4800 Ashford Dunwoody Road, Dunwoody, GA 30338.	Community Development Department, 4800 Ashford Dunwoody Road, Dunwoody, GA 30338.	Nov. 22, 2019	130679
Fulton (FEMA Docket No.: B–1954).	City of Sandy Springs (18–04–6945P).	The Honorable Rusty Paul, Mayor, City of Sandy Springs, 1 Galambos Way, Sandy Springs, GA 30328.	Community Development Department, 1 Galambos Way, Sandy Springs, GA 30328.	Nov. 22, 2019	130669
Maryland:					
Frederick (FEMA Docket No.: B–1954).	City of Frederick (19–03–0460P).	The Honorable Michael O'Connor, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701.	Public Works, Engineering Department, 140 West Patrick Street, Frederick, MD 21701.	Nov. 19, 2019	240030
Frederick (FEMA Docket No.: B–1954).	Unincorporated areas of Frederick County (19–03–0460P).	The Honorable Jan H. Gardner, Frederick County Executive, 12 East Church Street, Frederick, MD 21701.	Frederick County, Department of Development Review, Zoning Administration, 30 North Market Street, Frederick, MD 21701.	Nov. 19, 2019	240027
Montana: Sanders (FEMA Docket No.: B–1952).	Unincorporated areas of Sanders County (19–08–0298P).	The Honorable Anthony B. Cox, Presiding Officer, Sanders County Board of Commissioners, P.O. Box 519, Thompson Falls, MT 59873.	Sanders County Land Services Department, 1111 Main Street, Thompson Falls, MT 59873.	Nov. 15, 2019	300072
Oklahoma: Bryan (FEMA Docket No.: B–1954).	Town of Calera (19–06–0163P).	The Honorable Brenton Rucker, Mayor, Town of Calera, 110 West Main Street, Calera, OK 74730.	Town Hall, 110 West Main Street, Calera, OK 74730.	Nov. 25, 2019	400354
Tennessee: Hamilton (FEMA Docket No.: B–1958).	City of Collegedale (19–04–1351P).	The Honorable Katie A. Lamb, Mayor, City of Collegedale, 4910 Swinyar Drive, Collegedale, TN 37315.	Building and Codes Department, 4910 Swinyar Drive, Collegedale, TN 37315.	Nov. 18, 2019	475422
Texas:					
Bastrop (FEMA Docket No.: B–1954).	City of Bastrop (19–06–0976P).	The Honorable Connie Schroeder, Mayor, City of Bastrop, P.O. Box 427, Bastrop, TX 78602.	City Hall, 1311 Chestnut Street, Bastrop, TX 78602.	Nov. 18, 2019	480022
Bastrop (FEMA Docket No.: B–1954).	Unincorporated areas of Bastrop County (19–06–0976P).	The Honorable Paul Pape, Bastrop County Judge, 804 Pecan Street, Bastrop, TX 78602.	Bastrop County Engineering and Development Department, 211 Jackson Street, Bastrop, TX 78602.	Nov. 18, 2019	481193
Ector (FEMA Docket No.: B–1952).	City of Odessa (18–06–3857P).	The Honorable David Turner, Mayor, City of Odessa, P.O. Box 4398, Odessa, TX 79760.	City Hall, 411 West 8th Street, 4th Floor, Odessa, TX 79761.	Nov. 18, 2019	480206
Harris (FEMA Docket No.: B–1958).	Unincorporated areas of Harris County (18–06–3326P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Nov. 18, 2019	480287
McLennan (FEMA Docket No.: B–1952).	City of Woodway (18–06–3769P).	Mr. Shawn Oubre, Manager, City of Woodway, 922 Estates Drive, Woodway, TX 76712.	Community Services and Development Department, 924 Estates Drive, Woodway, TX 76712.	Nov. 19, 2019	480462
McLennan (FEMA Docket No.: B–1952).	Unincorporated areas of McLennan County (18–06–3769P).	The Honorable Scott M. Felton, McLennan County Judge, 501 Washington Avenue, Room 214, Waco, TX 76701.	McLennan County Engineering and Mapping Department, 215 North 5th Street, Suite 130, Waco, TX 76701.	Nov. 19, 2019	480456
Tarrant (FEMA Docket No.: B–1954).	City of Mansfield (19–06–0853P).	The Honorable David L. Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	Department of Zoning and Planning, 1200 East Broad Street, Mansfield, TX 76063.	Nov. 29, 2019	480606
Tarrant (FEMA Docket No.: B–1952).	City of Fort Worth (19–06–0602P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Engineering Department, 200 Texas Street, Fort Worth, TX 76102.	Nov. 14, 2019	480596
Travis (FEMA Docket No.: B–1954).	City of Manor (19–06–0958P).	Mr. Thomas M. Bolt, Manager, City of Manor, P.O. Box 387, Manor, TX 78653.	City Hall, 105 East Eggleston Street, Manor, TX 78653.	Dec. 2, 2019	481027
Webb (FEMA Docket No.: B–1948).	Unincorporated areas of Webb County (18–06–2680P)	The Honorable Tano E. Tijerina, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	Webb County Planning Department, 1110 Washington Street, Suite 302, Laredo, TX 78040.	Nov. 25, 2019	481059

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Williamson (FEMA Docket No.: B–1958).	City of Cedar Park (19–06–0879P).	The Honorable Corbin Van Arsdale, Mayor, City of Cedar Park, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	Engineering Department, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	Nov. 21, 2019	481282
Williamson (FEMA Docket No.: B–1958).	Unincorporated areas of Williamson County (19–06–0879P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Engineering Department, 3151 Southeast Inner Loop, Suite B, Georgetown, TX 78626.	Nov. 21, 2019	481079

[FR Doc. 2019–26887 Filed 12–12–19; 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–1945]

Proposed Flood Hazard Determinations for Winneshiek County, Iowa and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Winneshiek County, Iowa and Incorporated Areas.

DATES: This withdrawal is effective December 13, 2019.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B- 1945 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;*

SUPPLEMENTARY INFORMATION: On August 1, 2019, FEMA published a proposed notice at 84 FR 37661, proposing flood hazard determinations for Winneshiek County, Iowa and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–26889 Filed 12–12–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0049]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Suspicious/Criminal Activity Tip Reporting

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until February 11, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0049 in the body of the letter, the agency name and Docket ID ICEB–2019–0010. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. 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 ICEB–2019–0010;

(2) *Mail:* Submit written comments to DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536–5800.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: Jody C. Fasenmyer (802–662–8115), *jody.c.fasenmyer@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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:* Suspicious/Criminal Activity Tip Reporting.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

sponsoring the collection: U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. The Department of Homeland Security (DHS) tip reporting capability will facilitate the collection of information from the public and law enforcement partners regarding allegations of crimes enforced by DHS.

(5) *An estimate of the total number of responses and the amount of time estimated for an average respondent to respond:* ICE estimates a total of 130,000 responses at .10 minutes (.167 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21,710 annual burden hours.

Dated: December 9, 2019.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2019–26826 Filed 12–12–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6083–N–05]

Notice of a Federal Advisory Committee Meeting, Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC Regulatory Enforcement Subcommittee. This meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The meeting will be held on January 14, 2020, 10:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT). The teleconference number is U.S. toll-free: 866–628–5137 and Participant Code: 4325435. To access the webinar, use the following link: *https://zoom.us/j/739636113.*

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410, telephone 202–708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the Federal Relay at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment

Citizens wishing to make comments on the business of the MHCC must register by contacting Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com* or call 1–888–602–4663. With advance registration, members of the public will have an opportunity to provide oral or written comments relative to agenda topics for the Subcommittee's consideration. Written comments must be provided no later than January 6, 2020 to *mhcc@homeinnovation.com.* Please note, written statements submitted will not be read during the meeting but will be provided to the Subcommittee members prior to the meeting.

The MHCC will also provide an opportunity for oral public comments on specific matters before the Regulatory Enforcement Subcommittee. The total amount of time for oral comments will be 15 minutes with each commenter limited to two minutes, if necessary, to ensure pertinent Subcommittee business is completed. The Subcommittee will not respond to individual written or oral statements; however, it will take all public comments into account in its deliberations. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda.

Tentative Agenda

Tuesday, January 14, 2020—10 a.m. to 4 p.m. EDT

I. Call to Order and Roll Call
II. Opening Remarks—Subcommittee Chair & Designated Federal Officer (DFO)
III. Approval of minutes from October 29–31, 2019 Regulatory Enforcement Subcommittee Meeting
IV. Public Comment Period—15 minutes
V. Assigned Deregulation Comments and Proposed Changes Review Proposed Changes Log:
- LOG 195 Deregulation Comment Categories:
- On-Site Completion—DRC 4

VI. Lunch from 12:30 p.m. to 1:30 p.m.
VII. Assigned Deregulation Comments and Proposed Change Review Continued
VIII . Public Comment Period—15 minutes
IX. Wrap Up—DFO & Administering Organization
X. Adjourn

Dated: December 6, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–26912 Filed 12–12–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC06000.L13100000.DS0000. LXSIAREV0000.19XL1109AF; MO#4500131458]

Notice of Availability of the Record of Decision for the Bakersfield Field Office Hydraulic Fracturing Supplemental Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) for the Final Supplemental Environmental Impact Statement (EIS) developed for the 2012 Proposed Resource Management Plan

(RMP), and by this Notice is announcing its availability. This supplemental environmental analysis responds to a May 2017, U.S. District Court Order requiring additional environmental analysis of the potential impacts of hydraulic fracturing of oil and gas resources within the planning area. The BLM issues this ROD to re-affirm the portions of the 2014 ROD that were set-aside in a partial remand. Because there are no changes to the 2014 RMP resulting from supplementation of its underlying EIS, with signature of this ROD, that part of the 2014 ROD that was set aside on remand, is now in effect.

DATES: The Acting California State Director signed the ROD on December 12, 2019.

ADDRESSES: Copies of the ROD are available for public inspection during regular business hours at 3801 Pegasus Drive, Bakersfield, CA 93308. Interested persons may also review the ROD at *https://go.usa.gov/xE3Nw.*

FOR FURTHER INFORMATION CONTACT: Carly Summers, Supervisory Natural Resources Specialist; telephone: 661–391–6000; email: *csummers@blm.gov;* address: Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308. 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. Summers 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 Bakersfield Field Office planning area is located in eastern Fresno, western Kern, Kings, Madera, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties in California and encompasses approximately 1.2 million acres of Federal minerals, which includes roughly 400,000 surface acres of BLM-managed public land.

This supplemental environmental analysis responds to a May 2017, U.S. District Court Order requiring additional environmental analysis of the potential impacts of hydraulic fracturing of oil and gas resources within the planning area. The U.S. District Court Order upheld the range of alternatives analyzed in the 2012 Proposed RMP/Final EIS. The five management alternatives analyzed in the Proposed RMP/Final EIS were:

- The No Action alternative (Alternative A)—continue current management under the existing 1997 Caliente RMP and 1984 Hollister RMP, as amended.
- The Proposed Plan (Alternative B)—balance resource conservation and ecosystem health with the production of commodities and public use of the land.
- Alternative C—emphasize conserving cultural and natural resources, maintaining functioning natural systems, and restoring degraded natural systems.
- Alternative D—same as Alternative C, except that Alternative D would eliminate livestock grazing from BLM-managed lands in the planning area.
- Alternative E—emphasize the production of natural resources, commodities and public use opportunities.

The 2012 Proposed RMP/Final EIS identified public lands as available to fluid mineral leasing; no changes to that designation were made through the Final Supplemental EIS.

Preliminary resource issues were presented for public scoping review and comment in the August 8, 2018, **Federal Register** Notice of Intent (83 FR 39116). Issues identified by the BLM, Federal, State, and local agencies, and other stakeholders include air and atmospheric values, water quality and quantity, seismicity, special status species, and mineral resources (oil and gas).

The Draft Supplemental EIS began a 45-day public comment period upon publication of the Notice of Availability in the April 26, 2019 **Federal Register** (84 FR 17885). The BLM held public meetings on May 21, 22, and 23, 2019, in Bakersfield, San Luis Obispo, and Santa Barbara, respectively. Approximately 600 individuals attended the three meetings and approximately 16,000 written comments were received through ePlanning and standard mail. Responses to substantive comments are in Appendix B: Public Comment Summary Report of the Final Supplemental EIS. Public comments resulted in the addition of clarifying text to the final EIS, but did not warrant or suggest further supplementation or change.

The Final Supplemental EIS Notice of Availability published in the **Federal Register** on November 1, 2019 (84 FR 58739).

The results of this final supplemental analysis regarding the impacts of hydraulic fracturing of oil and gas resources, additive to those identified in the 2012 Final EIS, did not show a notable increase in total impacts. No conflicts were found between the estimated impacts of hydraulic fracturing and the resource or program management goals and objectives stated in the approved RMP. The range of alternatives was upheld by the District Court and has not changed between the approved 2014 RMP and its 2012 Final EIS and the 2019 Final Supplemental EIS. Therefore, no amendment to the 2014 RMP is necessary, and the BLM upholds its previous decision to select the Proposed Plan (Alternative B) for its Resource Management Plan. BLM has fully analyzed the effects of hydraulic fracturing in accordance with the order of the court, and although the 2012 EIS has been supplemented, no change is made to the RMP decisions that were approved in 2014.

The BLM utilized and coordinated the NEPA process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108), as provided in 36 CFR 800.2(d)(3). The BLM will continue to consult with Indian tribes on a government-to-government basis, in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will continue to be given due consideration.

With this ROD, the BLM incorporates the supplemental EIS for the Bakersfield Field Office Resource Management Plan (RMP) into the August 2012 EIS, which supported the Bakersfield Field Office Proposed Resource Management Plan. The BLM issues this ROD to re-affirm the portions of the 2014 ROD that were set-aside in the partial remand. Because there are no changes to the 2014 RMP resulting from supplementation of its underlying EIS, with signature of this ROD, that part of the 2014 ROD that was set aside on remand, is now in effect.

(Authority: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2; 43 CFR 1610.5; 42 U.S.C. 4370m–6(a)(1)).

Danielle Chi,

Deputy State Director, Resources.

[FR Doc. 2019–26679 Filed 12–12–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 20XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases WYW147077 and WYW147081, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as

amended, the Bureau of Land Management (BLM) received petitions for reinstatement of competitive oil and gas leases WYW147077 and WYW147081 from Five Star Energy LLC and Moriah Powder River LLC for land in Johnson County, Wyoming. The lessees filed the petitions on time, along with all rentals due since the leases terminated under the law. No leases affecting this land were issued before the petitions were filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: Termination of a lease is automatic and statutorily imposed by Congress. Alternatively, reinstatement terms are also set by Congress. Oil and gas leases WYW147077 and WYW147081 terminated effective November 1, 2018, for failure to pay rental timely. The lessees petitioned for reinstatement of the leases and met all filing requirements for a Class II reinstatement. The lessees agreed to the amended lease terms for rentals of $10 per acre, or fraction thereof, per year and royalty rates of 16 ⅔ percent, and additional lease stipulations. The lessees have paid the required $500 administrative fee and the $151 cost of publishing this notice. The lessees meet the requirements for reinstatement of the leases per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Reinstatement of these leases conforms to the terms and conditions of all applicable land use plans and other applicable National Environmental Policy Act documents. The BLM proposes to reinstate the leases with an effective date of November 1, 2018, under the amended terms and conditions of the leases and the increased rental and royalty rates cited above. The leases will be reinstated 30 days after publication of the notice of proposed reinstatement in the **Federal Register**.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3(b)(2)(v).

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2019–26897 Filed 12–12–19; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 19XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases WYW185919, WYW185924, WYW185925, and WYW185926, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas leases WYW185919, WYW185924, WYW185925, and WYW185926 from Hat Creek Resources, LLC for land in Johnson County, Wyoming. The lessee filed the petition on time, along with all rentals due since the leases terminated under the law. No leases affecting this land were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: Termination of a lease is automatic and statutorily imposed by Congress when rental fees are not paid in a timely manner. Similarly, reinstatement terms are also set by Congress upon submission of a petition for reinstatement from a lessee. Rental was not paid in time for competitive oil and gas leases WYW185919, WYW185924, WYW185925, and WYW185926, prompting lease termination by operation of law. As provided for under the Mineral Leasing Act of 1920, as amended, the BLM received a petition for reinstatement from the lessee of record, Hat Creek Resources, LLC for land in Johnson County, Wyoming. The lessee filed the petition on time along with all rentals due since the leases terminated under operation of law. The leases will be reinstated 30 days after publication of the proposed reinstatement notice in the **Federal Register**.

The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively, and additional lease stipulations. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the leases per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188).

Reinstatement of this lease conforms to the terms and conditions of all applicable land use plans, including the 2015 Approved Resource Management Plan Amendments for the Rocky Mountain Region, and other National Environmental Policy Act documents. The BLM proposes to reinstate the leases with the effective date of April 1, 2018, under the amended terms and conditions of the leases and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v)

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2019–26898 Filed 12–12–19; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–IMR–YELL–NPS0028091; PPIMYELL60 PPMVSCS1Z.Y00000 (200); OMB Control Number 1024–0266]

Agency Information Collection Activities; Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park

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, we) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 13, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0266 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Willie Burkhardt, Concessions Management Specialist, P.O. Box 168, Mammoth Hot Springs Yellowstone National Park, WY 82190–0168; or by email at *willie_burkhardt@nps.gov.* Please reference OMB Control Number 1024–0266 in the subject line of your comments. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

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.

On June 5, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on August 5, 2019 (84 FR 26153). We did not receive public comments on this notice.

We are again 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 (NPS) is authorized by regulations codified in 36 CFR 7.13(l), Special Regulations; Areas of the National Park System; Yellowstone National Park; Winter Use, to establish a management framework that allows the public to experience the unique winter resources and values at Yellowstone National Park (YELL). Access to most of the park in the winter, is limited by distance and the harsh winter environment, which presents challenges to safety and park operations. In response, the NPS provides opportunities for park visitors to experience Yellowstone in the winter via over-snow vehicles (snowmobiles and snowcoaches, collectively OSVs). The final rule includes provisions that allow greater flexibility for commercial tour operators, provide mechanisms to make the park cleaner and quieter during the winter seasons, reward over-snow vehicle innovations and technologies, and allow increases in visitation. All over-snow vehicles (OSV) operating in the park are required to meet air and sound emission standards and be accompanied by a guide. As directed by the regulation, commercial OSV operators must complete the *OSV Monthly Use Report* (Form 10–650) and maintain certain records regarding:

Emission and Sound Standards (§ 7.13(l)(4)(vii) and (5)). Only OSVs that meet NPS emission and sound standards may operate in the park. Before the start of each winter season:

(a) Snowcoach manufacturers or commercial tour operators must demonstrate, by means acceptable to the Superintendent, that their snowcoaches meet the standards.

(b) Snowmobile manufacturers must demonstrate, by means acceptable to the Superintendent, that their snowmobiles meet the standards.

Transportation Events (§ 7.13(l)(11)(i)–(iii)). To monitor compliance with the required average and maximum size of transportation events, as of December 15, 2014, each commercial tour operator must:

(a) Maintain accurate and complete records on the number of snowmobiles and snowcoaches he or she brings into the park on a daily basis. These records must be made available for inspection by the park upon request.

(b) Provide a monthly use report on their activities. Form 10–650, ''Concessioner Monthly Use Report'', available on the park website, is used to collect information for transportation events.

Enhanced Emission Standards (§ 7.13(l)(11)(iv)). To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, each commercial tour operator must:

(a) Before the start of each winter season, demonstrate, by means acceptable to the Superintendent, that his or her snowmobiles or snowcoaches meet the enhanced emission standards; and

(b) Maintain separate records for snowmobiles and snowcoaches that meet enhanced emission standards and those that do not.

We will use the information collected to: (1) Ensure that OSVs meet NPS emission standards to operate in the park; (2) evaluate commercial tour operators' compliance with allocated transportation events and daily and seasonal OSV group size limits; (3) ensure that established daily transportation event limits for the park are not exceeded, (4) confirm that commercial tour operators do not run out of authorizations before the end of the season and create a gap when prospective visitors cannot be accommodated, and (5) guarantee compliance with applicable laws and regulations.

Title of Collection: Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park.

OMB Control Number: 1024–0266.

Form Number: NPS Form 10–650.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Businesses desiring to operate snowcoaches and snowmobiles in Yellowstone National Park.

Total Estimated Number of Annual Respondents: 17.

Total Estimated Number of Annual Responses: 64.

Estimated Completion Time per Response: On average.

- Transportation Events *(reporting 1.5 hours; recordkeeping. 30 minutes)*

- Emission/Sound Standards *(reporting 30 minutes)*
- Enhanced Emission Standards (*reporting 30 minutes; recordkeeping 30 minutes)*

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

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. 2019–26900 Filed 12–12–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–610 and 731–TA–1425–1426 (Final)]

Refillable Stainless Steel Kegs From China and Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially retarded by reason of imports of refillable stainless steel kegs from China and Germany, provided for in subheadings 7310.10 and 7310.29 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''),[2] and to be subsidized by the government of China.[3] [4] [5]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 84 FR 57010, October 24, 2019, and 84 FR 57008, October 24, 2019.

[3] 84 FR 57005, October 24, 2019.

[4] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on refillable stainless steel kegs from China.

[5] Commissioners Randolph J. Stayin and Amy A. Karpel did not participate in these investigations.

Background

The Commission instituted these investigations effective September 20, 2018, following receipt of a petition filed with the Commission and Commerce by American Keg Company, LLC, Pottstown, Pennsylvania. Effective June 4, 2019, the Commission established a general schedule for the conduct of the final phase of the investigations following notification of preliminary determinations by Commerce that imports of refillable stainless steel kegs were being subsidized by the government of China [6] within the meaning of section 703(b) of the Act and that imports of refillable stainless steel kegs from China,[7] Germany,[8] and Mexico [9] were being sold at LTFV within the meaning of 733(b) of the Act. Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 17, 2019 (84 FR 28070). The hearing was held in Washington, DC, on August 14, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Following notification of final determinations by Commerce that imports of refillable stainless steel kegs were being subsided by the government of China and that imports of refillable stainless steel kegs from China and Germany were being sold in the United States at LTFV, notice of the supplemental scheduling of the final phase of the Commission's countervailing and antidumping duty investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 2019 (84 FR 59840).

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on December 9, 2019. The views of the Commission are contained in USITC Publication 5002 (December 2019), entitled *Refillable Stainless Steel Kegs from China and Germany: Investigation Nos. 701–TA–610 and 731–TA–1425–1426 (Final).*

[6] 84 FR 13634, April 5, 2019.

[7] 84 FR 25745, June 4, 2019.

[8] 84 FR 25736, June 4, 2019.

[9] 84 FR 25738, June 4, 2019.

By order of the Commission.

Issued: December 9, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–26863 Filed 12–12–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 11, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Technical Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0017. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 100 programs providing technical assistance as recipients under the Technical Assistance Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 100 respondents (Technical Assistance providers) approximately one hour to complete a semi-annual progress report twice a year. The semi-annual progress report for the Technical Assistance Program is divided into sections that pertain to the different types of activities in which Technical Assistance Providers are engaged.

The primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and their subgrantees to enhance the success of local projects they are implementing with VAWA grant funds. In addition, OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence, and stalking and to foster partnerships between organizations that have not traditionally worked together to address violence against women, such as faith- and community-based organizations.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the semi-annual progress report form is 200 hours. It will take approximately one hour for the grantees to complete the form twice a year.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: December 9, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–26833 Filed 12–12–19; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0025]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 11, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 of Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Services to Advocate for and Respond to Youth Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122- 0025. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 45 grantees of the Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies (which includes the previously authorized Services to Advocate for and Respond to Youth Program) which creates a unique opportunity for communities to increase collaboration among non-profit victim service providers, violence prevention programs, and child and youth organizations serving victims ages 0–24.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 45 respondents approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Consolidated Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 90 hours, that is 45 grantees completing a form twice a year with an estimated one hour to complete the form.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: December 9, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–26832 Filed 12–12–19; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 11, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122—0024. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 15 grantees of the Tribal Sexual Assault Services Program. The Sexual Assault Services Program (SASP), created by the Violence Against Women Act of 2005 (VAWA 2005), is the first federal funding stream solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault. The SASP encompasses four different funding streams for States and Territories, Tribes, State Sexual Assault Coalitions, Tribal Coalitions, and culturally specific organizations. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault.

The Tribal SASP supports efforts to help survivors heal from sexual assault trauma through direct intervention and related assistance from social service organizations such as rape crisis centers through 24-hour sexual assault hotlines, crisis intervention, and medical and criminal justice accompaniment. The Tribal SASP will support such services through the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 15 respondents (grantees from the Tribal Sexual Assault Services Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal SASP grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 30 hours, that is 15 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: December 9, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–26831 Filed 12–12–19; 8:45 am]

BILLING CODE 4410–FX–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 16, 23, 30, 2019, January 6, 13, 20, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of December 16, 2019

Tuesday, December 17, 2019

10:00 a.m.—Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Larniece McKoy Moore: 301–415–1942)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of December 23, 2019—Tentative

There are no meetings scheduled for the week of December 23, 2019.

Week of December 30, 2019—Tentative

There are no meetings scheduled for the week of December 30, 2019.

Week of January 6, 2020—Tentative

There are no meetings scheduled for the week of January 6, 2020.

Week of January 13, 2020—Tentative

There are no meetings scheduled for the week of January 13, 2020.

Week of January 20, 2020—Tentative

There are no meetings scheduled for the week of January 20, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov*. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 11th day of December 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–27035 Filed 12–11–19; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0226]

Agency Action Regarding the Exploratory Process for the Development of an Advanced Nuclear Reactor; Generic Environmental Impact Statement; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Gather information that would be used to determine whether to prepare a generic environmental impact statement for the construction and operation of advanced nuclear reactors; extension of comment period; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on December 9, 2019 that extends the comment period on the exploratory process to determine whether to proceed with the development of generic environmental impact statement for the construction and operation of advanced nuclear reactors (ANR GEIS). This action is necessary to correct the public comment period due date from January 24, 2019 to January 24, 2020.

DATES: The correction takes effect on December 13, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0226 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0226. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jack Cushing, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1424, email: *Jack.Cushing@nrc.gov* or Mallecia Sutton, Office of Nuclear Reactor Regulation, telephone: 301–415–0673, email: *Mallecia.Sutton@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: In the **Federal Register** (FR) on December 9, 2019, in FR Doc. 2019–26442, on page 67300, in the first column, second paragraph, second sentence under the **DATES** section, correct ''Comments should be filed no later than January 24, 2019'' to read ''Comments should be filed no later than January 24, 2020.'' In the third column, first paragraph, fourth sentence, correct ''The NRC has decided to extend the public comment period on this process until January 24, 2019, to allow more time for members of the public to submit their comments'' to ''The NRC has decided to extend the public comment period on this process until January 24, 2020, to allow more time for members of the public to submit their comments.''

Dated at Rockville, Maryland, this 10th day of December 2019.

For the Nuclear Regulatory Commission.

Anthony E. deJesus,

Team Leader, Legal Research Center, Program Support Branch, Office of the General Counsel.

[FR Doc. 2019–26916 Filed 12–12–19; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Announcement of OMB Approvals of Information Collections

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval.

SUMMARY: The Office of Management and Budget (OMB) has approved certain Pension Benefit Guaranty Corporation (PBGC) information collections under the Paperwork Reduction Act. This notice lists the approved information collections and provides their OMB control numbers and current expiration dates.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. TTY users may call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, extension 6563.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations require Federal agencies, after receiving OMB approval of information collections, to display OMB control numbers and inform respondents of their legal significance. In accordance with those requirements, PBGC hereby notifies the public that the following information

collections, that are contained in PBGC's regulations and do not have a corresponding form, have been approved by OMB.

- OMB Control Number 1212–0022, Mergers and Transfer Between Multiemployer Plans. The expiration date for this information collection contained in 29 CFR part 4231 is November 30, 2021.
- OMB Control Number 1212–0063, Filings for Reconsiderations. The expiration date for this information collection contained in 29 CFR part 4003 is August 31, 2022.
- OMB Control Number 1212–0068, Partitions of Eligible Multiemployer Plans. The expiration date for this information collection contained in 29 CFR part 4233 is February 28, 2022.

The PRA provides that 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. Publication of this notice satisfies this requirement with respect to the above-listed information collections, as provided in 5 CFR 1320.5(b)(2)(ii).

Issued in Washington, DC, by:

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–26932 Filed 12–12–19; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–51 and CP2020–49; MC2020–52 and CP2020–50; MC2020–53 and CP2020–51; MC2020–54 and CP2020–52; MC2020–55 and CP2020–53; MC2020–56 and CP2020–54; MC2020–57 and CP2020–55; MC2020–58 and CP2020–56; MC2020–59 and CP2020–57; MC2020–60 and CP2020–58]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 16, 2019, and December 17, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–51 and CP2020–49; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 136 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 16, 2019.

2. *Docket No(s).:* MC2020–52 and CP2020–50; *Filing Title:* USPS Request to Add Priority Mail Contract 572 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 16, 2019.

3. *Docket No(s).:* MC2020–53 and CP2020–51; *Filing Title:* USPS Request to Add Priority Mail Contract 573 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 16, 2019.

4. *Docket No(s).:* MC2020–54 and CP2020–52; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 137 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 16, 2019.

5. *Docket No(s).:* MC2020–55 and CP2020–53; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 107 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 16, 2019.

6. *Docket No(s).:* MC2020–56 and CP2020–54; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 108 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R.

Moeller; *Comments Due:* December 17, 2019.

7. *Docket No(s).:* MC2020–57 and CP2020–55; *Filing Title:* USPS Request to Add Priority Mail Contract 574 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 17, 2019.

8. *Docket No(s).:* MC2020–58 and CP2020–56; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 138 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 17, 2019.

9. *Docket No(s).:* MC2020–59 and CP2020–57; *Filing Title:* USPS Request to Add Priority Mail Contract 575 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* December 17, 2019.

10. *Docket No(s).:* MC2020–60 and CP2020–58; *Filing Title:* USPS Request to Add Priority Mail Contract 576 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* December 17, 2019.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–26934 Filed 12–12–19; 8:45 am]

BILLING CODE 7710–FW–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:* December 13, 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 December 9, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 577 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–62, CP2020–60.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–26828 Filed 12–12–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and 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:* December 13, 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 December 9, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 109 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–61, CP2020–59.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–26830 Filed 12–12–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87690; File No. SR–CboeBYX–2019–009]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

December 9, 2019.

On May 2, 2019, Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BYX Fee Schedule to establish a monthly Trading Rights Fee to be assessed on Members.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on May 16, 2019.[5] On June 28, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] In response to the BYX OIP, the Commission received three comment letters, including a response letter from the Exchange.[7] On November 12, 2019, pursuant to Section 19(b)(2) of the Act,[8] the Commission designated a longer period within which to approve or disapprove the proposed rule change.[9] On November 22, 2019, the Exchange withdrew the proposed rule change (SR–CboeBYX–2019–009).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that BYX initially filed the proposed rule change on April 29, 2019 (SR–CboeBYX–2019–006). On May 2, 2019, BYX withdrew that filing and submitted the present proposal (SR–CboeBYX–2019–009).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* Securities Exchange Act Release No. 85841 (May 10, 2019), 84 FR 22199.

[6] *See* Securities Exchange Act Release No. 86232, 84 FR 32227 (July 05, 2019) (''BYX OIP'').

[7] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 26, 2019; Tyler Gellasch, Executive Director, Healthy Markets, dated July 26, 2019; and Rebecca Tenuta, Counsel, Cboe Global Markets, dated August 9, 2019.

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 87499, 84 FR 63698 (November 18, 2019). The Commission designated January 11, 2020, as the date by which the Commission would approve or disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26840 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87688; File No. SR–CboeBZX–2019–041]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

December 9, 2019.

On May 2, 2019, Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BZX Fee Schedule to establish a monthly Trading Rights Fee to be assessed on Members.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on May 16, 2019.[5] On June 28, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] In response to the BZX OIP, the Commission received three comment letters, including a response letter from the Exchange.[7] On November 12, 2019, pursuant to Section 19(b)(2) of the Act,[8] the Commission designated a longer period within which to approve or disapprove the proposed rule change.[9] On November 22, 2019, the Exchange withdrew the proposed rule change (SR–CboeBZX–2019–041).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26838 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that BZX initially filed the proposed rule change on April 29, 2019 (SR–CboeBZX–2019–036). On May 2, 2019, BZX withdrew that filing and submitted the present proposal (SR–CboeBZX–2019–041).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* Securities Exchange Act Release No. 85840 (May 10, 2019), 84 FR 22190.

[6] *See* Securities Exchange Act Release No. 86233, 84 FR 32230 (July 05, 2019) (''BZX OIP'').

[7] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 26, 2019; Tyler Gellasch, Executive Director, Healthy Markets, dated July 26, 2019; and Rebecca Tenuta, Counsel, Cboe Global Markets, dated August 9, 2019.

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 87500, 84 FR 63700 (November 18, 2019). The Commission designated January 11, 2020, as the date by which the Commission would approve or disapprove the proposed rule change.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87691; File No. SR–Phlx–2019–52]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Order Types and Remove and Relocate Certain Rule Text Currently Located Within Rule 1080

December 9, 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 26, 2019, Nasdaq PHLX LLC (''Phlx'' 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 order types and remove and relocate certain rule text currently located within Rule 1080, titled ''Electronic Acceptance of Quotes and Orders.

Further, the Exchange proposes to amend Phlx Rules 1000, titled ''Applicability, Definitions and References'' to add definitions for ''Order Entry Firm'' and ''Away Best Bid or Offer or ABBO'' and remove the defined term ''Agency Order.'' The Exchange proposes to amend Rule 1014, titled ''Obligations of Market Makers,''[3] to permit Registered Options Traders (''ROTS'') and Specialists to enter orders. The Exchange proposes to update cross references within Rule 1017, titled ''Opening in Options.'' The rule text within Rule 1078, titled ''All-or-None Orders'' is being relocated to Rule 1080. The order types within Rule 1098 titled ''Complex Orders on the System,'' and Options 8, Section 32, titled ''Certain Types of Floor-Based (Non-System) Orders Defined'' are being amended to correspond to changes within Rule 1080 order types. Finally, Options 8, Section 39, at A–3 titled ''All-or-None Option Orders'' is being amended to update the floor applicability of this order type.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1080, entitled ''Electronic Acceptance of Quotes and Orders'' by:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ROTs include Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs''). A ROT is a regular member or a foreign currency options participant of the Exchange who has received permission from the Exchange to trade in options for his own account. An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned. An RSQT is an ROT that is a member affiliated with an RSQT with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. The Exchange notes that a Specialist, which is defined in Rule 1020, is a Registered Options Trader. For purposes of this rule the Exchange would note ROTs and Specialists, where applicable to be complete.

(1) Removing and relocating certain rule text including obsolete rule text; and (2) amending order types. These amendments are detailed below.

With respect to the removal of obsolete rule text, the Exchange filed prior rule changes [4] which established Phlx's System as it exists today. As the new System was amended through a series of rule changes, certain older technology such as AUTOM, AUTO–X, specialist manual handling and other functionality noted within this rule change, became obsolete. During this timeframe, the Exchange's System was automated to prevent any manual intervention, such as specialist manual handling, and provide System-enforced functionalities. These System enhancements effectively replaced and made obsolete certain processes that Phlx proposes to delete within this rule change.

As an overview of the automation of Phlx and corresponding rule changes, in July 2004, the Exchange began trading options on Phlx XL, followed by index options in December 2004. Phlx XL was completely rolled out by February 2005.[5] In 2006, Phlx commenced deleting certain obsolete provisions from its rules to reflect the automation that came about with the inception of Phlx XL.[6] In 2007, the Exchange filed a proposal to modernize the Exchange's System to account for technological advances that have been made in the industry since the original adoption of the rule and to provide more efficient executions for customers with marketable limit orders on the Exchange's Order Book.[7] In 2008, Phlx filed to permit the electronic handling of Complex Orders on Phlx XL.[8] In 2009, the Exchange proposed to implement several enhancements to its electronic options trading system, Phlx XL. The enhanced system was called Phlx XL II and would reflect enhancements to the opening, linkage and routing, quoting, and order management processes. The enhancements were intended to improve execution quality for Phlx users by improving a number of processes, including those related to the opening, order handling and order execution.[9] The Exchange proposed its Price Improvement XL auction in 2010.[10] The Exchange established a Qualified Contingent Cross Order in 2011.[11] The Exchange eliminated the Market Exhaust functionality in 2012.[12] The Exchange notes that its current functionalities were all filed for in various rule changes, however in filing each new functionality, the entirety of the obsolete functionality was not removed from Phlx rules. At this time, the Exchange proposes to remove those obsolete functionalities which are explained in more detail within this proposal.

Rule 1080(b)–(f) New Rule Text

The Exchange proposes to retitle Rule 1080(b) from ''Eligible Orders'' to ''Order Types.'' The current rule text provides,

Eligible Orders (i) The following types of orders are eligible for entry into AUTOM:

(A) Agency orders may be entered. The following types of agency orders are eligible for AUTOM: Day, GTC, Immediate or Cancel (''IOC''), Intermarket Sweep Order (''ISO''), market, limit, stop, stop-limit, all or none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, opening-only-market order, limit on opening order, and possible duplicate orders. For purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order, and FIND order; see Rule 1093.

(B) Orders for the proprietary account(s) of SQTs, RSQTs and non-SQT ROTs and specialists via electronic interface with AUTOM may be entered, subject to the restrictions on order entry set forth in Commentary .04 of this Rule.

(1) The following types of orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of 10 contracts or greater are eligible for entry via electronic interface with AUTOM: GTC, day limit, IOC, ISO, limit on opening and simple cancel. Orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of less than 10 contracts shall be submitted as IOC only.

(2) The following types of orders for the proprietary account(s) of SQTs and RSQTs are eligible for entry via electronic interface with AUTOM: Limit on opening, IOC, ISO, and day limit. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order, and FIND order; see Rule 1093.

(C) Off-floor broker-dealer limit orders, subject to the restrictions on order entry set forth in Commentary .05 of this Rule, may be entered. The following types of broker-dealer limit orders are eligible for AUTOM: Day, GTC, IOC, ISO, stop, stop-limit, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, limit on opening order. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order, and FIND order; see Rule 1093. For purposes of this Rule 1080, the term ''off-floor broker-dealer order'' means an order delivered from off the floor of the Exchange by or on behalf of a broker-dealer for the proprietary account(s) of such broker-dealer, including an order for a market maker located on an exchange or trading floor other than the Exchange's trading floor delivered via AUTOM for the proprietary account(s) of such market maker.

The Exchange proposes to delete the current rule text within Rule 1080(b)(i)(A) and replace it with a list of current order types and descriptions. The Exchange proposes to refer to the trading system as the defined term ''System'' [13] instead of ''AUTOM'' or ''Phlx XL II'' in the proposed rule text. The terms ''AUTOM'' and ''Phlx XL II'' are outdated references. The Exchange proposes to delete the following sentence currently within Rule 1080(b)(ii), ''The Exchange may determine to accept additional types of orders as well as to discontinue accepting certain types of orders.'' The Exchange further proposes to state within Rule 1080(b) new text, ''The

[4] *See* Securities Exchange Act Release Nos. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59); 55498 (March 20, 2007, 72 FR 14318 (March 27, 2007) (SR–Phlx–2007–15); 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32); and 72152 (May 12, 2014), 79 FR 28561 (May 16, 2014) (SR–Phlx–2014–32).

[5] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[6] *See* Securities Exchange Act Release Nos. 54312 (August 14, 2006), 71 FR 47856 (August 18, 2004) (SR–Phlx–2006–28) and 55498 (March 20, 2007), 72 FR 14318 (March 27, 2007) (SR–Phlx–2007–15).

[7] *See* Securities Exchange Act Release Nos. 55825 (May 29, 2007), 72 FR 30890 (June 4, 2007) (SR–Phlx–2007–38).

[8] *See* Securities Exchange Act Release Nos. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR–Phlx–2008–50).

[9] *See* Securities Exchange Act Release Nos. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). At this time, the Exchange introduced a Do-Not-Route (''DNR'') order, a FIND order, and a SRCH order.

[10] *See* Securities Exchange Act Release Nos. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108).

[11] *See* Securities Exchange Act Release Nos. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47).

[12] *See* Securities Exchange Act Release Nos. 66087 (January 3, 2012), 77 FR 1095 (January 9, 2012) (SR–Phlx–2012–101).

[13] The term ''System'' shall mean the automated system for order execution and trade reporting owned and operated by the Exchange which comprises: (A) An order execution service that enables members to automatically execute transactions in System Securities; and provides members with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits ''locked-in'' trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority (''OPRA'') for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a ''locked-in'' trading environment; and (C) the data feeds described at Rule 1070. *See* Phlx Rule 1000(b)(45).

following order types may be submitted to the System.''

Current Rule 1080(b)(i) defines the types of orders that may be submitted by categorization: (1) Agency; (2) proprietary; and (3) Off-Floor Broker Dealer.

Agency Orders

Currently, Phlx Rule 1080(b)(i)(A) defines agency. Current Rule 1080(b)(i)(A) states, ''For purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.'' [14] This rule also specifically provides order type requirements:

The following types of agency orders are eligible for AUTOM: Day, GTC, Immediate or Cancel (''IOC''), Intermarket Sweep Order (''ISO''), market, limit, stop, stop-limit, all or none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, opening-only-market order, limit on opening order, and possible duplicate orders. For purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order, and FIND order; see Rule 1093.

The Exchange notes that current Rule 1080 defines these categories as they existed some time ago. Today, the options industry has expanded capacity codes [15] that are utilized to determine the category of market participant for whom an order is being submitted. When members submit orders to Phlx, a capacity code is required. The Exchange notes that the definition of Agency Order within Rule 1080 is utilized to distinguish orders that are not entered for the proprietary account of a market participant. The Exchange notes that while that distinction may have been applicable at one point in time with respect to entering orders, it is not suitable to limit the entry of certain orders on that basis. The Exchange proposes to eliminate the categorization of ''agency orders'' and ''proprietary orders'' as these categorizations are unnecessary.

The current term ''agency'' is proposed to be deleted because the Exchange specifically identifies within the proposed rules which type of market participant may enter an order. The term ''proprietary'' as described within these rules refers to market participants conducting a market making business, such as ROTs (including SQTS and RSQTs) and Specialists.

The Exchange notes that today no other options market segregates the submission of order types by whether the order is an agency or proprietary order.[16] Rather, Phlx's proposal as well as rules of other options exchanges impose limitations on the types of orders that may be entered by a market makers as described further herein, as well as other limitations related to ROTs and Specialists entering orders.[17] While the Exchange is eliminating the references to ''agency'' and proprietary'' orders, the Exchange notes that there is no impact to market participants or systemic change that results from the elimination of these terms. The list of order types presented below reflects current practice. Also, the Exchange is not changing the manner in which orders are being submitted to the Exchange. The Exchange believes that by defining the rules, similar to other options markets, it will bring greater transparency to the Exchange's Rules and permit an ease of reference when comparing rulebooks. The Exchange notes that this proposal will not amend the System except for the changes described below where the Exchange is noting a change is proposed. Other functionalities offered by Phlx remain unchanged with this proposal.

The current rule text refers to the following order types within Rule 1080(b)(i)(A), which were permitted to be entered as Agency Orders, are currently not supported by the System: ''or better,'' [18] ''simple cancel to reduce size (cancel leaves),'' [19] ''cancel to change price'' and ''possible duplicate orders.'' [20] These order types have not been supported by the System since Phlx replatformed its technology to INET in 2009. The order types described herein have not been offered to Phlx participants since the Phlx XL replatform. These order types are not offered on other options markets today and have not been requested by any market participant. In 1997, Phlx filed to Rule 1080, Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Executive System (''AUTO–X''), codifying and amending the policies and procedures concerning AUTOM. The Exchange also requested permanent approval of the AUTOM pilot program.[21] The rule change provided

Proposed Rule 1080 describes the AUTOM System and its features, with paragraph (a) as the general introduction. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options and index options orders to the Exchange trading floor. Option orders entered by Exchange member organizations into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X, in accordance with the provisions of this Rule. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. This paragraph also provides that Rule 1080 shall govern the orders, execution reports and administrative messages (''order messages'') transmitted between the offices of member organizations and the trading floors of the Exchange through AUTOM.

The rule change further stated,

The following types of orders are eligible for AUTOM: Day, good-till cancelled (''GTC''), market, limit, stop, stop limit, all or none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order,

[14] The term ''Agency Order'' is described at Phlx Rule 1000(b)(49) as ''The term ''Agency Order'' shall mean any order entered on behalf of a public customer (which includes an order entered on behalf of a professional), and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[15] Capacity codes correspond to categorizations developed by The Options Clearing Corporation for all options exchanges.

[16] *See* Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX'') Options 3, Section 7, Miami International Securities Exchange, LLC Rule 515 and Cboe Exchange, Inc. Rule 5.6.

[17] *See* ISE, GEMX and MRX Options 2, Section 6. The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') do not have a rule which limits Market Makers from entering orders on those markets. *See* NOM Rules at Chapter VII, Section 5(d) and BX Options 2, Section 4(d), respectively.

[18] The designation ''or better'' indicates that the originator of the order is aware that the market is currently better than the limit price of the order; this order is not filled at a price outside of the ''or better'' price. The ''or better'' designation is used to verify the validity of the order and confirms that the order was entered on the correct side. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 75 FR 19616 (April 19, 1995) (SR–Phlx–95–18).

[19] The designation ''simple cancel'' indicates that an order is to be cancelled, while ''cancel leaves'' indicates that the size of a previous order is being reduced and ''cancel to change price'' cancels the price of a previous order. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 75 FR 19616 (April 19, 1995) (SR–Phlx–95–18).

[20] Possible duplicate'' is a status which indicates that before an AUTOM order is executed manually by the specialist, the specialist should confirm that the order has not yet been executed. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 75 FR 19616 (April 19, 1995) (SR–Phlx–95–18).

[21] *See* Securities Exchange Act Release No. 38683 (May 27, 1997), 62 FR 30366 (June 3, 1997) (SR–Phlx–97–24).

market close, market on opening, limit on opening, limit close, and possible duplicate orders. The Exchange's Options Committee may determine to accept additional types of orders as well as to discontinue accepting certain types of orders.

Phlx discontinued offering the following order types at a certain point in time before the transition to Phlx XL: [22] Currently not supported by the System: ''or better,'' [23] ''simple cancel to reduce size (cancel leaves),'' [24] ''cancel to change price'' and ''possible duplicate orders.'' [25] The Exchange notes that an automated system such as Phlx XL would not have supported order types that permitted manual handling such as ''or better'' or ''possible duplicate.'' The order types ''simple cancel to reduce size (cancel leaves),'' ''cancel to change price'' can be achieved today with the cancel-replacement order. Customer orders may continue to be entered on an agency basis today, however the use of certain manual order types are no longer permitted. The Exchange no longer permits market participants the ability to manually handle orders, the System automatically executes order types today and therefore the Exchange believes the elimination of these order types is consistent with the Act and serves to protect investors and the public interest by enforcing order type provisions automatically. The remainder of the order types noted in current Rule 1080(b)(i), such as day, GTC, IOC, ISO, market, limit, stop, stop-limit, all or none, simple cancel, cancel with replacement order, opening-only market order and limit on opening order are currently offered on Phlx.[26]

Proprietary

Current Rule 1080(b)(i)(B) refers to orders entered for proprietary accounts and specifically provides order type requirements for Specialists,[27] ROTs,[28] and non-SQT ROTs.[29] Current Rule 1080(b)(i)(B) provides,

> Orders for the proprietary account(s) of SQTs, RSQTs and non-SQT ROTs and specialists via electronic interface with AUTOM may be entered, subject to the restrictions on order entry set forth in Commentary .04 of this Rule.
>
> (1) The following types of orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of 10 contracts or greater are eligible for entry via electronic interface with AUTOM: GTC, day limit, IOC, ISO, limit on opening and simple cancel. Orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of less than 10 contracts shall be submitted as IOC only.
>
> (2) The following types of orders for the proprietary account(s) of SQTs and RSQTs are eligible for entry via electronic interface with AUTOM: Limit on opening, IOC, ISO, and day limit. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order, and FIND order; see Rule 1093.

Today, the Exchange limits its ROTs and Specialists from entering orders which may be entered on other markets such as Nasdaq ISE, LLC, Nasdaq GEMX, LLC and Nasdaq MRX, LLC.[30] Currently, Rule 1080(b)(i)(B) provides, ''Orders for the proprietary account(s) of SQTs, RSQTs and non-SQT ROTs and specialists via electronic interface with AUTOM may be entered, subject to the restrictions on order entry set forth in Commentary .04 of this Rule.'' Commentary .04 provides, ''*ROT Limit Orders.* Orders for the proprietary accounts of SQTs, RSQTs and non-SQT ROTs may be entered for delivery through AUTOM, through the use of Exchange approved proprietary systems to interface with AUTOM (''interface''). Such orders shall be for a minimum of one (1) contract. Orders for the proprietary account(s) of SQTs, RSQTs, and non-SQT ROTs with a size of less than 10 contracts shall be submitted as IOC only.'' The Exchange notes that it will no longer refer to legacy names for the trading system such as AUTOM and will instead refer to ''System'' which is defined.[31] The Exchange proposes to continue to require orders for SQTs and RSQTs to be for a minimum of one (1) contract in Rule 1080(e). The Exchange proposes to delete the rule text at Commentary .04 to Rule 1080. The Exchange is proposing new rule text within current Rule 1014, entitled ''Obligations of Market Makers'' as described below.

Today, the Exchange distinguishes between contracts that non-SQT ROTs and Specialists can enter with a size of 10 contracts or greater and those that may be entered for any size. Further, for orders with a size of 10 contracts or less, non-SQT ROTs and specialists must enter those orders as IOC only. The Exchange proposes to remove the restriction that ''Orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of less than 10 contracts shall be submitted as IOC only.'' Further, in deleting Commentary .04, the Exchange is removing any limitation as to the size of orders for IOC only purposes. The Exchange believes this limitation is no longer necessary given the evolution of the market place and further that it hinders non-SQT ROTs and Specialists unnecessarily. No other options market has similar limitations today.[32] The 10 contract limitation was put in place to restrict participants, whose primary role was to provide liquidity, from using orders of small size to avoid providing liquidity using quotes which were historically required to be of a size of 10 contracts or more.

Current Rule 1080(b)(i)(B)(1) provides, ''The following types of orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of 10 contracts or greater are eligible for entry via electronic interface with AUTOM: GTC, day limit, IOC, ISO, limit on opening and simple cancel. Orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of less than 10 contracts shall be submitted as IOC only.'' The Exchange is removing current Rule 1080(b)(i)(B)(1) in its entirety. As noted above, the Exchange proposes to no longer apply the 10 contract limitation. The rule text proposed within Rule 1014(e) and Rule 1080(e) do not contain a limitation on contract size. The Exchange notes that over the years the limitations that were placed on ROTs and Specialists entering orders has changed on all options markets. The Exchange does not propose to hinder these market participants in entering orders. With respect to non-SQT ROTs, those market participants may enter the orders noted

[22] The exact date the order types were no longer offered is unknown.

[23] The designation ''or better'' indicates that the originator of the order is aware that the market is currently better than the limit price of the order; this order is not filled at a price outside of the ''or better'' price. The ''or better'' designation is used to verify the validity of the order and confirms that the order was entered on the correct side. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 75 FR 19616 (April 19, 1995) (SR–Phlx–95–18).

[24] The designation ''simple cancel'' indicates that an order is to be cancelled, while ''cancel leaves'' indicates that the size of a previous order is being reduced and ''cancel to change price'' cancels the price of a previous order. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 75 FR 19616 (April 19, 1995) (SR–Phlx–95–18).

[25] Possible duplicate'' is a status which indicates that before an AUTOM order is executed manually by the specialist, the specialist should confirm that the order has not yet been executed. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 75 FR 19616 (April 19, 1995) (SR–Phlx–95–18).

[26] The Exchange notes that ''simple cancel'' is not offered as an order type on Phlx, but as a functionality to simply cancel an existing order. Therefore, the Exchange is not proposing to add it back into the amended Rule 1080 as an order type.

[27] A Specialist is an Exchange member who is registered as an options specialist. *See* Phlx Rule 1020(a).

[28] *See* note 3 above.

[29] A Floor Market Maker is known as a non-SQT ROT in Rule 1014(b)(ii)(C). A non-SQT ROT is an ROT who is neither an SQT nor an RSQT.

[30] *See* ISE, GEMX and MRX rules at Options 2, Section 6.

[31] *See* Phlx Rule 1000(b)(45).

[32] ISE, GEMX, MRX, NOM and BX do not limit orders to IOC by size.

with Options 8, Section 32. Amendments to Phlx Rules at Options 8, Section 32 are described below.

Current Rule 1080(b)(i)(B)(2) provides, ''The following types of orders for the proprietary account(s) of SQTs and RSQTs are eligible for entry via electronic interface with AUTOM: Limit on opening, IOC, ISO, and day limit. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order,[33] and FIND order; see Rule 1093.'' The Exchange is removing current Rule 1080(b)(i)(B)(2) in its entirety.

ROTs and Specialists Entering Orders on Phlx

The Exchange proposes to relocate the restrictions for ROTs and Specialists within Rule 1014 which sets forth obligations of ROTs and Specialists, as noted below.[34] Today, SQTs and Specialists on Phlx may not enter orders in non-appointed option series.[35] Further, Commentary .01 to Rule 1014 provides a restriction on the amount of trading activity in classes of options to which an SQT or Specialist is assigned. Commentary .01 to Rule 1014 states:

> The Exchange has determined for purposes of paragraph (c) of this Rule that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of an ROT (other than an RSQT) shall ordinarily be in classes of options to which he is assigned. Temporarily undertaking the obligations of paragraph (c) at the request of a member of the Exchange in non assigned classes of options shall not be deemed trading in non assigned option contracts.
>
> The Exchange may, in computing the percentage specified herein, assign a weighting factor based upon relative inactivity to one or more classes or series of option contracts.

These prohibitions exist to ensure that market making participants are focused on adding liquidity to Phlx. Today, the Exchange requires ROTs and Specialists to add liquidity to Phlx, for example Specialists must quote during the Opening Process[36] and Specialists and ROTs have intra-day quoting obligations.[37]

The Exchange proposes to amend its current restriction related to entering orders on Phlx to permit ROTs and Specialists to enter orders in classes of options to which they are assigned and classes of options in which they are not assigned, with certain limitations. The Exchange proposes within Rule 1014(e), which is currently reserved, to add rule text to permit ROTs and Specialists to enter Day orders, Opening Only Orders and Opening Sweeps and utilize the TIF of ''GTC'' when entering orders. This would be an amendment to current Rule 1080(b)(i)(B)(2), which does not currently permit these order types. As noted herein, the Exchange is proposing to remove the limit for contracts with a size of less than 10 contracts. The Exchange also proposes to permit ROTs (SQTs and RSQTs) and Specialists to enter orders in non-appointed option classes, however limit ROTs and Specialists to not exceed 25 percent[38] of the total number of all contracts executed by the ROT or Specialist in any calendar quarter. Proposed new Rule 1014(e) would provide:

> *Market Maker Orders.* ROTs and Specialists may enter all order types defined in Rule 1080(b) in the options classes to which they are appointed and non-appointed, except for Market Orders as provided in Rule 1080(b)(1), Stop Orders as provided in Rule 1080(b)(4), All-or-None Orders as provided in Rule 1080(b)(5), Directed Orders as provided for in Rule 1068, and public customer-to-public customer cross orders subject to Rule 1087(a) and (f). The total number of contracts executed during a quarter by a ROT or Specialist in options series to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts executed by the ROT or Specialist in options series.

The Exchange notes that its proposal is similar to other options markets.[39] The Exchange is permitting ROTs and Specialists to enter all order types defined in Rule 1080(b) in the options classes to which they are appointed and non-appointed, except for Market Orders as provided in Rule 1080(b)(1), Stop Orders as provided in Rule 1080(b)(4), All-or-None Orders as provided in Rule 1080(b)(5), and Directed Orders as provided for in Rule 1068, and public customer-to-public customer cross orders subject to Rule 1087(a) and (f), so as not to restrict the ability of a ROT or Specialist from entering orders they may enter today on other options markets. Although the Exchange is amending its rules to allow ROTs and Specialists to enter orders in non-appointed classes, the Exchange will limit ROTs and Specialists to not exceed 25%[40] of the total number of all contracts executed by the ROT or Specialist in any calendar quarter in those non-appointed options classes. The Exchange proposes to remove the provision within Commentary .01 to Rule 1014 and replace the prohibition with proposed Rule 1014(e).

The Exchange believes its proposal is consistent with the Act. Allowing ROTs and Specialists to enter orders in both assigned and unassigned classes of options will allow market making participants to enter more orders than they are permitted to enter today. The rule text at Commentary .01 of Rule 1014 which requires at least 50% of the trading activity in any quarter only applies to assigned options classes today and therefore is not very restrictive as ROTs and Specialists can only enter quotes or orders in assigned options series.

While the Exchange is permitting ROTS and Specialists to enter more orders, particularly in assigned options classes, ROTs and Specialists continue to have obligations to quote intra-day[41] and in order to meet those obligations they will need to stay focused on adding liquidity to Phlx. The Exchange believes that liquidity will not be impacted on Phlx because the Exchange is permitting ROTs and Specialists to enter more orders in appointed classes as the obligations to provide liquidity remain the same. Further, permitting ROTs and Specialists to enter orders in non-appointed classes provided they do not exceed 25% of the total number of contracts executed in any quarter is consistent with the Act because the proposed rule will allow ROTs and Specialists to continue to provide liquidity on Phlx, as is the case today, while not restricting their business activity in a manner that is no other market participants is restricted to

[33] The Exchange notes that ''SRCH,'' is not supported for proprietary account(s) of SQTs and RSQTs. A SRCH Order is a Public Customer order that is routable at any time. *See* Phlx Rule 1093(a)(iii)(C).

[34] Phlx Rule 1014(c) and (d) describes obligations for ROTs and Specialists in appointed and non-appointed options classes.

[35] Phlx Rule 1014(b)(ii), SQTs and RSQTs may only trade in a market making capacity in classes of options in which the SQT is assigned.

[36] *See* Phlx Rule 1017(d).

[37] *See* Phlx Rule 1081.

[38] The Exchange proposes to remove the limitation within Commentary .01 to Rule 1014 which applies to appointed options classes and instead adopt proposed Rule 1014(e) which describes the types of orders that ROTs and Specialists may enter in appointed and non-appointed options classes with the proposed 25% limitation on orders in appointed options classes.

[39] *See* ISE, GEMX and MRX at Options at Options 2, Section 6. Further, NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') do not limit the types of orders that can be entered by market makers. *See* NYSE Arca Rule 6.37B–O and NYSE American Rule 925.2NY.

[40] This limitation is an amendment to the current limitation within Commentary .01 to Rule 1014 which as noted herein, the Exchange proposes to eliminate. The proposed limitation of 25% would be less restrictive than the current ''50% of the trading activity in any quarter'' requirement, not only because it is a smaller percentage but because the 25% limitation only would apply to classes of options in which the ROT or Specialist is not appointed and the 50% limitation applied to classes of options in which the ROT or Specialist is appointed, and are the only types of orders which can be submitted by these participants today.

[41] *See* Phlx Rule 1081.

transact. Phlx's proposal will allow market making participants the same flexibility as exists today on other options markets.

With respect to proposed Rule 1014(e), the Exchange proposes to permit ROTs and Specialists to enter Day orders, Opening Only Orders and Opening Sweeps and utilize the TIF of ''GTC.'' This would be an amendment as current Rule 1080(b)(i)(B)(2), which does not currently permit these order types. As noted herein, the Exchange is removing the limit for contracts with a size of less than 10 contracts. The Exchange is excluding order types that today may not be entered by a Specialist or ROT, as is the case today, such as All-or-None Orders,[42] Directed Orders,[43] and public customer-to-public customer cross orders subject to Rule 1087(a) and (f).[44] The Exchange proposes to prohibit SQTs and RSQTs from entering Market Orders and Stop Orders. Today, the Exchange requires SQTs and RSQTs to ''maintain a two-sided market in those options in which the electronic ROT is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market'' pursuant to Phlx Rule 1081(a)(i). The Exchange believes that continuing the practice of prohibiting SQTs and RSQTs from entering Market Orders is consistent with the Act because Market Orders are designed to remove liquidity from the Order Book. Further, Stop Orders are non-displayed order types until they are triggered which does not benefit the role of an SQT or RSQT in displaying liquidity on the Order Book.

Off-Floor Broker-Dealer

Current Phlx Rule 1080(b)(i)(C) provides that for purposes of this Rule 1080, the term ''off-floor broker-dealer order'' means an order delivered from off the floor of the Exchange by or on behalf of a broker-dealer for the proprietary account(s) of such broker-dealer, including an order for a market maker located on an exchange or trading floor other than the Exchange's trading floor delivered via AUTOM for the proprietary account(s) of such market maker. This rule also provides, in part:

> Off-floor broker-dealer limit orders, subject to the restrictions on order entry set forth in Commentary .05 of this Rule, may be entered. The following types of broker-dealer limit orders are eligible for AUTOM: Day, GTC, IOC, ISO, stop, stop-limit, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, limit on opening order. Respecting Phlx XL II, the following order types are also permitted: DNR order, SRCH order, and FIND order; see Rule 1093.

Current Phlx Rule 1080(b)(i)(C) applies to Off-Floor Broker Dealers limit orders and provides that broker-dealer limit orders are eligible for AUTOM: Day, GTC, IOC, ISO, stop, stop-limit, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, limit on opening order. Current Rule 1080(b)(i)(C) and Commentary .05 to Rule 1080[45] describe restrictions for Off-Floor Broker Dealers. The Exchange proposes to amend and relocate text from current Rule 1080(b)(i)(C) to proposed Rule 1080(e). The Exchange proposes to state, at new Rule 1080(e),

> An off-floor broker-dealer order may be entered for a minimum size of one contract. Off-floor broker-dealers may enter all order types defined in Rule 1080(b) except for All-or-None Orders, Market Orders, Stop Market Orders, and public customer-to-public customer cross orders subject to Rule 1087(a) and (f).

The Exchange proposes that Off-Floor Broker Dealers may continue to enter day, GTC, IOC, ISO, stop, stop-limit, cancel with replacement order and limit on opening order as specified within current Rule 1080(b)(i)(C). The Exchange notes that stop market and market orders, SRCH Orders,[46] simple cancel to reduce size (cancel leaves) and cancel to change price are either no longer offered on the System or not offered to Off-Floor Broker Dealers. With this new proposed rule, the Exchange proposes to reflect the order types that an Off-Floor Broker Dealer may enter by noting that all order types within Rule 1080(b) may be entered, except as noted. The Off-Floor Broker Dealer order restrictions remain unchanged except that the types of orders that Off-Floor Broker Dealers may enter are being amended to exclude order types that are no longer offered such as simple cancel to reduce size (cancel leaves) and cancel to change price and to also exclude Stop Market Orders, which are not available to Off-Floor Broker Dealers today, so this is not changing. The Exchange notes that Stop Limit Orders are permitted to be entered today by Off-Floor Broker Dealers. The Exchange notes that only Market Orders and Stop Market Orders are restricted, as is the case today. The restrictions afforded to Off-Floor Broker Dealers remain the same. This amendment is not substantive.

The Exchange notes that the term ''Off-Floor Broker-Dealer Order'' is currently defined within Rule 1000(b)(50) and therefore is not necessary to reiterate within Rule 1080(b). The Exchange proposes to delete Commentary .05 of Rule 1080, which references the outdated term ''AUTOM.''[47] This provision is no longer necessary as the minimum size for Off-Floor Broker Dealer orders is noted in new proposed Rule 1080(e). The rule text in Commentary .05(i) is also being deleted as unnecessary as all members are subject to the rule text in Rule 1080(j), not just broker-dealers. The Exchange believes that this rule text is confusing. The Exchange proposes to delete Commentary .05(ii) to Rule 1080 because priority rules continue to be contained in Options 8, Section 25 (Floor Allocation). The priority rules have not changed and Off-Floor Broker Dealer Limit Orders continue to be bound by those rules. Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. This language within Commentary .05(ii) to Rule 1080 indicates that Off-Floor Broker Dealers may establish priority and the Specialist may match the priority, but these rules are subject to Rules 119, 120 and Options 8, Section 25 for allocation. There are other rules which address priority to all members, not just Off-Floor Broker Dealers. Rather, at the time AUTOM was available, this priority could be established, but is no longer the case. Finally, Off-Floor Broker Dealer Limit Orders are no longer

[42] All-or-None Orders may only be entered by a Public Customer.

[43] Rule 1068(a)(i)(B) provides, ''The term ''Order Flow Provider'' (''OFP'') means any member or member organization that submits, as agent, orders to the Exchange.'' ROTs and Specialists do not submit orders on an agency basis and therefore are excluded from entering Directed Orders. See Securities Exchange Act Release No. 62320 (June 17, 2010), 75 FR 36132 (June 24, 2010) (SR–Phlx–2010–83). In this rule change, Phlx noted that Directed Orders can be broker-dealer orders as well as public customer orders. The term public customer included professionals.

[44] A PIXL Order is an order submitted for electronic execution into the PIXL Auction Mechanism pursuant to Rule 1087. Current PIXL Rule 1087(a) and (f) provides that a PIXL Order may be a public customer-to-public customer cross order, which is comprised of a Public Customer order to buy and a Public Customer to sell at the same price and for the same quantity.

[45] Commentary .05 to Rule 1080 states, ''Off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract. Off-floor broker-dealer limit orders are subject to the following other provisions:

(i) The restrictions and prohibitions concerning off-floor market makers set forth in Rule 1080(j).

(ii) Off-floor broker-dealer limit orders entered via AUTOM establishing a bid or offer may establish priority, and the specialist and crowd may match such a bid or offer and be at parity, except as provided in Exchange Rule 1014(g)(i)(A).''

[46] SRCH Orders are only offered to Public Customers pursuant to Rule 1093(a)(iii)(C).

[47] The Exchange notes that AUTOM no longer exists. This legacy system was replaced by Phlx XL.

entered via AUTOM.[48] This exception to cited Rule 1014(g)(i)(A) is no longer possible. The AUTOM order delivery system grew over the years into the current fully automated Phlx options trading system XL II. AUTOM and AUTO–X were replaced by the Phlx XL System, such that references to both terms refer to Phlx XL.[49] The Exchange notes that today all orders would be represented in the trading crowd pursuant to Options 8, Section 25(a)(1)(A).

As noted above, Phlx proposes to remove the agency/proprietary order distinction from its rules. Instead, the Exchange proposes to note a list of order types available on Phlx and separately provide restrictions for ROTs, Specialists and Off-Floor Broker Dealers as already described herein. The Exchange notes that in separately limiting those market participants the Exchange is not substantively changing the format of the order types, it is eliminating the categories of ''agency'' and ''proprietary''. No other options markets segregates order types into those categories.

Notwithstanding the restrictions for ROTs, Specialists and Off-Floor Broker Dealers within proposed Rule 1080(e) and Rule 1014(e), the Exchange proposes to replace the order types listed within Rule 1080(b) with the below order types and descriptions to be added to Rule 1080(b).

(1) Market Order. A Market Order is an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange. Specialists, ROTs and Off-Floor Broker-Dealers may not submit Market Orders.

(2) Limit Order. A Limit Order is an order to buy or sell a stated number of options contracts at a specified price or better.

(3) Intermarket Sweep Order. An Intermarket Sweep Order (ISO) is a Limit Order that meets the requirements of Rule 1083. Orders submitted to the Exchange as ISO are not routable and will ignore the ABBO and trade at allowable prices on the Exchange. ISOs may be entered on the regular order book or into the Price Improvement XL Mechanism (''PIXL'') pursuant to Rule 1087(b)(11). ISO Orders may not be submitted during the Opening Process pursuant to Rule 1017.

(4) Stop Order. A Stop Order is a Limit Order or Market Order to buy or sell at a limit price when interest on the Exchange for a particular option contract reaches a specified price. A Stop Order shall be cancelled if it is immediately electable upon receipt. A Stop Order shall not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another Complex Order. Specialists and ROTs may not submit a Stop Order. Off-Floor Broker-Dealers may not enter a Stop Market Order.

(a) A Stop-Limit Order to buy becomes a Limit Order executable at the limit price or better when the option contract trades or is bid on the Exchange at or above the stop-limit price. A Stop-Limit Order to sell becomes a Limit Order executable at the limit price or better when the option contract trades or is offered on the Exchange at or below the stop-limit price.

(b) A Stop Market Order is similar to a stop-limit except it becomes a Market Order when the option contract reaches a specified price.

(5) All-or-None Order. An All-or-None Order is a limit order or market order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer. All-or-None Orders are non-displayed and non-routable. All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met. The Acceptable Trade Range protection in Rule 1099(a) is not applied to All-Or-None Orders.

(i) Non-Displayed Contingency Orders. A Non-Displayed Contingency Order shall be defined to include the following non-displayed order types: (1) Stop Orders; and (2) All-or-None Orders.

(6) Opening Sweep. An Opening Sweep is a one-sided order entered by a Specialist or ROT through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Rule 1099, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Rule 1017 and will be cancelled upon the open if not executed.

(7) Cancel-Replacement Order. A Cancel-Replacement Order is a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will result in a loss of priority.

(8) Qualified Contingent Cross Order or QCC Order. A QCC Order is as that term is defined in Rule 1088.

(9) PIXL Order. A PIXL Order is as described in Rule 1087.

(10) Legging Order. A Legging Order is an as the term is specified in Rule 1098(f)(iii)(C).

(11) Directed Orders. A Directed Order is as described in Rule 1068.

All members may enter a Market Order, except Specialists and ROTs, as noted in the exclusion of Market Orders from current Rule 1080(b)(i)(B)(2). Current Rule 1080(b)(i)(B)(1) did not permit Specialists or ROTs to enter Market Orders and current Rule 1080(b)(i)(C)(1) did not permit Off-Floor Broker-Dealers to enter Market Orders. Proposed Rule 1080(e), which is discussed below, also notes the Off-Floor Broker-Dealer restriction for Market Orders. The Exchange proposes to describe a Market Order[50] at proposed 1080(b)(1) as, ''an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange. Specialists and ROTs may not submit a Market Order.'' This is the same description as in Options 8, Section 32(a). The Exchange has historically defined its order types within Options 8, Section 32 which are related to floor trading and has filed rule changes noting this description of a Market Order.[51] The Exchange is not substantively amending this order type.

Today, all members may enter a Limit Order,[52] which the Exchange proposes to describe at proposed Rule 1080(b)(2) as ''an order to buy or sell a stated number of options contracts at a specified price or better.'' The description of a Limit Order is currently identically described within Options 8, Section 32(b). The Exchange is not substantively amending this order type.

An Intermarket Sweep Order is a Limit Order that meets the requirements of Rule 1083.[53] The Exchange proposes to state within proposed Rule 1080(b)(3), ''An Intermarket Sweep Order (ISO) is a Limit Order that meets the requirements of Rule 1083. Orders submitted to the Exchange as ISO are not routable and will ignore the ABBO and trade at allowable prices on the Exchange. ISOs may be entered on the regular order book or into the Price Improvement XL Mechanism (''PIXL'') pursuant to Rule 1087(b)(11). ISO Orders may be submitted during the Opening Process pursuant to Rule 1017.'' The Exchange notes that all

[48] AUTOM was a legacy electronic order delivery and reporting system which provided for the automatic entry and routing of Exchange-listed equity options and index options orders to the Exchange trading floor. Option orders entered by Exchange member organizations into AUTOM were routed to the appropriate specialist unit on the Exchange trading floor. Orders delivered through AUTOM could be executed manually, or certain orders were eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists were required by the Exchange to participate in AUTOM and its features and enhancements. *See* Securities Exchange Act Release No. 38792 (June 30, 1997), 62 FR 36602 (July 8, 1997) (SR–Phlx–97–24).

[49] *See* Securities Exchange Act 72152 (May 12, 2014), 79 FR 28561 (May 16, 2014) (SR–Phlx–2014–32).

[50] Market Orders are described within Options 8, Section 32(a).

[51] *See* Securities Exchange Act Release No. 83141 (May 1, 2018), 83 FR 20123 (May 7, 2018 (SR–Phlx–2018–32). The Exchange drafted the description to be similar to the description in Options 8, Section 32. Although it is substantially similar to the footnote 4 in the aforementioned rule change which provides, ''Market Orders are orders to buy or sell at the best price available at the time of execution.''

[52] Limit Orders are described within Options 8, Section 32(b).

[53] Rule 1083 currently describes an ISO Order.

members are eligible to enter an ISO.[54] The Exchange notes that ISO behavior, while described within Phlx Rules today as mentioned above, are being centralized within Rule 1080(b)(3). No substantive changes are being made to this order type which is currently described in various rules mentioned herein.

The Exchange proposes to describe a Stop Order[55] at proposed Rule 1080(b)(4), as ''a Limit Order or Market Order to buy or sell at a limit price when interest on the Exchange for a particular option contract reaches a specified price. A Stop Order shall be cancelled if it is immediately electable upon receipt. A Stop Order shall not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another Complex Order. Specialists and ROTs may not submit a Stop Order. An Off-Floor Broker-Dealers may not enter a Stop Market Order.'' The Exchange further proposes to describe a Stop-Limit Order at proposed Rule 1080(b)(4)(A) as follows ''A Stop-Limit Order to buy becomes a Limit Order executable at the limit price or better when the option contract trades or is bid on the Exchange at or above the stop-limit price. A Stop-Limit Order to sell becomes a Limit Order executable at the limit price or better when the option contract trades or is offered on the Exchange at or below the stop-limit price.'' The Exchange proposes to describe a Stop Market Order at proposed Rule 1080(b)(4)(B) as follows, ''A Stop Market Order is similar to a stop-limit except it becomes a Market Order when the option contract reaches a specified price.'' Today, all members except Specialists, ROTs and Off-Floor Broker-Dealers may enter a Stop Order.[56] Proposed Rule 1080(e), which is discussed below, also notes the Off-Floor Broker-Dealer restriction for Stop Market Orders With this proposal, the terms stop and stop-limit are both provided for within the proposed term ''Stop Order.'' No substantive changes are being made to this order type.

An All-or-None Order is currently described within Rule 1078. The Exchange proposes to relocate Rule 1078, without amendment, into Rule 1080(b)(5) and reserve Rule 1078.[57] The Exchange also proposes to amend the definition of All-or-None Order currently within Options 8, Section 32(b)(3) which applies to the trading floor.[58] The Exchange notes that unlike Rule 1080(b)(5), which applies to electronic trading, All-or-None Orders entered into open outcry would not be subject to Acceptable Trade Range protection in Rule 1099(a), which covers only those orders submitted electronically into the System. No substantive changes are being made to this order type.

The Exchange proposes to define the term ''Non-Displayed Contingency Orders'' at proposed new Rule 1080(b)(5)(i) as follows: ''A Non-Displayed Contingency Order shall be defined to include the following non-displayed order types: (1) Stop Orders; and (2) All-or-None Orders.''

The Exchange proposes to define the Opening Sweep functionality within proposed Rule 1080(b)(6) for ease of reference to order types. The Opening Sweep is currently described within Rule 1017(b)(i).[59] Current Rule 1080(b)(i) notes the Exchange offers an opening-only-market order and a limit on opening order. The Exchange is amending the definition of Opening Sweep within Rule 1017(b)(i) by removing the language and simply referring to proposed Rule 1080(b)(6). The Exchange is amending and relocating the description of Opening Sweep within proposed Rule 1080(b)(6). Further, the Exchange proposes a change to the current rule to state it is an order and not a quote. This change will not amend the order type other than to make clear the manner it will be categorized. Phlx traditionally has referred to all interest within the SQF protocol as quote interest. The Exchange proposes to amend the references to ''quotation'' to ''order'' to make clear the type of interest that is being entered. An Opening Sweep is a one-sided order that only may be entered into the Opening Process. Further, the Exchange proposes to make clear that an Opening Sweep may only be entered by a Specialist or ROT as this order type is submitted through the SQF protocol.[60] Other market participants tag orders for the Opening Process by placing a TIF of ''OPG'' on the order as explained below. The Exchange notes that all members may submit interest into the Opening Process. The Exchange also proposes to add two new sentences to the Opening Sweep description which provide, ''This order type is not subject to any protections listed in Rule 1099, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Rule 1017 and will be cancelled upon the open if not executed.'' The Exchange notes that the Automated Quotation Adjustments protections applies to quotes entered into SQF but would not apply to an Opening Sweep which is an order entered into SQF. The Exchange notes that the second sentence is not new as Opening Sweeps are described within Rule 1017 today and apply only during the Opening Process. This sentence provides additional context to the Opening Sweep.

The Exchange proposes to memorialize a cancel-replacement order within proposed Rule 1080(b)(7). A Cancel-Replacement Order is currently defined within Options 8, Section 32(c)(4) as ''a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number.'' The Exchange proposes to amend this description to state, ''a Cancel-Replacement Order is a single

[54] *See* Phlx Rule 1083.

[55] Stop Orders are described within Options 8, Section 32(c)(1)–(2). The Exchange has reworded the Stop Order description to make clear that a Stop Order can be either a limit or market order in the first sentence and also more clearly describe the contingency. The Exchange does not believe that the descriptions differ substantively. Further, the Exchange has defined a stop order within a rule change. *See* Securities Exchange Act Release No. 85519 (April 5, 2019), 84 FR 14686 (April 11, 2019) (SR–Phlx–2019–07). The description in this rule change at footnote 14 is substantially similar in stating, ''A stop order is a limit or market order to buy or sell at a limit price when a trade or quote on the Exchange for a particular option contract reaches a specified price. A stop-market or stop-limit order shall not be triggered by a trade that is reported late or out of sequence or by a complex order trading with another complex order.''

[56] *See* Phlx Rule 1080(b)(i)(B)(1) and (2).

[57] An All-or-None Order is a limit order or market order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer. All-or-None Orders are non-displayed and non-routable. All-or-None Orders are executed in price-time priority among all Public Customer Orders if the size contingency can be met. The Acceptable Trade Range protection in Rule 1099(a) is not applied to All-Or-None Orders. *See* Rule 1078.

[58] Options 8, Section 32(c)(3) provides, ''(3) *All or None Order.* An all-or-none order is a market or limit order which is to be executed in its entirety or not at all.'' The Exchange notes that other revisions are being made to Options 8, Section 32(b)(3) that were made in a prior rule change. *See* Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (SR–Phlx–2019–03) and were inadvertently reversed in a subsequent filing that did not capture the amended text. *See* Securities Exchange Act Release No. 85740 (April 29, 2019), 84 FR 19136 (SR–Phlx–2019–17). The Exchange is reinstating the changes that were made in SR–Phlx–2019–03.

[59] Rule 1017(b)(i) provides, ''An Opening Sweep is a one-sided electronic quotation submitted for execution against eligible interest in the system during the Opening Process.''

[60] See Phlx Rule 1080(a)(i)(B), which notes that the ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Specialists, SQTs and RSQTs to submit Immediate-or-Cancel Orders through SQF.

message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed.'' The Exchange notes it is proposing to add the following language, which is not currently described within existing rules, ''The replacement order will result in a loss in priority.'' The Exchange believes that as amended the Exchange provides additional detail to the order type. The additional language concerning priority is intended to provide market participants with additional detail about the retention of priority when amending a Cancel-Replacement Order and makes clear that it will not retain priority. The Exchange is memorializing the manner in which a Cancel-Replacement Order is handled today by the System. The Exchange notes that the order would be prioritized anew if it partially filled and the remainder of the unfilled order was returned to the Exchange.[61]

The Exchange proposes to include a Qualified Contingent Cross or ''QCC'' Order within proposed Rule 1080(b)(8) for ease of reference, which directs one to Rule 1088, which provides the detailed explanation of this order type. A QCC Order is described in detail within Rule 1088 today. While this order type is not currently listed within Rule 1080, the Exchange believes that it is useful to market participants to have all order types centralized. No substantive changes are being made to this order type.

The Exchange proposes to include a definition of a PIXL Order within proposed Rule 1080(b)(9) for ease of reference. A PIXL Order is described in greater detail within Rule 1087 today and that description is being referenced within Rule 1080(b)(9). While this order type is not currently listed within Rule 1080, the Exchange believes that it is useful to market participants to have all order types centralized. No substantive changes are being made to this order type.

The Exchange proposes to include a definition of a Legging Order within proposed Rule 1080(b)(10) for ease of reference. A Legging Order is as described in greater detail within Rule 1098(f)(iii)(C). While this order type is not currently listed within Rule 1080, the Exchange believes that it is useful to market participants to have all order types centralized. No substantive changes are being made to this order type.

The Exchange proposes to include a definition of a Directed Order within proposed Rule 1080(b)(11) for ease of reference. A Directed Order is described in greater detail within Rule 1068 today. While this order type is not currently listed within Rule 1080, the Exchange believes that it is useful to market participants to have all order types centralized. No substantive changes are being made to this order type.

The Exchange proposes to add Time in Force or ''TIF'' types within proposed new Rule 1080(c). Today these TIFs are noted within current Rule 1080(b)(i)(A)–(C) by category. The Exchange proposes to add descriptions to provide greater detail for these existing TIFs. The term ''Time in Force'' shall mean the period of time that the System will hold an order for potential execution, and shall include:

(1) *Day.* If not executed, an order entered with a TIF of ''Day'' expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX.

(2) *Immediate-or-Cancel or IOC.* An Immediate-or-Cancel (''IOC'') Order entered with a TIF of ''IOC'' is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.

(A) Orders entered with a TIF of IOC are not eligible for routing.

(B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a ROT or Specialist through SQF is not subject to the Order Price Protection or the Market Order Spread Protection in Rule 1099(a).

(C) Orders entered into the Price Improvement XL Mechanism and Qualified Contingent Cross Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) Executed either on entry or after an exposure period, or (2) cancelled.

(3) Opening Only. An Opening Only (''OPG'') order is entered with a TIF of ''OPG''. This order can only be executed in the Opening Process pursuant to Rule 1017. This order type is not subject to any protections listed in Rule 1099, except for Automated Quotation Adjustments. Any portion of the order that is not executed during the Opening Process is cancelled.

(4) Good Til Cancelled. A Good Til Cancelled (''GTC'') Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close.

The Exchange proposes to describe an order with a TIF of ''Day'' at proposed new Rule 1080(c)(1) as an order that if not executed, an order entered with a TIF of ''Day'' expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day Orders may be entered through FIX.[62] The Exchange believes that describing a Day Order with greater specificity will add detail to how Day Orders are treated in the System. The Exchange notes that orders are permitted to be entered with a TIF of ''day'' as noted in proposed Rule 1080(b). The Exchange notes that Options 8, Section 32 does not describe a ''Day'' order. The Exchange proposes to include the definition of a ''Day'' Order in proposed Options 8, Section 32(c)(2).

The Exchange proposes to describe an order with a TIF of ''Immediate-or-Cancel'' or ''IOC'' at proposed new Rule 1080(c)(2) as a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. Current Options 8, Section 32(c)(5) describes an IOC Order as ''An Immediate-or-Cancel (''IOC'') order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled. IOC Orders are not routable and shall not be subject to any routing process described in these Rules.'' The Exchange is including a definition of an IOC Order within proposed Rule 1080(c)(2) similar to that in Options 8, Section 32(c)(5) with no substantive changes. Proposed Rule 1080(c)(2)(A) notes that Orders entered with a TIF of IOC are not eligible for routing. Further the Exchange proposes to add new details to this rule that are applicable specifically to the electronic market by stating that ''IOC orders may be entered through FIX[63] or SQF, provided that an IOC Order entered by a ROT or Specialist through SQF is not subject to the Order Price Protection or the Market Order Spread Protection in Rule 1099(a).'' Today, orders that are entered as IOC by a ROT or Specialist through SQF[64] are subject to the protections listed in Rule 1099,[65] except for Order Price Protection and Market Order Spread Protection. The Order

[61] *See* Phlx Rule 1091(a)(i), ''If a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System, unless any portion of the original order remains on the System, in which case the routed order shall retain its timestamp and its priority.''

[62] Financial Information eXchange'' or ''FIX'' is an interface that allows members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. *See* Rule 1080(a)(i)(A).

[63] *See* Rule 1080(a)(i)(A).

[64] *See* Rule 1080(a)(i)(B).

[65] Phlx Rule 1099 is titled, ''Risk Protections.''

Price Protection and Market Order Spread Protection, while available for orders, are not available on SQF. The Exchange notes these exceptions within this rule to make clear that this information is available to market participants within the description of IOC. The Exchange notes ROTs and Specialists utilize IOC Orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC Orders to offload risk, is vital for ROTs and Specialists, and allows them to maintain tight markets and meet their quoting and other obligations to the market. The Exchange believes that allowing ROTs and Specialists to submit IOC Orders though their preferred protocol increases their efficiency in submitting such orders and thereby allow them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, ROTs and Specialists provide liquidity to the market place and have obligations.[66] The Exchange believes not offering Order Price Protection and Market Order Spread Protection for IOC Orders entered through SQF is consistent with the Act because ROTs and Specialists have more sophisticated infrastructures than other market participants and are able to manage their risk, particularly with respect to quoting, using tools that are not available to other market participants.[67]

Also, the proposed rule would also specify that orders entered into the Price Improvement XL (''PIXL'') Mechanism and Qualified Contingent Cross (''QCC'') Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) Executed either on entry or after an exposure period, or (2) cancelled.[68] The Exchange believes that adding these new details to the manner in which IOC Orders are handled within the System will bring greater transparency to these order types.

The Exchange proposes to describe an order with a TIF of ''Opening Only'' or ''OPG'' at proposed new Rule 1080(c)(3) as an order can only be executed in the Opening Process pursuant to Rule 1017. The proposed rule also provides that ''Any portion of the order that is not executed during the Opening Process is cancelled.'' The Exchange also proposes to note ''This order type is not subject to any protections listed in Rule 1099, except for Automated Quotation Adjustments.'' This limitation is already provided for within Rule 1099. The Exchange currently refers to this TIF as limit on opening order and proposes to rename this TIF ''Opening Only'' or ''OPG.'' The Exchange notes that the terms ''opening-only market order'' and ''limit on opening'' are market and limit orders with a TIF of OPG. The Exchange believes that memorializing OPG as a TIF explains the manner in which these orders are entered into the Opening Process for handling pursuant to Rule 1017.

An order with a TIF of ''Good Til Cancelled'' or ''GTC'' is described at proposed new Rule 1080(c)(4) and is also being included in Options 8, Section 32(c)(3) as an order that if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close. The Exchange has noted this TIF within the current Rule 1080(b), however it did not describe the TIF. The Exchange proposes to define it within both Rules 1080 and Options 8, Section 32, according to the manner in which the TIF is applied today within the System.

Proposed Rule 1080(d) notes that DNR, SRCH and FIND are described within Rule 1093. Specifically, the proposed rule text provides, ''Routing Strategies. Orders may be entered on the Exchange with a routing strategy of FIND, SRCH or Do-Not-Route (''DNR'') as provided in Rule 1093 through FIX only.'' Rule 1093 describes DNR, SRCH and FIND Orders in greater detail. The Exchange is noting the limitation of FIX for additional information on the entry of routed orders. FIX is the only order entry protocol offered on Phlx today for FIND, SRCH, or DNR orders.[69] The current rule text of Rule 1080(b)(i) includes this routing strategies in the list of order types. The Exchange proposes to separate out these FIX-only routing strategies within proposed Rule 1080(d) for clarity.

Rule 1080(f) Unbundling of Orders

The Exchange proposes to amend the rule text within Rule 1080(b)(iii)[70] which concerns the unbundling of orders to simply re-number this provision as proposed new Rule 1080(f) and remove references to outdated systems (AUTOM and AUTO–X).

Rule 1080(c)

Rule 1080(c) currently states,

> Phlx XL automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually. The terms ''Book Match'' and ''Book Sweep'' are subsumed under the term ''AUTO–X'' for purposes of these rules.
>
> In Phlx XL II, respecting situations in which the Quote Exhaust feature is engaged, the system will automatically execute transactions as set forth in Rule 1082.
>
> The Exchange may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Exchange will be clearly communicated to Exchange membership and AUTOM users on the Exchange's website. Such restriction would not take effect until after such communication has been made
>
> The Exchange shall provide automatic executions for eligible customer and broker-dealer orders up to the Exchange's disseminated size as defined in Exchange Rule 1082 except with respect to orders eligible for ''Book Match.

The Exchange proposes to delete all of the aforementioned rule text. The first sentence, ''Phlx XL automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization'' while true is explained in other rules. The Exchange notes in Options 8, Section 25 the manner in which orders are allocated today at the either the NBBO or the Phlx Best Bid or Offer. The Exchange also

[66] Specialists have quoting obligations during the Opening Process as specified in Rule 1017(d) and ROTs and Specialists have intra-day quoting obligations as specified in Rule 1093.

[67] ROTs and Specialists quotes are subject to various protections listed in Rule 1099(c). These additional quoting protections permit ROTs and Specialists to manage their exposure at the Exchange. Other market participants would not be subject to these risk protections because they do not submit quotes on Phlx and do not utilize SQF.

[68] The TIF of IOC is applied to all PIXL and QCC Orders today.

[69] *See* Phlx Rule 1080(a)(i)(A).

[70] Current Rule 1080(b)(iii) provides, ''Orders may not be unbundled for the purposes of eligibility for AUTOM and AUTO–X, nor may a firm solicit a customer to unbundle an order for this purpose.

notes that Rule 1082 provide for the manner in which the Exchange does not trade-through the NBBO. This sentence is not providing the detail contained in those other rules.

With respect to the next three sentences, which provide, ''AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually. The terms ''Book Match'' [71] and ''Book Sweep'' [72] are subsumed under the term ''AUTO–X'' for purposes of these rules,'' the Exchange proposes to delete these sentences. As noted above AUTOM no longer exists so references to AUTOM orders are obsolete. Also, specialist manual handling no longer exists.[73] The explanation of manual order handling is not relevant in today's System. The Exchange notes that all executions occur within the match engine as explained in Options 8, Section 25. Partial manual execution is not possible within the System. As all AUTO–X functionality was overridden by the initiation of Phlx XL fully automated technology, the references to the terms ''Book Match'' and ''Book Sweep'' are no longer necessary. The rule text referring to legacy systems should have been removed at the time that Phlx XL was implemented. The Exchange is proposing to remove Rule 1080(c) rules related to a legacy system to avoid confusion.

There is a reference to Phlx XL within Rule 1080(c), ''In Phlx XL II, respecting situations in which the Quote Exhaust feature is engaged, the system will automatically execute transactions as set forth in Rule 1082.'' The Exchange notes that the Quote Exhaust feature is described within Rule 1082(a)(3) and therefore this reference in not necessary within Rule 1080. The aforementioned rule text is being deleted in its entirety.

For similar reasons, the Exchange is removing the remainder of 1080(c).

Rule 1080(c)(i)

The Exchange proposes to delete Rule 1080(c)(i)(A) and (B) in their entirely; the rule text states:

(i) NBBO Calculation

(A) Where an Options Exchange Official determines that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the ''Quote Rule''), customer market orders will receive an automatic execution at the NBBO based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement set forth in the Quote Rule. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (''OPRA''); quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO. The Exchange may determine to exclude quotes from its calculation of NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate, under the conditions set forth above. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Such documentation shall include: Identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Options Exchange Official who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rule and regulations thereunder.

(B) Where an Options Exchange Official determines that quotes in options on the Exchange or another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from the Option Price Reporting Authority (''OPRA''); and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

The SEC Quote Rule is referenced in current Rule 1082(a)(iii).[74] The Exchange proposes to remove this rule text as Rule 1082 provides for Firm Quotations as does Rule 1019(b)(5). The Exchange describes NBBO Price Protection within Rule 1096(b). The Exchange notes that the references to AUTOM processes do not exist today.

Rule 1080(c)(ii)

The Exchange proposes to delete Rule 1080(b)(ii)(A) and (B) which provides,

Order Entry Firms and Users

(A) Definitions

(1) The term ''Order Entry Firm'' means a member organization of the Exchange that is able to route orders to AUTOM.

(2) The term ''User'' means any person or firm that obtains access to AUTO–X through an Order Entry Firm.

(B) Obligations of Order Entry Firms. Order Entry Firms shall:

(1) Comply with all applicable Exchange options trading rules and procedures;

(2) Provide written notice to all Users regarding the proper use of AUTO–X.

Rule 1080(c)(ii)(A)(1) currently defines an ''Order Entry Firm'' as a member organization of the Exchange that is able to route orders to AUTOM. The Exchange proposes to amend the definition of Order Entry Firm and relocate it to Rule 1000(b)(38) to provide, ''An Order Entry Firm or ''OEF'' is a member organization that submits orders, as agent or principal, on the Exchange.'' The Exchange believes that this new description more accurately describes these market participants. The Exchange notes that Rule 1080(c)(ii)(A)(2) currently defines a ''User'' as any person or firm that obtains access to AUTO–X through an Order Entry Firm. The Exchange proposes to delete this term. The term User is an obsolete definition intended to refer to the outdated AUTOM system.

[71] Book Match was an automatic execution feature of the Exchange's systems that automatically executes inbound marketable orders against limit orders on the book or specialist, RSQT and/or SQT electronic quotes (''electronic quotes'') at the disseminated price where: (1) The Exchange's disseminated size includes limit orders on the book and/or electronic quotes at the disseminated price; and (2) the disseminated price is the National Best Bid or Offer. *See* Securities Exchange Act Release No. 54312 (August 14, 2006), 71 FR 47856 (August 18, 2006) (SR–Phlx–2006–28).

[72] Book Sweep was an automatic execution feature of the Exchange's systems that, respecting non-Streaming Quote Options, allowed certain orders resting on the limit order book to be automatically executed when the bid or offer generated by the Exchange's system or by the specialist's proprietary quoting system locks (*i.e.,* $1.00 bid, $1.00 offer) or crosses (*i.e.,* $1.05 bid, $1.00 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders in non-Streaming Quote Options executed by the Book Sweep feature were allocated among crowd participants participating on the Wheel. Book Sweep is being retained for Streaming Quote Options. *See* Securities Exchange Act Release No. 54312 (August 14, 2006), 71 FR 47856 (August 18, 2006) (SR–Phlx–2006–28).

[73] Manual execution by a specialist could occur in AUTOM. Specialist manual handling, and this rule governing order messages, all of which is obsolete. AUTOM and AUTO–X were replaced by Phlx XL. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59). Rule 1080(c)(iv)(G) notes that no orders will be executed manually on Phlx XL which is the current System.

[74] *See* Phlx Rule 1082(a)(iii) The term ''SEC Quote rule'' shall mean rule 602 of Regulation NMS under the Securities Exchange Act of 1934, as amended.

The Exchange uses the terms ''member'' and ''member organization'' in its rules to apply to entities and persons that may access the System. The Exchange only permits members and member organizations to access it System.

The Exchange currently provides for obligations of Order Entry Firms within current Rule 1080(c)(ii)(B). The rule text provides that ''Obligations of Order Entry Firms. Order Entry Firms shall: (1) Comply with all applicable Exchange options trading rules and procedures; (2) Provide written notice to all Users regarding the proper use of AUTO–X.'' The Exchange proposes to delete Rule 1080(c)(ii)(B) and eliminate the requirement that Order Entry Firms [75] comply with all applicable Exchange options trading rules and procedures and provide written notice to all Users regarding the proper use of AUTO–X. The Exchange notes that all members and member organizations are subject to its rules. An Order Entry Firm would be required to be a member or member organization to access the System. The AUTO–X procedures are irrelevant and therefore this sentence is being deleted. AUTO–X no longer exists, it was part of AUTOM as explained herein.

Rule 1080(c)(iii)

The Exchange proposes to delete the rule text at Rule 1080(c)(iii)(A) and (B), titled ''Quotations Interacting with Limit Orders on the Book'' which provides,

(A) Respecting options traded on the Phlx XL system, when the bid or offer generated by the Exchange's Auto-Quote system, SQF (as defined in Commentary .01(b)(i) of this Rule), or by an SQT or RSQT (as defined in Rule 1014(b)(ii)) matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book, orders on the limit order book in that series will be automatically executed and automatically allocated in accordance with Exchange rules. If Book Sweep is not engaged at the time the Auto-Quote, SQF, RSQT or SQT bid or offer matches or crosses the Exchange's best bid or offer represented by a limit order on the book, the specialist, RSQT, or SQT may manually initiate the Book Sweep feature.

(B) Respecting options traded on the Phlx XL II system, Market Sweep will replace Book Sweep order processing. A Market Sweep is composed of one or more single-sided quotes submitted by a Phlx XL II participant to automatically execute at multiple order price levels and a single quote price level. A Market Sweep will execute against both quotes and orders, but when a quote level is exhausted, the system will cancel the balance of the Market Sweep back to the entering party to allow quotes to be updated. Market Sweeps are processed on an immediate-or-cancel basis, may not be routed, may be entered only at a single price, and may not trade through away markets.

The Exchange proposes to delete this rule text within Rule 1080(c)(iii)(A) because it reflects an outdated Auto-Quote system which no longer exists. The functionality described in subparagraph (iii)(A) no longer exists, including Auto-Quote [76] and the Book Sweep feature, as previously mentioned. These features initially existed within Phlx XL. Phlx XL was later replaced by Phlx XL II in 2009.[77] With respect to Rule 1080(c)(iii)(B), the Exchange notes that the Phlx XL functionality described herein was renamed ''Market Sweep.'' The Market Sweep description within current Rule 1080(c)(iii)(B) describes an IOC order. Today, ROTs and Specialists may enter IOC orders through SQF. This functionality is already included as part of the SQF functionality and also the IOC description is proposed within new Rule 1080(c)(2). The Exchange therefore proposes the deletion of Rule 1080(c)(iii)(B).

Rule 1080(c)(iv)

The Exchange proposes to delete Rule 1080(c)(iv) which provides,

Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for automatic execution will instead be manually handled by the specialist:

(A) RESERVED;

(B) Respecting options traded on Phlx XL, the AUTOM System is not open for trading when the order is received (which is known as a pre-market order);

(C) Respecting options traded on Phlx XL, the disseminated market is produced during an opening or other rotation;

(D) Respecting options traded on Phlx XL, when the Exchange's best bid or offer is represented by a limit order on the book (except with respect to orders eligible for ''Book Sweep'' as described in Rule 1080(c)(iii) above, and ''Book Match'' as described in Rule 1080(g)(ii) below);

(E) Respecting options traded on Phlx XL, if the Exchange's bid or offer is not the NBBO; and

(F) Reserved.

(G) Respecting options traded on the Phlx XL II system, no orders will be executed manually.

The Exchange's systems are designed and programmed to identify the conditions that cause inbound orders to be ineligible for automatic execution. Once it is established that inbound orders are ineligible for automatic execution, Exchange staff has the ability to determine which of the above conditions occurred.

The Exchange proposes to delete Rule 1080(c)(iv) because it refers to the possibility of executions being manually handled by the specialist, which cannot occur anymore, as described above.[78] Rule 1080(c)(iv)(A) is currently reserved, and is being deleted. Rule 1080(c)(iv)(B) describes AUTOM, which is now obsolete and proposed to be deleted. Phlx Rule 1017 describes the timeframe interest will be accepted for the Opening Process. Similarly, Rule 1080(c)(iv)(C) describes a process for opening and reopening which is described in Phlx Rule 1017; the rule text is not necessary. A trading halt will result in a reopening pursuant to Rule 1017. Rule 1080(c)(iv)(D) and (E) is proposed to be deleted because it is not a possibility for manual handling today. As noted in Rule 1080(c)(iv)(G) no orders are handled manually on Phlx XL, which the Exchange is simply referring to as System. The Exchange also proposes to delete Rule 1080(c)(iv)(F) which is reserved.

Rule 1080(c)(v) and vi

The Exchange proposes to delete Rule 1080(c)(v) which provides,

Respecting options traded on Phlx XL, in situations in which the Exchange receives a market order that is not eligible for automatic execution because of any of the conditions described in Rule 1080(c)(iv), such market order, if not already executed manually by the specialist, will nonetheless be executed automatically when: (A) A limit order resting on the limit order book or a quotation that was not priced at the NBBO at the time such market order was received, becomes priced at the NBBO; or (B) an inbound limit order or quotation priced at or better than the NBBO is received before the specialist has manually executed such market order. In each case, the AUTOM System will automatically execute the market order against such resting limit order or quotation, or against such inbound limit order or quotation, at or better than the NBBO price.

The Exchange proposes to delete the rule text at Rule 1080(c)(v) because it

[75] *See* Rule 1080(c)(ii)(A)(1).

[76] Auto-Quote was the Exchange's electronic options pricing system, which enabled specialists, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs''), to automatically monitor and instantly update and submit electronic quotations for equity option and index option contracts. Auto-Quote was eliminated in 2007. *See* Securities Exchange Act Release No. 55498 (March 20, 2007, 72 FR 14318 (March 27, 2007) (SR–Phlx–2007–15) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Exchange's Auto-Quote Options Pricing Functionality). This filing inadvertently did not remove all references to Auto-Quote.

[77] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[78] Manual execution by a specialist could occur in AUTOM. Specialist manual handling, and this rule governing order messages, all of which is obsolete. AUTOM and AUTO–X were replaced by Phlx XL. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59). Rule 1080(c)(iv)(G) notes that no orders will be executed manually on Phlx XL which is the current System.

references obsolete functionality related to AUTOM and specialist manual handling. Phlx XL II contained no such functionality and replaced specialist manual handling with automated functionality.

The Exchange also proposes to delete Rule 1080(b)(vi) which is currently reserved.

Rule 1080(d), Hours

The Exchange proposes to delete Rule 1080(d), ''Hours.'' AUTOM is no longer a relevant system. The Exchange's trading hours for quotes is provided for in Rule 1019(b)(4)[79] and the trading hours for orders is provided for in Rule 1093(a)(2).[80] The Exchange does not believe that this information is necessary.

Rule 1080(e), Extraordinary Circumstances

The Exchange proposes to delete Rule 1080(e). ''Extraordinary Circumstances,'' which provides,

Respecting options traded on the Phlx XL system, in the event extraordinary circumstances with respect to a particular class of options exist, an Options Exchange Official may determine to disengage AUTO–X with respect to that option, in accordance with Exchange procedures. Five minutes subsequent to the disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), the requesting specialist or his/her designee, an Options Exchange Official, and a designated regulatory staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged when either: (i) The specialist or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the specialist or his/her designee shall inform the regulatory staff that the extraordinary circumstances no longer exist and that the specialist is re-engaging AUTO–X; or (ii) when an Options Exchange Official and the designated regulatory staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary conditions exist floor-wide, an Options Exchange Official may determine to disengage the AUTO–X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), an Options Exchange Official and a designated regulatory staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged when either: (1) The specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the specialist or his/her designee will inform regulatory staff that the extraordinary circumstances no longer exist for their particular class of options and that the specialist is re-engaging AUTO–X; or (2) when an Options Exchange Official and the designated regulatory staff person determine that the extraordinary circumstances no longer exist. The NBBO Feature is always disengaged when AUTO–X is disengaged. Extraordinary circumstances include market occurrences and system malfunctions that impact a specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security in the case of equity options or in the underlying currency in the case of U.S. dollar-settled foreign currency options; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences. The Exchange shall document any action taken to disengage AUTO–X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO–X is disengaged due to extraordinary circumstances. Such documentation shall include: Identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Options Exchange Official who approved such action, the reasons for which such action was taken; identification of the specialist and the specialist Unit (or in the case of floor-wide disengagement, identification of the Exchange designee); and identification of the regulatory staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(i) The Exchange's Emergency Committee, pursuant to Rule 98, may take other action respecting AUTOM in extraordinary circumstances.

Rule 1080(e), Extraordinary Circumstances, is proposed to be deleted because it refers to the obsolete functionality of Phlx XL and AUTO–X (AUTO–X was part of AUTOM and is no longer in existence). This also involves the deletion of subparagraph (i), because the Emergency Committee no longer exists;[81] emergencies related to the System or trading floor are handled pursuant to various other provisions.[82]

Rule 1080(f) Specialist Obligations

The Exchange proposes to delete Rule 1080(f), ''Specialist Obligations,'' which provides,

Specialist Obligations—Respecting options traded on Phlx XL, a specialist must accept eligible orders delivered through AUTOM. A specialist must comply with the obligations of Rule 1014, as well as other Exchange rules, in the handling of AUTOM orders.

(i) RESERVED.

(ii) A specialist must respond promptly to all messages communicated through AUTOM, including order entry, execution and cancellation and replacement of orders as well as administrative messages.

(iii) A specialist is responsible for the remainder of an AUTOM order where a partial execution occurred.

(iv) A specialist is responsible for the visibility to the trading crowd of both the screens displaying incoming AUTO–X orders as well as bids/offers for the at-the-money strike prices in displayed options.

(v) To ensure proper notification to AUTOM users, a specialist must promptly notify the Surveillance Post of any AUTOM-related Options Exchange Official approval in order for such approval to be valid.

Rule 1080(f), Specialist Obligations, is proposed to be deleted because it refers to obligations that were once applicable to trading on Phlx XL and AUTOM, both of which are obsolete, as discussed above. Specialist obligations are noted within Phlx Rule 1020, ''Registration and Functions of Options Specialists'' as well as Rule 1014, ''Obligations of Market Makers.''

Rule 1080(g), Contra-Party Participation

The Exchange proposes to delete Rule 1080(g), ''Contra-Party Participation,'' which provides,

Contra-Party Participation—Respecting options traded on the Phlx XL system:

(A) Book Match—For purposes of this sub-paragraph, the contra-side to automatically executed inbound marketable orders shall be a limit order on the book or specialist, RSQT and/or SQT electronic quotes (''electronic quotes'') at the disseminated price where: (1) The Exchange's disseminated size includes limit orders on the book and/or electronic quotes at the disseminated price; and (2) the disseminated price is the National Best Bid or Offer. This feature is called Book Match. However, respecting options trading on the Phlx XL II system, the contra-side to automatically executed inbound marketable orders can also be a sweep, pursuant to Rule 1082.

The Exchange proposes to delete Rule 1080(g), Contra-Party Participation, because Book Match is obsolete. As noted in the last sentence of the text, with Phlx XL, Rule 1082(a)(ii)(B)(3)(c) discusses new interest in the opposite side of the market.

[79] The System accepts quotes for the Opening Process as specified in Rule 1017.

[80] The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange's website.

[81] *See* Securities Exchange Act Release No. 71906 (April 8, 2014), 79 FR 20949 (April 14, 2014) (SR–Phlx–2014–20).

[82] *See* By-Law Article VII, Section 7–5, Authority to Take Action Under Emergency or Extraordinary Market Conditions.

Rule 1080(h), Responsibility for AUTOM Orders

The Exchange proposes to delete Rule 1080(h), Responsibility for AUTOM Orders, which provides,

Responsibility for AUTOM Orders—Respecting options traded on Phlx XL, a member organization who initiates the transmission of an order message to the floor (the ''initiating member'') through AUTOM is responsible for that order message up to the point that a legible and properly formatted copy of the order message is received on the trading floor by the specialist unit. Thereafter, the specialist who is registered in the option specified in the order message is responsible for the contents of the order message received and is responsible for the order until one of the following occurs: (i) An execution report for the entire amount of the order is properly sent; (ii) a cancellation acknowledgement is properly sent; or (iii) an order properly expires.

For the convenience of members using AUTOM, the Exchange provides an AUTOM Service Desk to assist on the trading floor in the operation of AUTOM. In accordance with Exchange By-Law Article VI, Section 6–3, the Exchange shall not be liable for any loss, expenses or damage resulting from or claimed to have resulted from the acts, errors or omissions of its agents, employees or members in connection with AUTOM, or the AUTOM System.

The Exchange proposes to delete Rule 1080(h), Responsibility for AUTOM Orders, because Phlx XL and AUTOM are obsolete, as discussed above. In addition, the specialist no longer handles or submits orders on behalf of others, such that references to the receipt of order messages are also obsolete. The Exchange is also deleting reference to its AUTOM Service Desk; various operations personnel work in support of the trading floor but the Exchange does not believe their functions need to be described in a rule. By-Law Article VI, Section 6–3 applies to limit liability regardless of whether it is listed in this rule.

The Exchange proposes to delete Rule 1080(i), (m), and (n) which are currently reserved. The Exchange also proposes to delete the following extraneous sentence: ''Such orders will be automatically placed on the limit order book in price-time priority.''

Commentary .01

The Exchange proposes to delete Commentary .01 to Rule 1080 which provides,

.01 Reserved

(b) If options trading systems throttle quotations for at least three minutes, the Chairperson of the Board of Directors or his designee may, for capacity management purposes, mandate that the specialized quote feed be set to update quotations based on a certain minimum movement in the underlying security or the underlying foreign currency for: (i) All options; (ii) index options only; or (iii) certain specified options, taking into account certain factors that may include, but are not limited to, the price of the underlying security, volatility in the underlying security or the underlying foreign currency, or whether there has been any trading volume over the last two trading days. Such mandated minimum setting may continue for a period of 15 minutes, and may be continued every 15 minutes thereafter, provided that the Exchange's options trading systems are throttling quotations at the end of each such 15-minute period.

The Exchange notes that the language contained in Commentary .01 to Rule 1080 refers to legacy functionality that existed prior to the INET transition and does not reflect current functionality. Today, the System automatically throttles and provides equal access to the Order Book across all interfaces.

Commentary .02

The Exchange proposes to delete Commentary .02 which provides,

The Electronic Order Book is the Exchange's automated limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price/time priority.

(a)(i) Except as provided in sub-paragraph (a)(ii) below, the AUTOM System will immediately display the full price and size of any limit order that establishes the Exchange's disseminated price or increases the size of the Exchange's disseminated bid or offer.

(ii) The AUTOM System will not display:

(A) An order executed upon receipt;

(B) An order where the customer who placed it requests that it not be displayed, and upon representation of such order in the trading crowd the Floor Broker announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed;

(C) A customer limit order for which, immediately upon receipt, a related order for the principal account of the specialist, reflecting the terms of the customer order, is routed to another options exchange;

(D) Orders received before or during a trading rotation, however, such limit orders will be displayed immediately upon conclusion of the applicable rotation if they represent the Exchange's best bid or offer;

(E) The following order types as defined in Rule 1066: Contingency Orders; One-Cancels-the-Other Orders; Hedge Orders (*e.g.,* spreads, straddles, combination orders); Synthetic Options;

(F) Immediate or Cancel (''IOC'') orders.

(b) Limit orders may only be placed on the limit order book by: (i) An ROT via electronic interface with AUTOM pursuant to Rule 1014, Commentary .18; (ii) a Floor Broker using the Options Floor Broker Management System (as described in Commentary .06 below); or (iii) the AUTOM System for eligible customer and off-floor broker-dealer limit orders.

(c) A limit order to be executed manually by the specialist pursuant to Rule 1080(c)(iv) will be displayed automatically by the AUTOM System until such limit order is executed or cancelled. If such limit order is partially executed, the AUTOM System will automatically display the actual number of contracts remaining in such limit order.

As explained herein, AUTOM is an outdated system. The Exchange notes its order types within Phlx Rules 1080(b) and Options 8, Section 32, including Limit Orders. Other rules govern trading on the floor, including, but not limited to Options 8, Sections 25, 29 and 30. Also, as discussed above, specialist manual execution no longer exists.

Commentary .03

The Exchange proposes to delete Commentary .03 to Rule 1080 which provides,

''Intermarket Sweep Order'' or ''ISO'' is a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Rule 1083. ISOs are immediately executable within the Phlx XL II system or cancelled, and shall not be eligible for routing as set out in Rule 1080.

Simultaneously with the routing of an ISO to the Phlx XL II system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Offer (as defined in Rule 1083(n)) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

The Exchange relocated an updated description of ISO Orders to proposed Rule 1080(b)(3). The Exchange notes that it removed references to Phlx XL and added greater detail about ISO in the PIXL Auction and during the Opening Process. Rule 1083 contains more information with respect to ISO Orders which is referenced within the rule.

Commentary .04 and .05

The Exchange proposed the deletion of these commentaries within the discussion of Rule 1080(b) as these commentaries related to text within that section.

Rule 1000, Applicability, Definitions and References

The Exchange proposes to amend Rule 1000(b)(40) which is currently reserved, to define the term ''Away Best Bid or Offer'' or ''ABBO'' to mean the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. The Exchange believes that this term will bring greater clarity to the

Exchange's rules. The Exchange proposes to delete Rule 1000(b)(49) to remove the definition of ''Agency Order,'' as it is no longer using this categorization of orders, as discussed above.

Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders

The Exchange explained above the proposed addition of rule text to Rule 1014(e), which is currently reserved, to explain what types of orders a ROT or Specialist may not enter.

Rule 1017

The term ''All-or-None'' is being capitalized within Rule 1017(b). The description of the Opening Sweep in Rule 1017(b)(i) is being deleted, and a cross-reference to the new definition for Opening Sweep, in 1080(b)(6), is being added within the rule.

Rule 1078, All-or-None

As noted above, the Exchange is relocating the text of this rule into Rule 1080(b)(5) and reserving this rule.

Rule 1098, Complex Orders on the System

The Exchange proposes to update Rule 1098 to note that certain order types are described in proposed Rule 1080(b) and (c). The Exchange is removing the descriptions of order types within Rule 1098(b)(v) and instead referencing back to Rule 1080. The order types entered as complex orders do not differ in description from those entered on the simple market. This proposal will conform order types across the electronic market, as well as the floor, with the proposed changes to Options 8, Section 32. The Exchange is adding Directed Orders to Rule 1098(b)(v) as Directed Orders are proposed to be added to Rule 1080(b).

The Exchange also proposes to amend Rule 1098(d)(B), 1098(e)(iv) and 1098(f)(ii) to redefine certain sweeps as ''orders'' instead of ''quotations.'' Specifically, similar to the amendment for Opening Sweeps defined above, the Exchange is proposing to amend the references to COOP Sweep, COLA Sweep and CBOOK Sweep to describe them as a ''one-sided electronic order entered by a Specialist or ROT through SQF'' instead of ''a one-sided electronic quotation.'' Phlx traditionally has referred to all interest within the SQF protocol as quote interest. There is no systemic change as a result of this amendment. The Exchange is simply re-categorizing these ''quotes'' as ''orders'' as they are identical to IOC orders. The Exchange proposes to amend the references to ''quotation'' to ''order'' to make clear the type of interest that is being entered. Further, the Exchange proposes to make clear that these sweeps may only be entered by a Specialist or ROT through SQF.[83] This is the case today.

The Exchange offers ROTs and Specialists the ability to expeditiously submit IOC orders through SQF, without having to utilize the FIX protocol. This allows ROTs and Specialists to manage risk utilizing a single protocol, SQF. Unlike other market participants, ROTs and Specialists are required to provide liquidity to the market and are subject to certain obligations, including a requirement to provide continuous two-sided quotes on a daily basis.[84] ROTs and Specialists utilize IOCs (today sweeps) to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOCs to offload risk, is vital for ROTs and Specialists, and allows them to maintain tight markets and meet their quoting and other obligations to the market. The Exchange believes that unlike other market participants, ROTs and Specialists have obligations and risks, which are mitigated by providing these market participants with the ability to increase their efficiency in submitting such orders and thereby allow them to maintain quality markets to the benefit of all market participants that trade on the Exchange. The Exchange notes that other exchanges offer similar capabilities to market makers.[85] Furthermore, other exchanges do not offer order protections on order submitted through a quoting protocol. MIAX's Price Protection on Non-Market Maker Orders is not available for orders submitted by a Market Maker.[86] The Price Protection on Non-Market Maker Orders prevents an order from being executed at a price beyond the price designated in the order's price protection instructions, and is a similar protection to the Exchange's Limit Order Price Protection. The Exchange similarly believes that it is consistent with the Act to not apply certain protections to Market Maker Immediate-or-Cancel Orders submitted through SQF.

ROTs and Specialists handle a large amount of risk when quoting on the Exchange and in addition to the risk protections required by the Exchange, ROTs and Specialists utilize their own risk management parameters when entering orders, minimizing the likelihood of a ROTs and Specialist order resulting from an error from being entered. The Exchange believes that ROTs and Specialists, unlike other market participants, have the ability to manage their risk when submitting IOC Orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

Options 8, Section 32

The Exchange is proposing to amend Options 8, Section 32 to add an ''(a)'' before the rule text. The Exchange proposes to amend the ''a'' and ''b'' before Market Order[87] and Limit Order[88] to a ''1'' and ''2'' respectively.

Options 8, Section 32 governs the trading floor while Rule 1080 governs electronic trading. A member enters orders through FBMS, directly into the System shall be governed by Rule 1080 with respect to order types. The Exchange proposes to re-letter Contingency Order from ''c'' to ''b.'' The Exchange proposes to replace the current All or None Order[89] description within Options 8, Section 32(b)(3) with the rule text currently within Rule 1078 with the exception of the description of the Acceptable Trade Range Protection, which is not applied when submitting orders in open outcry.

The Exchange proposes to add a new Options 8, Section 32(c) which provides, ''Time in Force or ''TIF.'' The term ''Time in Force'' shall mean the period of time that the System will hold an order for potential execution, and shall include:''. This sentence will provide more contextual information. The Exchange will renumber the Immediate or Cancel Order from Options 8, Section 32(b)(5) to new Options 8, Section 32(c)(1). The Exchange proposes to add two additional TIFs, ''Day'' and ''Good Til Cancelled'' at proposed new Options 8, Section 32(c)(2) and (3). The Exchange proposes to utilize the descriptions proposed within new Rule 1080(c)(1)

[83] Market Makers on Phlx include Specialists and ROTs. *See* note 3.

[84] *See* Phlx Rule 1081.

[85] Miami International Securities Exchange LLC (''MIAX'') utilizes its MIAX Express Interface (MEI), a quoting interface, for market makers to enter immediate-or-cancel orders.

[86] *See* MIAX Rule 515(c)(1).

[87] *Market Order.* A market order is an order to buy or sell a stated number of option contracts and is to be executed at the best price obtainable when the order reaches the post.

[88] *Limit Order.* A limit order is an order to buy or sell a stated number of option contracts at a specified price, or better.

[89] *All or None Order.* An all-or-none order is a market or limit order which is to be executed in its entirety or not at all.

and (4). The Exchange proposes to add a description for Floor Qualified Contingent Cross Orders within new proposed Options 8, Section 32(e). The description is copied from Rule 1064(e) with a title, ''Floor Qualified Contingent Cross Order or Floor QCC Order.'' [90] The Exchange proposes to re-letter the remainder of the rule.

Options 8, OFPA A–3

The Exchange proposes to add a cross-reference to the definition of All-or-None Orders in proposed new Rule 1080(b)(5) within Options Floor Procedure Advice A–3.

The Exchange notes that other revisions are being made to Options 8, Section 32(b)(3) that were made in a prior rule change [91] and inadvertently removed by a subsequent rule change. The subsequent rule change did not capture the amended text.[92] The Exchange is reinstating the changes that were made in SR–Phlx–2019–03 within this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[93] in general, and furthers the objectives of Section 6(b)(5) of the Act,[94] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending Rule 1080 to amend the order types descriptions and eliminate references and descriptions of outdated functionality.

Order Types

The Exchange's proposal to remove the distinction between ''agency and ''proprietary'' is consistent with the Act because this distinction is not necessary to describe the types of orders available on Phlx. The Exchange notes that while that distinction may have been applicable at one point in time with respect to entering orders, it is not suitable to limit the entry of certain orders on that basis. Phlx captures capacity of market participants when they submit orders to the System. Further, the Exchange notes within proposed Rule 1080(b) any limitations that impact a market participant's ability to submit an order. Finally, proposed Rule 1014(e) will provide limitations for ROTs and Specialists submitting orders.

The Exchange notes that today no other options market segregates the submission of order types by whether the order is an agency or proprietary order. Rather, Phlx's proposal as well as rules of other options exchanges impose limitations on the types of orders that may be entered by ROTs and Specialists as described further herein, as well as other limitations related to market ROTs and Specialists makers entering orders.[95] While the Exchange is eliminating the references to ''agency'' and proprietary'' orders, the Exchange notes that there is no impact to market participants or systemic change that results from the elimination of these terms. The list of order types presented below reflect current practice. The Exchange is not changing the manner in which orders are being submitted to the Exchange. The Exchange believes that by defining the rules, similar to other options markets, it will bring greater transparency to the Exchange's Rules and permit an ease of reference when comparing rulebooks. The Exchange notes that this proposal will not amend the System except for the changes described below where the Exchange is noting a change is proposed. Other functionalities offered by Phlx remains unchanged with this proposal.

The Exchange's proposal to replace the current rule text regarding order types within Rule 1080(b) with a list of current order types will bring greater transparency to the Exchange's Rules. Today, Rule 1080(b)(i) lists certain order types that have not been available on Phlx since Phlx replatformed its technology to INET in 2009. Specifically, the Exchange believes that eliminating order types that are not available, which include ''or better,'' ''simple cancel to reduce size (cancel leaves),'' ''cancel to change price'' and ''possible duplicate orders,'' is consistent with the Act because the revised rule will make clear the order types that are available and will clarify the rules. The Exchange notes that these order types have not been available for some time. The Exchange believes market participants are aware of the current order types that are accepted by the System because they review the Exchange's specifications. Proposed Rule 1080(b) would make clear what order types are available and provide a description of each order type.

Current Options 8, Section 32 describes the order types available for trading on the Trading Floor of the Exchange. The order types available within Phlx are the same regardless of whether the order is entered electronically or through the Options Floor Broker Management System.[96] Additionally, these order types may be entered in either the simple or complex order books. For these reasons, the Exchange is simultaneously updating the descriptions of the order types into Options 8, Section 32, and Rules 1080 and 1098 to ensure conformity among these rules. The description of Market Order within proposed Rule 1080(b)(1) is substantially similar to the description of Options 8 Section 32(a). The description of a Limit Order within proposed 1080(b)(2) is identical to the description within Options 8, Section 32(b). The ISO description within proposed Rule 1080(b)(3) refers to current Rule 1083 and references the current behavior within PIXL pursuant to Rule 1087. Finally, ISO behavior for the Opening Process is referenced within Rule 1017. The Exchange believes that describing the behavior of the ISO Order within Rule 1080(b) is consistent with the Act because this functionality exists today and is being centralized within one description for ease of reference for members. The Stop Order description proposed within Rule 1080(b)(4) is being modified from the definition within Options 8, Section 32(c)(1) but the Exchange believes the description is substantially similar.

Adding a description for Non-Displayed Contingency Orders within Rule 1080(b)(5) will enhance the Rulebook and allow the Exchange to readily refer to these categories of orders within its rules. In addition, this description will apprise members of the order types on Phlx that are Non-Displayed in one location within the

[90] The Exchange proposes, ''A Floor Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, as provided in Options 8, Section 30(e), that is identified as being part of a qualified contingent trade, as that term is defined in subsection Options 8, Section 30(e)(3), coupled with a contra-side order or orders totaling an equal number of contracts.''

[91] *See* Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (SR–Phlx–2019–03).

[92] *See* Securities Exchange Act Release No. 85740 (April 29, 2019), 84 FR 19136 (SR–Phlx–2019–17).

[93] 15 U.S.C. 78f(b).

[94] 15 U.S.C. 78f(b)(5).

[95] *See* ISE, GEMX and MRX Options 3, Section 7, Miami International Securities Exchange, LLC Rule 515 and Cboe Exchange, Inc. Rule 5.6.

[96] Options Floor Based Management System or (''FBMS'') is a component of the System designed to enable members and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders negotiated, represented and executed by members on the Exchange, to the extent permissible under Rule 1000(f), such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The features of FBMS are described in Rules 1063(e) and 1085. In addition, a non-member or member may utilize an FBMS FIX interface to create and send an order into FBMS to be represented by a Floor Broker for execution. *See* Phlx Rule 1080(a)(i)(C).

Rulebook. The All-or-None description within proposed Rule 1080(b)(6) is identical to Rule 1078.

The Opening Sweep description is being revised to describe this order type as an order and not a quote. The Exchange notes that the categorization of the Opening Sweep is not a substantial change to the manner in which the order type functions. The System is not being amended. The Opening Sweep is currently described within Rule 1017(b)(i).[97] Current Rule 1080(b)(i) notes the Exchange offers an opening-only-market order and a limit on opening order. The Exchange is amending the definition of Opening Sweep within Rule 1017(b)(i) by removing the language and simply referring to proposed Rule 1080(b)(6). Phlx traditionally has referred to all interest within the SQF protocol as quote interest. The Exchange proposes to amend the references to ''quotation'' to ''order'' to make clear the type of interest that is being entered. The Opening Sweep is an IOC Order that only may be entered into the Opening Process. Further, the Exchange proposes to make clear that an Opening Sweep may only be entered by a Specialist or ROT as this order type is submitted through the SQF protocol.[98] Other market participants tag orders for the Opening Process by placing a TIF of ''OPG'' on the order as explained below. The Exchange notes that all members may submit interest into the Opening Process. The Exchange believes that this rule change is consistent with the Act because the categorization has no impact on the functionality on the manner in which members utilize the Opening Sweep functionality. From the member prospective there is no functional change. The Exchange believes that this amendment will conform the categorization of this order type to that of order types that are Immediate-or-Cancel Orders despite the protocol. The Exchange's proposal to add two new sentences to the Opening Sweep description which provide, ''This order type is not subject to any protections listed in Rule 1099, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Rule 1017 and will be cancelled upon the open if not executed'' are consistent with the Act. Automated Quotation Adjustments protections applies to quotes entered into SQF but would not apply to an Opening Sweep which is an order entered into SQF. The Exchange notes that the second sentence is not new as Opening Sweeps are described within Rule 1017 today and apply only during the Opening Process. Both of sentences bring greater transparency to this rule.

The Exchange offers ROTs and Specialists the ability to expeditiously submit IOC orders through SQF, without having to utilize the FIX protocol. This allows ROTs and Specialists to manage risk utilizing a single protocol, SQF. Unlike other market participants, ROTs and Specialists are required to provide liquidity to the market and are subject to certain obligations, including a requirement to provide continuous two-sided quotes on a daily basis.[99] ROTs and Specialists utilize IOCs (today sweeps) to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOCs to offload risk, is vital for ROTs and Specialists, and allows them to maintain tight markets and meet their quoting and other obligations to the market. The Exchange believes that unlike other market participants, ROTs and Specialists have obligations and risks, which are mitigated by providing these market participants with the ability to increase their efficiency in submitting such orders and thereby allow them to maintain quality markets to the benefit of all market participants that trade on the Exchange. The Exchange notes that other exchanges offer similar capabilities to market makers.[100] Furthermore, other exchanges do not other order protections on order submitted through a quoting protocol. MIAX's Price Protection on Non-Market Maker Orders is not available for orders submitted by a Market Maker.[101] The Price Protection on Non-Market Maker Orders prevents an order from being executed at a price beyond the price designated in the order's price protection instructions, and is a similar protection to the Exchange's Limit Order Price Protection. The Exchange similarly believes that it is consistent with the Act to not apply certain protections to Market Maker Immediate-or-Cancel Orders submitted through SQF.

ROTs and Specialists handle a large amount of risk when quoting on the Exchange and in addition to the risk protections required by the Exchange, ROTs and Specialists utilize their own risk management parameters when entering orders, minimizing the likelihood of a ROTs and Specialist order resulting from an error from being entered. The Exchange believes that ROTs and Specialists, unlike other market participants, have the ability to manage their risk when submitting IOC Orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

The Exchange's proposal to describe the Cancel-Replacement Order within proposed Rule 1080(b)(7) is similar to the order type currently described within Options 8, Section 32(c)(7). The Exchange is amending this description in a manner that is similar to Options 8, Section 32(7) except the Exchange is adding additional rule text that is not currently described within the existing Rules. The Exchange proposes to make clear when a loss of priority would occur when submitting a Cancel-Replacement Order. The Exchange believes that memorializing the current System practice in which the System determines how to prioritize a Cancel-Replacement Order is consistent with the Act because when an order is routable, the System would need to re-check the order to determine if it is marketable and therefore routable. Phlx Rule 1093 describes routing functionality.

With respect to QCC Orders, PIXL Orders, Legging Orders and Directed Orders, the Exchange's proposal to note the rule where a detailed explanation of the Order Type may be found will add greater transparency to the Exchange's Rules. The Exchange's proposal to include all order types within proposed Rule 1080(b) is consistent with the Act and the protection of investors and the general public because it will provide members with a complete list of order types thereby adding greater transparency to the Exchange's Rules.

The Exchange's proposal to add TIFs to proposed Rule 1080(c) will also enhance the Exchange's Rulebook by including these order types to the proposed set of Rules and providing additional transparency. The Exchange proposes to add at Rule 1080(c)(1) a description of a Day Order. The Exchange's proposed description of a Day Order memorializes the manner in

[97] Rule 1017(b)(i) provides, ''An Opening Sweep is a one-sided electronic quotation submitted for execution against eligible interest in the system during the Opening Process.''

[98] *See* Phlx Rule 1080(a)(i)(B) notes that (B) ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Specialists, SQTs and RSQTs may submit Immediate-or-Cancel Orders through SQF.

[99] Specialists have quoting obligations during the Opening Process as specified in Rule 1017(d) and ROTs and Specialists have intra-day quoting obligations as specified in Rule 1093.

[100] Miami International Securities Exchange LLC (''MIAX'') utilizes its MIAX Express Interface (MEI), a quoting interface, for market makers to enter immediate-or-cancel orders.

[101] *See* MIAX Rule 515(c)(1).

which the System currently treats a TIF of ''Day.'' Exchange members today are familiar with a Day Order which is described in the specifications. The Exchange believes that this description is consistent with the Act in that the TIF of Day simply clarifies that an order with a TIF of day will be cancelled at the end of the day if not executed and serves to provide greater clarity to the Exchange's Rules. The Exchange's proposal to describe an IOC Order at proposed Rule 1080(c)(2) similar to Options 8 Section 32(c)(8) except that the Exchange also proposes to note that the IOC Order may be a Market Order. This is not the case for Market Orders on the trading floor as a price is required to be specified in the trading crowd. Today, Market Orders may be marked with a TIF of ''IOC'', this is not a System change. The Exchange is also proposing to include new rule text to further describe that in an electronic market the types of protocols that may be utilized on Phlx to submit IOC Orders. Further the Exchange proposes to note that IOC orders submitted through SQF are not subject to the order protections within Phlx Rule 1099, except for Automated Quotation Adjustments.

The Exchange notes that SQF is utilized by ROTs and Specialists. These market participants are required to provide liquidity to the market and are subject to certain obligations, including requirements to provide two-sided quotes on a daily basis.[102] ROTs and Specialists use IOC Orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using IOC Order to offload risk, is vital for these market participants, and allows them to maintain tight markets and meet their quoting obligations to the market. ROTs and Specialists handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange, ROTs and Specialists utilize their own risk management parameters when entering orders, minimizing the likelihood of a ROT or Specialist order resulting from an error from being entered. The Exchange believes that ROTs and Specialists, unlike other market participants, have the ability to manage their risk when submitting IOC Orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the quoting obligations the Exchange imposes on these participants. The Exchange noted in a another rule change that market makers on Phlx may enter Immediate-or-Cancel Orders through SQF and are similarly not subject to certain risk protections.[103]

The Exchange's proposal to define an order with a TIF of ''Opening Only'' within Rule 1080(c)(3) as an IOC Order that can be entered during the Opening Process is consistent with the Act. The limitation of order protections within the Opening Process is noted within Rule 1099. The Exchange notes that this TIF exists today but is being renamed. Today, orders that are entered as IOC by a ROT or Specialist through SQF [104] are subject to the protections listed in Rule 1099,[105] except for Order Price Protection and Market Order Spread Protection. The Order Price Protection and Market Order Spread Protection, while available for orders, are not available on SQF. The Exchange's proposal to note these exceptions within this rule is consistent with the Act because it brings greater transparency with respect to the availability of order protections. The Exchange notes ROTs and Specialists utilize IOC Orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC Orders to offload risk, is vital for ROTs and Specialists, and allows them to maintain tight markets and meet their quoting and other obligations to the market. The Exchange believes that allowing ROTs and Specialists to submit IOC Orders though their preferred protocol increases their efficiency in submitting such orders and thereby allow them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, ROTs and Specialists provide liquidity to the market place and have obligations.[106] The Exchange believes not offering Order Price Protection and Market Order Spread Protection for IOC Orders entered through SQF is consistent with the Act because ROTs and Specialists have more sophisticated infrastructures than other market participants and are able to manage their risk, particularly with respect to quoting, using tools that are not available to other market participants.[107]

Finally, the Exchange's proposal to memorialize a GTC Order within proposed Rule 1080(c)(4) is consistent with the Act and will provide a description for a GTC Order that does not exist today. The TIF is noted within current Rule 1080(b)(i) without a description. Similar to a Day Order, the Exchange believes that it is consistent with the Act to describe a GTC Order, which is eligible as an order until cancelled, within Rule 1080(c) to provide members with greater transparency as to the TIFs which are available on Phlx.

The Exchange's proposal to note the various routing strategies within Rule 1080(d) is consistent with the Act because it will also add greater transparency to the Exchange's rules. These routing strategies are already described within Rule 1093 and will add greater transparency to this rule. The Exchange is simply relocating the restrictions that are applicable today to Off-Floor Broker Dealers to new Rule 1080(e) without any substantive changes.

The order types description within proposed Rule 1080(b) should promote just and equitable principles of trade and perfect the mechanisms of a free and open market and the national market system by providing greater clarity concerning certain aspects of the System's operations. The order types proposed within Rule 1080(b) do not add any new functionality, rather, they provide descriptions for each available order type currently offered by the Exchange. The proposed rules provide additional detail related to functionality for certain order types and the handling of orders which offers greater transparency with respect to the Exchange's order type functionality.

Proposed Rule 1014(e) would permit ROTs and Specialists to enter orders in both their assigned and unassigned options, but it would also limit a ROT or Specialist to not exceed 25 percent of the total number of all contracts executed by the ROT or Specialist in unassigned options in any calendar quarter. This limitation is similar to

[102] *See* Phlx Rule 1091.

[103] *See* Securities Exchange Act Release No. 81034 (June 27, 2017), 82 FR 30923 (July 3, 2017) (SR–ISE–2017–58). See also Securities and Exchange Release No. 76295 (October 29, 2015), 80 FR 68338 at 68339 (November 4, 2015) (SR–Phlx–2015–83) (Phlx noted in footnote 8 that while SQF permits the receipt of quotes, sweeps are not included for purposes of the Percentage Based risk protection in Rule 1095(i)). Phlx Rule 1080(c)(iii)(B) provides that, ''Market Sweeps are processed on an immediate-or-cancel basis, may not be routed, may be entered only at a single price, and may not trade through away markets.''

[104] *See* Rule 1080(a)(i)(B).

[105] Phlx Rule 1099 is titled, ''Risk Protections.''

[106] Specialists have quoting obligations during the Opening Process as specified in Rule 1017(d) and ROTs and Specialists have intra-day quoting obligations as specified in Rule 1093.

[107] ROTs and Specialists quotes are subject to various protections listed in Rule 1099(c). These additional quoting protections permit ROTs and Specialists to manage their exposure at the Exchange. Other market participants would not be subject to these risk protections because they do not submit quotes on Phlx and do not utilize SQF.

limitations on other options markets.[108] Today, ROTs and Specialists on Phlx may not enter orders in non-appointed option series.[109] The Exchange's proposal to permit a ROT or Specialist to enter a limited amount of orders is consistent with the Act because ROTs and Specialists may enter orders for purposes of providing liquidity on the Exchange in certain circumstances. Further, the Exchange still proposes to limit ROTs and Specialists. The Exchange is excluding order types that today may not be entered by a Specialist or ROT today. Today, Specialists and ROTs may not enter All-or-None Orders, and public customer-to-public customer cross orders subject to Rule 1087(a) and (f), which orders may only be entered by a Public Customer. The Exchange proposes to prohibit SQTs and RSQTs from entering Market Orders and Stop Orders as well because the Exchange requires SQTs and RSQTs to ''maintain a two-sided market in those options in which the electronic ROT is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market'' pursuant to Phlx Rule 1081(a)(i). The Exchange believes that permitting SQTs and RSQTs to enter Market Orders does not achieve this objective as Market Orders are designed to remove liquidity from the Order Book. Further, the Exchange does believes that Stop Orders similarly are designed to remove liquidity from the Order Book and are non-displayed order types until they are triggered which does not benefit the role of an SQT or RSQT in displaying liquidity on the Order Book. Finally, Directed Orders may not be entered by Specialists and ROTs today pursuant to Rule 1068.

The Exchange believes its proposal is consistent with the Act. No longer limiting the amount of orders that may be executed by ROTs and Specialists to simply appointed classes will allow market making participants to enter more orders than they are permitted to enter today. The current restriction imposed by Commentary .01 to Rule 1014 to execute at least 50% of the trading activity in any quarter is only possible today in assigned options series and therefore is not very restrictive. Allowing ROTs and Specialists to enter order in assigned series is in addition to their current obligations to quote intra-day.[110] In order to meet those obligations ROTs and Specialists will need to stay focused on adding liquidity to Phlx. Further, permitting ROTs and Specialists to enter orders in non-appointed classes provided they do not exceed 25% of the total number of contracts executed in any quarter is consistent with the Act because the proposed rule will allow ROTs and Specialists to continue to provide liquidity on Phlx, as is the case today, while not restricting their business activity in a manner that is no other market participants is restricted to transact. Phlx's proposal will allow market making participants the same flexibility as exists today on other options markets.

The Exchange's proposal to amend current Rule 1080(b)(i)(B) and (C) to remove the current size limitation of 10 contracts pursuant to which certain orders must be entered as IOC by ROTs and Specialists is consistent with the Act because the Exchange believes that this limitation is no longer necessary given the evolution of the market place and further that it hinders non-SQT ROTs and Specialists unnecessarily. No other options market has similar limitations today.[111] The 10 contract limitation was put in place to restrict participants, whose primary role was to provide liquidity, from using orders of small size to avoid providing liquidity using quotes which were historically required to be of a size of 10 contracts or more. Proposed Rule 1080(b) does not impose any limit and serves to promote just and equitable principles of trade by not limiting ROTs and Specialists, who today are the only market participants with such a restriction.

Similar to the rule change proposed for Opening Sweeps within proposed Rule 1080(b)(6) the Exchange proposes to amend Rule 1098 to amend the descriptions of COOP Sweeps, COLA Sweeps and CBOOK Sweeps to change the description of these IOC Orders from a quote to an order. The Exchange's proposal to describe these sweeps as one-sided orders entered by a Specialist or ROT through SQF instead of as one-sided quotations will make clear the type of interest that these sweeps are for purposes of order entry. Phlx traditionally has referred to all interest within the SQF protocol as quote interest but this classification is not correct when distinguishing interest as either a quote or order. Today these sweeps are considered order interest, so no change is being made to the manner in the System accepts or processes these sweeps. The Exchange believes its proposal is consistent with the Act because the proposal will align sweeps in the proper category of interest as order interest to avoid confusion and protect investors and the general public.

Outdated Systems

The Exchange proposes to remove references to obsolete functionality within Rule 1080(c)–(h). There are multiple references to legacy systems and terms related to those Systems. The AUTOM order delivery system grew over the years into the current fully automated Phlx options trading system XL II. AUTOM and AUTO–X were replaced by the Phlx XL System, such that references to both terms refer to Phlx XL.[112] Also, specialist manual handling no longer exists.[113] The explanation of manual order handling is not relevant in today's System. The Exchange notes that all executions occur within the match engine as provided for within Options 8, Section 25. Partial manual execution is not possible within the current System. Rule 1080(c)(iv)(G) provides that no orders are handled manually on Phlx XL, which the Exchange is simply referring to as System. As all AUTO–X functionality was overridden by the initiation of Phlx XL fully automated technology, the references to the terms ''Book Match'' and ''Book Sweep'' are no longer necessary. The rule text referring to legacy systems should have been removed at the time that Phlx XL was implemented. The functionality described in Rule 1080(c) (iii)(A) no longer exists, including Auto-Quote[114] and the Book Sweep feature, as previously mentioned. These features initially existed within Phlx XL. Phlx XL was later replaced by Phlx XL II in

[108] *See* ISE, GEMX and MRX Options 2, Section 6, NOM Rules at Chapter VII, Section 6(e), and BX Rules at Options 2, Section 5(e). Further, NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') do not limit the types of orders that can be entered by market makers. *See* NYSE Arca Rule 6.37B–O and NYSE American Rule 925.2NY.

[109] Phlx Rule 1014(b)(ii), SQTs and RSQTs may only trade in a market making capacity in classes of options in which the SQT is assigned.

[110] *See* Phlx Rule 1081.

[111] *See* note 32 above.

[112] *See* Securities Exchange Act 72152 (May 12, 2014), 79 FR 28561 (May 16, 2014) (SR–Phlx–2014–32).

[113] Manual execution by a specialist could occur in AUTOM. Specialist manual handling, and this rule governing order messages, all of which is obsolete. AUTOM and AUTO–X were replaced by Phlx XL. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59). Rule 1080(c)(iv)(G) notes that no orders will be executed manually on Phlx XL which is the current System.

[114] Auto-Quote was the Exchange's electronic options pricing system, which enabled specialists, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs''), to automatically monitor and instantly update and submit electronic quotations for equity option and index option contracts. Auto-Quote was eliminated in 2007. *See* Securities Exchange Act Release No. 55498 (March 20, 2007, 72 FR 14318 (March 27, 2007) (SR–Phlx–2007–15).

2009.[115] Rule 1080(e), Extraordinary Circumstances, is proposed to be deleted, because it refers to the obsolete functionality of Phlx XL and AUTO–X (AUTO–X was part of AUTOM and is no longer in existence). This also involves the deletion of subparagraph (i), because the Emergency Committee no longer exists;[116] emergencies related to the System or trading floor are handled pursuant to various other provisions.[117] The Exchange believes that removing obsolete rule text and functionality will protect investors and the public interest because it will avoid confusion within the rules.

Additionally, certain redundant rule text is being removed. With respect to Rule 1080(c)(iii)(B), the Exchange notes that the Phlx XL functionality described herein was renamed ''Market Sweep.'' Today this functionality is referred to within the Specialized Quote Feed functionality within Rule 1080(a)(i)(B) and will also be referred to within proposed Rule 1080(c)(2)(B) which describes IOC Orders. The Exchange notes that the Quote Exhaust feature is described within Rule 1082(a)(3) and therefore this reference in not necessary within Rule 1082. The SEC Quote Rule is referenced in current Rule 1082(a)(iii).[118] Rule 1080(c)(ii)(A)(1) defines an ''Order Entry Firm'' as a member organization of the Exchange that is able to route orders to AUTOM. The term Order Entry Firm is not necessary to describe order types or other functionality. Rule 1080(c)(ii)(A)(2) defines a ''User'' as any person or firm that obtains access to AUTO–X through an Order Entry Firm. The term User is an obsolete definition intended to refer to the outdated AUTOM system. The Exchange uses the terms member and member organization in its rules to apply to entities and persons that may access the System. The Exchange only permits members and member organizations to access it System. Rule 1080(f), Specialist Obligations, is proposed to be deleted because it refers to obligations that were once applicable to trading on Phlx XL and AUTOM, both of which are obsolete, as discussed above. Specialist obligations are noted within Phlx Rule 1020, ''Registration and Functions of Options Specialists'' as well as Rule 1014, ''Obligations of Market Makers.'' The Exchange proposes to delete Rule 1080(g), Contra-Party Participation, because Book Match is obsolete. As noted in the last sentence of the text, with Phlx XL, Rule 1082(a)(ii)(B)(3)(c) discusses new interest in the opposite side of the market. Removing obsolete and redundant rule text will bring greater clarity to the Exchange's rules. With respect to Commentary .01(b) of Rule 1080, the Exchange notes that it does not throttle as described in this rule text. The Exchange notes that the language contained in Commentary .01 to Rule 1080 refers to legacy functionality that existed prior to the INET transition and does not reflect current functionality. Today, the System automatically throttles and provides equal access to the Order Book across all interfaces.

Rule 1000

The Exchange's proposal to memorialize the defined term ''Order Entry Firm'' within proposed Rule 1000(b)(38) will permit the term to be utilized throughout the Rulebook.

The Exchange's proposal to amend Rule 1000(b)(40) which is currently reserved, to define the term ''Away Best Bid or Offer'' or ''ABBO'' to mean the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer will add greater clarity to the Exchange's rules.

The Exchange's proposal to remove the term ''Agency Order'' from Rule 1000(b)(49) is consistent with the Act because this term is not necessary or utilized elsewhere in the Rulebook other than without Rule 1080(b). The Exchange is revising Rule 1080(b) such that this term is no longer required.

Rule 1017

The Exchange's proposal to capitalize the term ''All-Or-None'' and revise the defined term ''Opening Sweep'' to refer to Rule 1080(b)(6) are non-substantive amendments.

Rule 1078

The Exchange's proposal to delete Rule 1078 is non-substantive.

Rule 1098

The Exchange's proposal to cross-reference proposed Rule 1080(c) refer to the defined terms within Rule 1080(b) is consistent with the Act because as noted herein both simple and complex orders are similar for the order types defined within proposed Rule 1080(b). This amendment merely continues to conform those terms.

Options 8, Section 32

The Exchange's proposal to re-number/re-letter Options 8, Section 32 is non-substantive. The Exchange's proposal to amend proposed Rule 1080(b)(3) to add further information to the All-or-None Order to align the rule with proposed Rule 1080(b)(5), except with respect to the last sentence of proposed Rule 1080(b)(5) which does not apply with respect to Floor Trading is consistent with the Act. The additional clarity will serve to align the rules and bring greater transparency to the distinctions between electronic and Floor Trading where those distinctions exist.

Adding a new TIF section to proposed Options 8, Section 32(c) similar to proposed Rule 1080(c) will align those rules. Memorializing a Day Order and a GTC Order will also make clear that those TIFs are available today on the Trading Floor. Those TIFs are available today and are not included within Options 8, Section 32.

Finally, the Exchange seeks to memorialize the Floor QCC Order which is described within Options 8, Section 30(e) within Options 8, Section 32 to bring greater transparency to the order types available on the Trading Floor. This amendment is non-substantive as this order type exists today.

The Exchange notes that this proposal does not amend the System or the manner in which Floor Trading members may submit orders to the Trading Floor.

Options 8, Section 39

The Exchange proposes to amend the All-or-None Order to refer to Rule 1080(b)(5). As described herein, the remaining changes are intended to conform the rule to a prior rule change that was inadvertently amended.[119]

Technical Amendments

The Exchange's proposal to update the cross-references, remove reserved sections and re-number/re-letter its rules will bring greater organization to the Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[115] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[116] *See* Securities Exchange Act Release No. 71906 (April 8, 2014), 79 FR 20949 (April 14, 2014) (SR–Phlx–2014–20).

[117] *See* By-Law Article VII, Section 7–5, Authority to Take Action Under Emergency or Extraordinary Market Conditions.

[118] *See* Phlx Rule 1082(a)(iii) The term ''SEC Quote rule'' shall mean rule 602 of Regulation NMS under the Securities Exchange Act of 1934, as amended.

[119] The Exchange notes that other revisions are being made to Options 8, Section 32(b)(3) that were made in a prior rule change. See Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (SR–Phlx–2019–03) and were inadvertently revered in a subsequent filing that did not capture the amended text. *See* Securities Exchange Act Release No. 85740 (April 29, 2019), 84 FR 19136 (SR–Phlx–2019–17). The Exchange is reinstating the changes that were made in SR–Phlx–2019–03.

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Order Types

The Exchange's proposal to remove the distinction between ''agency'' and ''proprietary'' will apply uniformly to all market participants in that it will not cause an undue burden on competition. The change will not impact the manner in which member submit orders into the System. The Exchange is not changing the manner in which orders are being submitted to the Exchange. The Exchange notes that today no other options market segregates the submission of order types by whether the order is an agency or proprietary order.

The Exchange's proposal to replace the current rule text regarding order types within Rule 1080(b) with a list of current order types will not impose an undue burden on competition, rather it will bring greater transparency to the Exchange's Rules. The order types listed within Rule 1080 are available to all market participants except that All-or-None Orders are available only to customers as provided today within Rule 1078. Current Options 8, Section 32 describes the order types available for trading on the Trading Floor of the Exchange. The order types available within Phlx are the same regardless of whether the order is entered electronically or through the Options Floor Broker Management System.[120] Additionally, these order types may be entered in either the simple or complex Order Book. For these reasons, the Exchange is simultaneously updating the descriptions of the order types into Options 8, Section 32, 1080 and 1098 to ensure conformity among these rules.

Eliminating the rule text for the following order types, ''or better,'' ''simple cancel to reduce size (cancel leaves),'' ''cancel to change price'' and ''possible duplicate orders,'' does not create an undue burden on competition because the Exchange does not offer these order types to any market participant today. The Exchange notes that it believes market participants are aware of the current order types that are accepted by the System. Currently, the rule provides a list of order types within Options 8, Section 32 which describe the order types for trading on the floor of the Exchange. The order types available within Phlx are the same regardless of whether the order is entered electronically or through the Options Floor Broker Management System. Additionally, these order types may be entered in either the simple or complex order books.

Further, the Exchange is defining terms within Rule 1080(b) which are already defined in the Rulebook, in some cases, for ease of reference.[121] The new descriptions of order types will provide greater clarity regarding the operation of the System. The order types within Rule 1080(b) do not add any new functionality but instead re-organize the Exchange's order type rules to provide additional detail regarding the order type functionality currently offered by the Exchange.

The description of Market Order within proposed Rule 1080(b)(1) is substantially similar to the description of Options 8 Section 32(a). The description of a Limit Order within proposed 1080(b)(2) is identical to the description within Options 8, Section 32(b). The ISO description within proposed Rule 1080(b)(3) refers to current Rule 1083 and references the current behavior within PIXL pursuant to Rule 1087. Finally, ISO behavior for the Opening Process is referenced within Rule 1017. The Exchange believes that describing the behavior of the ISO Order within Rule 1080(b) does not impose an undue burden on competition because this functionality exists today and is being centralized within one description for ease of reference for members. The Stop Order description proposed within Rule 1080(b)(4) is being modified from the definition within Options 8, Section 32(c)(1) but the Exchange believes the description is substantially similar.

Adding a description for Non-Displayed Contingency Orders within Rule 1080(b)(5) will enhance the Rulebook and allow the Exchange to readily refer to these categories of orders within its rules. The All-or-None Order description within proposed Rule 1080(b)(6) is identical to Rule 1078.

The Opening Sweep description is being revised to describe this order type as an order and not a quote. The Exchange does not believe this change imposes an undue burden on competition because an Opening Sweep may only be entered by a Specialist or ROT as this order type is submitted through the SQF protocol.[122] Other market participants tag orders for the Opening Process by placing a TIF of ''OPG'' on the order as explained below. The Exchange notes that all members may submit interest into the Opening Process. Further, the categorization has no impact on the functionality on the manner in which members utilize the Opening Sweep functionality.

The Exchange's proposal to describe the Cancel-Replacement Order within proposed Rule 1080(b)(7) is similar to the order type currently described within Options 8, Section 32(c)(7). The Exchange's proposal to add rule text that is not currently described within the existing Rules to make clear when a loss of priority would occur when submitting a Cancel-Replacement Order does not impose an undue burden on competition.

The Exchange's proposal to add TIFs to proposed Rule 1080(c) will enhance the Exchange's Rulebook by including these order types to the proposed set of Rules and providing additional transparency. The Exchange proposal to add at Rule 1080(c)(1) of a Day Order does not impose an undue burden on competition, rather it memorializes the manner in which the System currently treats a TIF of ''Day'' thereby adding transparency. The Exchange's proposal to describe an IOC Order at proposed Rule 1080(c)(2) similar to Options 8 Section 32(c)(8), with the addition of Market Order, and include new rule text to further describe that in an electronic market the types of protocols that may be utilized on Phlx to submit IOC Orders does not impose an undue burden on competition. Further the Exchange proposes to note that IOC orders submitted through SQF are not subject to the order protections within Phlx Rule 1099, except for Automated Quotation Adjustments. The Exchange notes that SQF is utilized by ROTs and Specialists, which market participants are required to provide liquidity to the market and are subject to certain obligations, including requirements to provide two-sided quotes on a daily basis.[123] ROTs and Specialists utilize their own risk management parameters when entering orders, minimizing the likelihood of a ROT or Specialist order resulting from an error from being entered. The Exchange believes that ROTs and Specialists, unlike other market participants, have the ability to manage their risk when submitting IOC Orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the

[120] *See* note 96 above.

[121] Opening Sweep is defined in Rule 1017(b)(i). QCC Order is defined within Rule 1080(o). The PIXL Order is defined within Rule 1087. All-or-None Orders are defined within Rule 1078. A Legging Order is defined within Rule 1098(f)(iii)(C). Directed Orders if defined with Rule 1068. Do No Route Orders are defined within Rule 1093.

[122] *See* Phlx Rule 1080(a)(i)(B) notes that (B) ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Specialists, SQTs and RSQTs may submit Immediate-or-Cancel Orders through SQF.

[123] *See* Phlx Rule 1091.

quoting obligations the Exchange imposes on these participants.

The Exchange's proposal to define an order with a TIF of ''Opening Only'' within Rule 1080(c)(3) as an IOC Order that can be entered during the Opening Process and note as new language to this order type that this order type is not subject to the risk protection within Rule 1099, except for Automated Quotation Adjustment does not impose an undue burden on competition as the limitation of order protections within the Opening Process is noted within Rule 1099. The Exchange notes that this TIF exists today but is being renamed. Finally, the Exchange's proposal to memorialize a GTC Order within proposed Rule 1080(c)(4) will provide a description for a GTC Order that does not exist today. The TIF is noted within current Rule 1080(b)(i) without a description. This amendment will provide members with greater transparency as to the TIFs which are available on Phlx.

The Exchange's proposal to note the various routing strategies within Rule 1080(d) will also add greater transparency to the Exchange's rules. These routing strategies are already described within Rule 1093 and will add greater transparency to this rule. The Exchange is simply relocating the restrictions that are applicable today to Off-Floor Broker Dealers to new Rule 1080(e) without any substantive changes.

The Exchange's proposal at Rule 1014(e) would permit ROTs and Specialists to enter orders in their assigned and unassigned options series, but limit a ROT or Specialist to not exceed 25 percent of the total number of all contracts executed by the ROT or Specialist in their unassigned options series in any calendar quarter, does not impose an undue burden on competition, rather it provides ROTs and Specialists with the ability to enter orders subject to the same limitation that exists today on other options markets.[124] Today, ROTs and Specialists on Phlx may not enter orders in non-appointed option series [125] and further the Exchange requires, pursuant to Commentary .01 to Rule 1014 that at least 50% of the trading activity in any quarter (measured in terms of contract volume) of an ROT (other than an RSQT) shall ordinarily be in classes of options to which he is assigned. Proposed Rule 1014(e) does not impose an undue burden on competition because unlike other market participants, ROTs and Specialists continue to have obligations to quote intra-day [126] and in order to meet those obligations they will need to stay focused on adding liquidity to Phlx. The Exchange believes that liquidity will not be impacted on Phlx because the Exchange is permitting ROTs and Specialists to enter more orders in appointed classes because ROTs and Specialists may enter orders in non-appointed classes provided they do not exceed 25% of the total number of contracts executed in any quarter. The proposal will allow ROTs and Specialists to continue to provide liquidity on Phlx, as is the case today, while not restricting their business activity in a manner that is no other market participants is restricted to transact.

The Exchange's proposal to remove a size limitation of 10 contracts within current Rule 1080(b)(i)(B) and (C) pursuant to which certain orders must be entered as IOC by ROTs and Specialists does not impose an undue burden on competition, rather the Exchange believes the provision unnecessarily hinders non-SQT ROTs and Specialists. ROTs and Specialists are the only market participants with such a restriction. The limitation is no longer necessary given the evolution of the market place. No other options market has similar limitations today.[127] The 10 contract limitation was put in place to restrict participants, whose primary role was to provide liquidity, from using orders of small size to avoid providing liquidity using quotes which were historically required to be of a size of 10 contracts or more.

The Exchange's proposal to make clear that Opening Sweeps within Rule 1080(b)(6), COOP Sweeps, COLA Sweeps and CBOOK Sweeps within Rule 1098 are in fact orders and not quotations will bring greater clarity to the Exchange's rules. The Exchange's proposal to describe these sweeps as one-sided orders entered by a Specialist or ROT through SQF instead of as one-sided quotations will make clear the type of interest that these sweeps are for purposes of order entry. Phlx traditionally has referred to all interest within the SQF protocol as quote interest but this classification is not correct when distinguishing interest as either a quote or order. The Exchange believes its proposal does not impose any burden on competition because sweeps are orders today and would be uniformly considered orders for all ROTs and Specialists. All market participants may enter interest during the Opening Process. The Exchange notes that the amending these sweep descriptions will align sweeps in the proper category of interest as order interest to avoid confusion.

The Exchange's proposal to note the various routing strategies within Rule 1080, and relocate the restrictions that are applicable today to Off-Floor Broker Dealers to new Rule 1080(e) do not impose an undue burden on competition, rather these changes add greater clarity to the Exchange's Rules.

Outdated Systems

Removing references to obsolete functionality within Rule 1080(c)–(h) does not impose an undue burden on competition, rather it brings greater clarity to the Exchange's rules. Today, no market participant has access to the functionality which is proposed to be deleted. Removing the obsolete functionality will make clear what is offered on the Exchange. In addition, removing redundant text which is already described elsewhere in the Rulebook will bring greater clarity to the Rulebook. Removing obsolete and redundant rule text will bring greater clarity to the Exchange's rules. With respect to Commentary .01(b) of Rule 1080, the Exchange notes that it does not throttle as described in this rule text. The Exchange notes that the language contained in Commentary .01 to Rule 1080 refers to legacy functionality that existed prior to the INET transition and does not reflect current functionality. Today, the System automatically throttles and provides equal access to the Order Book across all interfaces.

Rule 1000

The Exchange's proposal to memorialize the defined term ''Order Entry Firm'' within proposed Rule 1000(b)(38) will permit the term to be utilized throughout the Rulebook.

The Exchange's proposal to amend Rule 1000(b)(40) which is currently reserved, to define the term ''Away Best Bid or Offer'' or ''ABBO'' to mean the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer will add greater clarity to the Exchange's rules.

The Exchange's proposal to remove the term ''Agency Order'' from Rule 1000(b)(40) is consistent with the Act because this term is not necessary or utilized elsewhere in the Rulebook other than without Rule 1080(b). The Exchange is revising Rule 1080(b) such that this term is no longer required.

[124] *See* note 109 above.

[125] Phlx Rule 1014(b)(ii), SQTs and RSQTs may only trade in a market making capacity in classes of options in which the SQT is assigned.

[126] *See* Phlx Rule 1081.

[127] *See* note 32 above.

Rule 1098

The Exchange's proposal to cross-reference proposed Rule 1080(c) refer to the defined terms within Rule 1080(b) does not impose an undue burden on competition because as noted herein both simple and complex orders are similar for the order types defined within proposed Rule 1080(b). This amendment merely continues to conform those terms.

Options 8, Section 32

The Exchange's proposal to re-number/re-letter Options 8, Section 32 is non-substantive. The Exchange's proposal to amend proposed Rule 1080(b)(3) to add further information to the All-or-None Order to align the rule with proposed Rule 1080(b)(5), except with respect to the last sentence of proposed Rule 1080(b)(5) which does not apply with respect to Floor Trading does not impose an undue burden on competition, rather the amendment adds clarity to the Rule and brings greater transparency to the distinctions between electronic and Floor Trading where those distinctions exist.

Adding a new TIF section to proposed Options 8, Section 32(c) similar to proposed Rule 1080(c) will align those rules. Memorializing a Day Order and a GTC Order will also make clear that those TIFs are available today on the Trading Floor. Those TIFs are available today and are not included within Options 8, Section 32.

Finally, the Exchange seeks to memorialize the Floor QCC Order which is described within Options 8, Section 30(e) within Options 8, Section 32 to bring greater transparency to the order types available on the Trading Floor. This amendment is non-substantive as this order type exists today. The Exchange notes that this proposal does not amend the System or the manner in which Floor Trading members may submit orders to the Trading Floor.

Options 8, Section 39

The Exchange proposes to amend the All-or-None Order to refer to Rule 1080(b)(5). As described herein, the remaining changes are intended to conform the rule to a prior rule change that was inadvertently amended.[128]

Technical Amendments

The Exchange's proposal to update the cross-references, remove reserved sections and re-number/re-letter its rules will bring greater organization to the Rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[129] and subparagraph (f)(6) of Rule 19b–4 thereunder.[130]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–52 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–Phlx–2019–52. 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–Phlx–2019–52 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[131]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26841 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[128] The Exchange notes that other revisions are being made to Options 8, Section 32(b)(3) that were made in a prior rule change. *See* Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (SR–Phlx–2019–03) and were inadvertently revered in a subsequent filing that did not capture the amended text. *See* Securities Exchange Act Release No. 85740 (April 29, 2019), 84 FR 19136 (SR–Phlx–2019–17). The Exchange is reinstating the changes that were made in SR-Phlx-2019–03.

[129] 15 U.S.C. 78s(b)(3)(A)(iii).

[130] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[131] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87684; File No. SR–NYSEAMER–2019–52]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amending Its NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule Related to Co-Location Services

December 9, 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 25, 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 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 its NYSE American Equities Price List and Fee Schedule ('' Price List and Fee Schedule'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to co-location services to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule related to co-location [4] services offered by the Exchange to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users.[5]

Proposed Change

LCN 10 Gb Circuit

Among other connectivity options, Users are able to connect to the Exchange over the Liquidity Center Network (''LCN''), a local area network available in the data center.[6] LCN access is available at 1, 10 and 40 Gb bandwidth capacities. Currently, Users have two 10 Gb options for LCN access:

- LCN 10 Gb, which has been in place since 2010,[7] and
- LCN 10 Gb LX, which was introduced in 2013.[8]

The LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection, and has latency levels substantially similar to those of the LCN 40 Gb connection.[9] Between the two 10 Gb LCN alternatives, the vast majority (80%) of User connections are the newer LCN 10Gb LX connections.

The Exchange proposes to cease offering the LCN 10 Gb connection. The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Price List and Fee Schedule would eliminate a connectivity option previously available to Users. For the reasons discussed below, however, the Exchange has concluded that the proposed change is necessary because it believes that if it does not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users with LCN 10 Gb connections would be compromised.

For each LCN connection, the network hardware relies on a switch, which acts as the ''gatekeeper'' for a User's inbound messaging (*e.g.,* orders and quotes) sent to the Exchange's trading and execution system and the Exchange's outbound messaging (*e.g.,* market data and drop copies) within the data center.[10] Switches are manufactured and sold to the Exchange by third parties. Currently, the LCN 1 Gb and LCN 10 Gb connections use one type of switch (the ''First Switch'') and the LCN 10 Gb LX and LCN 40 Gb connections use a second type of switch (the ''Second Switch'').[11]

The manufacturer of the First Switch made an ''end of life'' (''EOL'') announcement notifying customers that the First Switch is being discontinued. The manufacturer stated that it is phasing out the provision of replacement parts and support for the First Switch. Per its EOL notice, it has ceased offering the First Switch, and, as of January 1, 2020: [12]

- It has no commitment to furnish software engineering level support for the operating system software licensed for the First Switch. No further service or maintenance releases or patches will be created to support the First Switch.
- It has no commitment to perform hardware engineering level support, including hardware modifications and failure analysis, for hardware defects.

As a consequence, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to existing ones, and so it proposes to discontinue the

[1] 15 U.S.C.78s(b) (1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] The other local area network is the internet protocol (''IP'') network. *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126).

[7] *See* 75 FR 59299, *supra* note 4, at 59299.

[8] *See* Securities Exchange Act Release Nos. 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92); and 70982 (December 4, 2013), 78 FR 74197 (December 10, 2013) (SR–NYSEMKT–2013–97).

[9] *See* 78 FR 69904 *supra* note 8, at 69905.

[10] *See id.*

[11] *See id.* at note 7.

[12] ''JTAC Technical Bulletin,'' at *https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL_BULLETINS/16000/TSB16960/en_US/TSB16960.pdf. See also* ''Juniper Networks Product End-of-Life,'' at *https://support.juniper.net/support/pdf/eol/990833.pdf.*

service and remove it from the Price List and Fee Schedule.[13]

The Exchange plans to implement the change during the first half of 2020.[14] It will announce the implementation date through a customer notice. After the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections.[15]

To provide time for Users that have LCN 10 Gb connections (''Current Users'') to implement any changes, the Exchange proposes to give them a six month grace period, starting on the implementation date. After the grace period ends, any remaining LCN 10 Gb connections will be terminated. The Exchange also proposes to waive any change fees [16] and non-recurring charges [17] that a Current User would otherwise incur as a result of the proposed change.

Bundled Network Access

The Exchange currently offers a pair of ''bundled'' connectivity options (''Bundled Network Access'') at 1 and 10 Gb bandwidths,[18] but no User is utilizing one. Accordingly, the Exchange proposes to discontinue the Bundled Network Access options and remove references to the related pricing from the Price List and Fee Schedule.

The change would be consistent with previous practice: In 2014 and 2016 previously existing bundled network access connectivity options were discontinued, as they were no longer utilized by Users.[19]

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List and Fee Schedule are applied uniformly to all Users.

LCN 10 Gb

As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to the nine Current Users' existing LCN 10 Gb connections. Accordingly, after the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections and, after the grace period, it will terminate any remaining LCN 10 Gb connections. The Exchange also proposes to waive any change fees and non-recurring charges that a Current User would otherwise incur as a result of the proposed change.

The Current Users have several options available to them upon termination of the LCN 10 GB connections:

- A Current User may move to the faster LCN 10 Gb LX connection. The change would increase the User's monthly recurring charge from $14,000 to $22,000, but the User would benefit from a faster connection while maintaining the same amount of bandwidth and system redundancy.
- A Current User may move to the slower IP Network, which offers a 10 Gb circuit alternative. The change would lower the User's monthly recurring charge from $14,000 to $11,000. The connection would have greater latency, but the User would maintain the same bandwidth and resiliency.
- A Current User may opt to re-tailor its system to reduce the number of LCN connections it has. For example, a Current User with two LCN 10 Gb connections could consolidate them into one LCN 40 Gb connection. The change would decrease the User's monthly recurring charge from $28,000 to $22,000 while allowing it to benefit from a faster connection and increased bandwidth, although it would reduce the redundancy of its connection.
- A Current User may opt to become a ''Hosted Customer'' by being hosted by another User (a ''Hosting User''), or to cross connect to another User within co-location, either of which would likely decrease its monthly connectivity costs and available bandwidth.[20]

The Exchange expects to work with the Current Users to implement the change.

Bundled Network Access

As no Users utilize a Bundled Network Access option, no Users will be impacted by the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. 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.'' [21]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing

[13] The Price List and Fee Schedule provide that a User that purchased five 10 Gb LCN connections would be charged the initial fee for a sixth 10 Gb LCN connection but would not be charged the monthly fee that would otherwise be applicable. Currently, no Users qualify for the discount. As part of the proposed change, the provision would be deleted.

[14] Also during the first half of 2020, the Exchange expects to update the network hardware of the LCN 10 Gb LX and LCN 40 Gb connections by replacing the Second Switch with a new switch (the ''New Switch''). The Exchange plans to update the LCN 1 Gb network hardware with the New Switch as well, which would allow the Exchange to continue to offer the LCN 1 Gb circuit despite the EOL of the First Switch. Because the New Switch, like the Second Switch, will provide a lower-latency connection, the Exchange expects that the latency of the LCN 1 Gb will decrease.

The Exchange does not propose to make a similar change to the LCN 10 Gb network hardware because, if it did, there would be no difference between the LCN 10 Gb and the LCN 10 Gb LX connection: They would have the same bandwidth and latency levels. However, the two services cannot have the same latency. Rather, as the Exchange has stated, the LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection. 78 FR 69904 *supra* note 8, at 69905. Its latency levels are similar to those of the LCN 40 Gb connection, and the same fees are assessed for both services. *See* 78 FR 74197 *supra* note 8, at 74197–74198. In addition, the Exchange does not believe that it would be reasonable or equitable to charge different fees for equivalent services. *See id.*

[15] The Exchange believes that it has enough First Switches to fulfil any orders it may receive prior to the implementation date.

[16] The Exchange charges a User a ''Change Fee'' if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User. *See* Securities Exchange Act Release No. 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSEMKT–2012–11).

[17] Co-location connectivity services have a non-recurring initial charge. For example, the LCN 10 Gb LX has a $15,000 initial charge per connection. *See* 78 FR 74197 *supra* note 8, at 74198.

[18] *See* Securities Exchange Act Release No. 77973 (June 2, 2016), 81 FR 36975 (June 8, 2016) (SR–NYSEMKT–2016–57).

[19] *See id.* and Securities Exchange Act Release No. 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61).

[20] *See* 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). The Exchange does not have visibility into what other Users, including Hosting Users, charge or the bandwidth they offer, but to the best of its knowledge no Hosting User offers its hosted customers a 10 Gb connection.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] 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. In addition, it is designed 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

As a consequence of the manufacturer's declaration of the First Switch's EOL, the Exchange believes that, if it did not eliminate the LCN 10 Gb connections, it would be unable to provide the current level of support to Users that have such connections. More specifically, pursuant to its EOL, the manufacturer is ceasing to offer the First Switch and terminating its software and hardware engineering level support. As a result, when the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. Accordingly, the Exchange believes that it is reasonable to eliminate the LCN 10 Gb connectivity option.

The Exchange believes that the proposed change will facilitate its compliance with the requirements of Regulation Systems Compliance and Integrity (''SCI'').[26] The LCN is an SCI system[27] of the Exchange, which is itself an SCI entity. Accordingly, the Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[28] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Accordingly, the Exchange believes that, in light of the EOL of the First Switch, the proposed change to eliminate the LCN 10 Gb connectivity option is a reasonable solution.

The Exchange believes the situation is analogous to when an SCI entity determines to utilize a third party to operate an SCI system on its behalf. As the Commission has noted, in such case, the SCI entity ''is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party.''[29] Likewise, ''if an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.''[30] In the present case, the third party that provides the First Switch, an important part of the network hardware for the LCN 10 Gb connection, has declared its intention to discontinue both production of and technical support for the First Switch. Given that, the Exchange has assessed its ability to manage the LCN 10 Gb connection going forward, and has concluded that it cannot continue to offer a product that relies on the First Switch.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be reasonable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change. The fee waivers would help to alleviate the burden of the change on the Current Users.

With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[23] *See* 78 FR 50471, *supra* note 5, at 50471. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–66, SR–NYSEArca–2019–85, SR–NYSECHX–2019–23, and SR–NYSENAT–2019–29.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] 17 CFR 242.1000 through 242.1007; *see also* Securities Exchange Act Release No. 73639, 79 FR 72251 (December 5, 2015) (adopting Regulation Systems Compliance and Integrity).

[27] ''SCI systems'' means ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.'' 17 CFR 242.1000.

[28] 79 FR 72251, *supra* note 26, at 72256–72257.

[29] *Id.* at 72276.

[30] *Id.*

streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List and Fee Schedule, make the Price List and Fee Schedule easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be equitable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change.

The fee waivers would help to alleviate the burden of the change on the Current Users. With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List and Fee Schedule, make the Price List and Fee Schedule easier to read, understand and administer.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer an older connectivity option that it could not support at current levels, or if, as a consequence of the EOL, Users' connectivity was compromised or they were wholly unable to use it to connect to the Exchange. As noted above, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange believes it would be unable to provide the current level of support to Users that have such connections. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one.

The Exchange believes that the proposed change will protect investors and the public interest because it will facilitate the Exchange's compliance with the requirements of Regulation SCI. The Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN, as an SCI system, has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[31] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List and Fee Schedule, make the Price List and Fee Schedule easier to read, understand and administer.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide any Users with new LCN 10 Gb connections or give the present level of support to Current Users' existing ones. In addition, no Users would be able to purchase the Bundled Network Access. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

At the same time, Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these 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,[32] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would

[31] *Id.*

[32] 15 U.S.C. 78f(b)(8).

apply to all Users equally: No Users would be able to purchase a LCN 10 Gb connection or Bundled Network Access.

The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Price List and Fee Schedule would eliminate a connectivity option previously available to Users. As a consequence of the change, nine Current Users would be required to terminate their LCN 10 Gb connections and either move to LCN 10 Gb LX connections, move to 10 Gb IP network connections, re-tailor their systems to reduce the number of connections, become Hosted Customers, cross-connect to other Users, or otherwise adjust for the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would not place any burden on intramarket competition that is not necessary or appropriate because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connections and adjust for the change, while the fee waivers would help to alleviate the burden of the change.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would not place any burden on intramarket competition that is not necessary or appropriate, as currently no Users utilize the service, and so no Users would be affected. The change would permit the Exchange to streamline the offerings available to Users in the data center and, by removing references to related pricing from the Price List and Fee Schedule, make the Price List and Fee Schedule easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

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.'' [33]

As noted above, the Exchange recognizes that removing the LCN 10 Gb connection from its Price List and Fee Schedule would eliminate a connectivity option previously available to Users. Indeed, the proposed change may negatively impact the Exchange's revenues, since Current Users may opt to re-tailor their systems to reduce the number of connections, move to 10 Gb IP network connections, re-tailor become Hosted Customers, or cross-connect to another User. Such choices, any of which would reduce revenue, may be more attractive to Users as a consequence of the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)(iii) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35] Because the proposed rule change does not: (i)

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6).

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.[36]

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)[37] 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–2019–52 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–2019–52. 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–2019–52 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26834 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87689; File No. SR–CboeBYX–2019–013]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

December 9, 2019.

On August 1, 2019, Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BYX Fee Schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on August 21, 2019.[4] The Commission received one comment letter on the proposed rule change, and one response letter from the Exchange.[5] On September 27, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6]

On November 21, 2019, the Exchange withdrew the proposed rule change (SR–CboeBYX–2019–013).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26839 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 86685 (August 15, 2019), 84 FR 43627.

[5] *See* Letters from: Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 12, 2019; Adrian Griffiths, Assistant General Counsel, Cboe, dated September 25, 2019. Comment letters are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2019-013/srcboebyx2019013.htm.*

[6] *See* Securities Exchange Act Release No. 87140, 84 FR 52917 (October 3, 2019).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87687; File No. SR–CboeBZX–2019–072]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

December 9, 2019.

On August 1, 2019, Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BZX Fee Schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the

Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on August 21, 2019.[4] The Commission received one comment letter on the proposed rule change, and one response letter from the Exchange.[5] On September 27, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6]

On November 21, 2019, the Exchange withdrew the proposed rule change (SR–CboeBZX–2019–072).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26837 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 86686 (August 15, 2019), 84 FR 43633.

[5] *See* Letters from: Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 12, 2019; Adrian Griffiths, Assistant General Counsel, Cboe, dated September 25, 2019. Comment letters are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2019-013/srcboebyx2019013.htm.*

[6] *See* Securities Exchange Act Release No. 87142, 84 FR 52902 (October 3, 2019).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87701; File No. SR–NYSENAT–2019–29]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services

December 9, 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 25, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location[4] services offered by the Exchange to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users.[5]

Proposed Change

LCN 10 Gb Circuit

Among other connectivity options, Users are able to connect to the Exchange over the Liquidity Center Network (''LCN''), a local area network available in the data center.[6] LCN access is available at 1, 10 and 40 Gb bandwidth capacities. Currently, Users have two 10 Gb options for LCN access:

- LCN 10 Gb, which has been in place since 2010,[7] and
- LCN 10 Gb LX, which was introduced in 2013.[8]

The LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection, and has latency levels substantially similar to those of the LCN 40 Gb connection.[9] Between the two 10 Gb LCN alternatives, the vast majority (80%) of User connections are the newer LCN 10Gb LX connections.

The Exchange proposes to cease offering the LCN 10 Gb connection. The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Price List would eliminate a connectivity option previously available to Users. For the reasons discussed below, however, the Exchange has concluded that the proposed change is necessary because it believes that if it does not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users with LCN 10 Gb connections would be compromised.

For each LCN connection, the network hardware relies on a switch, which acts as the ''gatekeeper'' for a User's inbound messaging (*e.g.,* orders and quotes) sent to the Exchange's trading and execution system and the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (''Co-location Notice''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE Chicago, Inc. (''NYSE Chicago'' and together, the ''Affiliate SROs''). *See id.* at note 11.

[6] The other local area network is the internet protocol (''IP'') network. *See id.* at 26316.

[7] *See* Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56); 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80); and 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). In 2017, the Exchange became a subsidiary of NYSE Group, Inc. As a result, the Exchange and the Affiliate SROs are direct or indirect subsidiaries of NYSE Group, Inc. and, indirectly, Intercontinental Exchange, Inc. *See* Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16).

[8] *See* Securities Exchange Act Release Nos. 70888 (November 15, 2013), 78 FR 69907 (November 21, 2013) (SR–NYSE–2013–73); 70979 (December 4, 2013), 78 FR 74200 (December 10, 2013) (SR–NYSE–2013–77); 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92); 70982 (December 4, 2013), 78 FR 74197 (December 10, 2013) (SR–NYSEMKT–2013–97); 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR–NYSEArca–2013–123); and 70981 (December 4, 2013), 78 FR 74203 (December 10, 2013) (SR–NYSEARCA–2013–131).

[9] *See* 78 FR 69907, *supra* note 8, at 69907.

Exchange's outbound messaging (*e.g.,* market data and drop copies) within the data center.[10] Switches are manufactured and sold to the Exchange by third parties. Currently, the LCN 1 Gb and LCN 10 Gb connections use one type of switch (the ''First Switch'') and the LCN 10 Gb LX and LCN 40 Gb connections use a second type of switch (the ''Second Switch'').[11]

The manufacturer of the First Switch made an ''end of life'' (''EOL'') announcement notifying customers that the First Switch is being discontinued. The manufacturer stated that it is phasing out the provision of replacement parts and support for the First Switch. Per its EOL notice, it has ceased offering the First Switch, and, as of January 1, 2020:[12]

- It has no commitment to furnish software engineering level support for the operating system software licensed for the First Switch. No further service or maintenance releases or patches will be created to support the First Switch.
- It has no commitment to perform hardware engineering level support, including hardware modifications and failure analysis, for hardware defects.

As a consequence, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to existing ones, and so it proposes to discontinue the service and remove it from the Price List.[13]

The Exchange plans to implement the change during the first half of 2020.[14] It will announce the implementation date through a customer notice. After the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections.[15]

To provide time for Users that have LCN 10 Gb connections (''Current Users'') to implement any changes, the Exchange proposes to give them a six month grace period, starting on the implementation date. After the grace period ends, any remaining LCN 10 Gb connections will be terminated. The Exchange also proposes to waive any change fees[16] and non-recurring charges[17] that a Current User would otherwise incur as a result of the proposed change.

Bundled Network Access

The Exchange currently offers a pair of ''bundled'' connectivity options (''Bundled Network Access'') at 1 and 10 Gb bandwidths,[18] but no User is utilizing one. Accordingly, the Exchange proposes to discontinue the Bundled Network Access options and remove references to the related pricing from the Price List.

The change would be consistent with previous practice: In 2014 and 2016 previously existing bundled network access connectivity options were discontinued, as they were no longer utilized by Users.[19]

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List is applied uniformly to all Users.

LCN 10 Gb

As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to the nine Current Users' existing LCN 10 Gb connections. Accordingly, after the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections and, after the grace period, it will terminate any remaining LCN 10 Gb connections. The Exchange also proposes to waive any change fees and non-recurring charges that a Current User would otherwise incur as a result of the proposed change.

The Current Users have several options available to them upon termination of the LCN 10 GB connections:

- A Current User may move to the faster LCN 10 Gb LX connection. The change would increase the User's monthly recurring charge from $14,000 to $22,000, but the User would benefit from a faster connection while maintaining the same amount of bandwidth and system redundancy.
- A Current User may move to the slower IP Network, which offers a 10 Gb circuit alternative. The change would lower the User's monthly recurring charge from $14,000 to $11,000. The connection would have greater latency, but the User would maintain the same bandwidth and resiliency.
- A Current User may opt to re-tailor its system to reduce the number of LCN connections it has. For example, a Current User with two LCN 10 Gb connections could consolidate them into one LCN 40 Gb connection. The change would decrease the User's monthly recurring charge from $28,000 to $22,000 while allowing it to benefit from a faster connection and increased bandwidth, although it would reduce the redundancy of its connection.
- A Current User may opt to become a ''Hosted Customer'' by being hosted by another User (a ''Hosting User''), or to cross connect to another User within co-location, either of which would likely decrease its monthly connectivity costs and available bandwidth.[20]

[10] *See id.* at 69908.

[11] *See id.* at note 7.

[12] ''JTAC Technical Bulletin,'' at *https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL_BULLETINS/16000/TSB16960/en_US/TSB16960.pdf. See also* ''Juniper Networks Product End-of-Life,'' at *https://support.juniper.net/support/pdf/eol/990833.pdf.*

[13] The Price List provides that a User that purchased five 10 Gb LCN connections would be charged the initial fee for a sixth 10 Gb LCN connection but would not be charged the monthly fee that would otherwise be applicable. Currently, no Users qualify for the discount. As part of the proposed change, the provision would be deleted.

[14] Also during the first half of 2020, the Exchange expects to update the network hardware of the LCN 10 Gb LX and LCN 40 Gb connections by replacing the Second Switch with a new switch (the ''New Switch''). The Exchange plans to update the LCN 1 Gb network hardware with the New Switch as well, which would allow the Exchange to continue to offer the LCN 1 Gb circuit despite the EOL of the First Switch. Because the New Switch, like the Second Switch, will provide a lower-latency connection, the Exchange expects that the latency of the LCN 1 Gb will decrease.

The Exchange does not propose to make a similar change to the LCN 10 Gb network hardware because, if it did, there would be no difference between the LCN 10 Gb and the LCN 10 Gb LX connection: They would have the same bandwidth and latency levels. However, the two services cannot have the same latency. Rather, the LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection. *See, e.g.,* 78 FR 69907, *supra* note 8, at 69907. Its latency levels are similar to those of the LCN 40 Gb connection, and the same fees are assessed for both services. *See* 78 FR 74200, *supra* note 8, at 74201–74202. In addition, the Exchange does not believe that it would be reasonable or equitable to charge different fees for equivalent services. *See id.*

[15] The Exchange believes that it has enough First Switches to fulfil any orders it may receive prior to the implementation date.

[16] The Exchange charges a User a ''Change Fee'' if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User. *See* Co-location Notice, *supra* note 4, at 26316.

[17] Co-location connectivity services have a non-recurring initial charge. For example, the LCN 10 Gb LX has a $15,000 initial charge per connection. *See id.* at 26318.

[18] *See id.*

[19] *See* Securities Exchange Act Release Nos. 77975 (June 2, 2016), 81 FR 36973 (June 8, 2016) (SR–NYSE–2016–39); 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37); 77973 (June 2, 2016), 81 FR 36975 (June 8, 2016) (SR–NYSEMKT–2016–57); 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61; 77977 (June 2, 2016), 81 FR 36981 (June 8, 2016) (SR–NYSEArca–2016–77; and 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81).

[20] *See* Co-location Notice, *supra* note 4, at 26318. The Exchange does not have visibility into what other Users, including Hosting Users, charge or the bandwidth they offer, but to the best of its

Continued

The Exchange expects to work with the Current Users to implement the change.

Bundled Network Access

As no Users utilize a Bundled Network Access option, no Users will be impacted by the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. 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.'' [21]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] 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. In addition, it is designed 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

As a consequence of the manufacturer's declaration of the First Switch's EOL, the Exchange believes that, if it did not eliminate the LCN 10 Gb connections, it would be unable to provide the current level of support to Users that have such connections. More specifically, pursuant to its EOL, the manufacturer is ceasing to offer the First Switch and terminating its software and hardware engineering level support. As a result, when the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. Accordingly, the Exchange believes that it is reasonable to eliminate the LCN 10 Gb connectivity option.

The Exchange believes that the proposed change will facilitate its compliance with the requirements of Regulation Systems Compliance and Integrity (''SCI'').[26] The LCN is an SCI system [27] of the Exchange, which is itself an SCI entity. Accordingly, the Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[28] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Accordingly, the Exchange believes that, in light of the EOL of the First Switch, the proposed change to eliminate the LCN 10 Gb connectivity option is a reasonable solution.

The Exchange believes the situation is analogous to when an SCI entity determines to utilize a third party to operate an SCI system on its behalf. As the Commission has noted, in such case, the SCI entity ''is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party.'' [29] Likewise, ''if an SCI entity is uncertain of its ability

knowledge no Hosting User offers its hosted customers a 10 Gb connection.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[23] *See* Co-location Notice, *supra* note 4, at 26315. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–66, SR–NYSEAmer–2019–52, SR–NYSEArca–2019–85, and SR–NYSECHX–2019–23.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] 17 CFR 242.1000 through 242.1007; *see also* Securities Exchange Act Release No. 73639, 79 FR 72251 (December 5, 2015) (adopting Regulation Systems Compliance and Integrity).

[27] ''SCI systems'' means ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.'' 17 CFR 242.1000.

[28] 79 FR 72251, *supra* note 26, at 72256–72257.

[29] *Id.* at 72276.

to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.'' [30] In the present case, the third party that provides the First Switch, an important part of the network hardware for the LCN 10 Gb connection, has declared its intention to discontinue both production of and technical support for the First Switch. Given that, the Exchange has assessed its ability to manage the LCN 10 Gb connection going forward, and has concluded that it cannot continue to offer a product that relies on the First Switch.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be reasonable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change. The fee waivers would help to alleviate the burden of the change on the Current Users.

With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be equitable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change.

The fee waivers would help to alleviate the burden of the change on the Current Users. With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer an older connectivity option that it could not support at current levels, or if, as a consequence of the EOL, Users' connectivity was compromised or they were wholly unable to use it to connect to the Exchange. As noted above, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange believes it would be unable to provide the current level of support to Users that have such connections. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one.

The Exchange believes that the proposed change will protect investors and the public interest because it will facilitate the Exchange's compliance with the requirements of Regulation SCI. The Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN, as an SCI system, has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[31] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide any Users with new LCN 10 Gb connections or give the present level of support to Current Users' existing ones. In addition, no Users would be able to purchase the Bundled Network Access. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

[30] *Id.*

[31] *Id.*

At the same time, Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these 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,[32] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: No Users would be able to purchase a LCN 10 Gb connection or Bundled Network Access.

The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Price List would eliminate a connectivity option previously available to Users. As a consequence of the change, nine Current Users would be required to terminate their LCN 10 Gb connections and either move to LCN 10 Gb LX connections, move to 10 Gb IP network connections, re-tailor their systems to reduce the number of connections, become Hosted Customers, cross-connect to other Users, or otherwise adjust for the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would not place any burden on intramarket competition that is not necessary or appropriate because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connections and adjust for the change, while the fee waivers would help to alleviate the burden of the change.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would not place any burden on intramarket competition that is not necessary or appropriate, as currently no Users utilize the service, and so no Users would be affected. The change would permit the Exchange to streamline the offerings available to Users in the data center and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

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.'' [33]

As noted above, the Exchange recognizes that removing the LCN 10 Gb connection from its Price List would eliminate a connectivity option previously available to Users. Indeed, the proposed change may negatively impact the Exchange's revenues, since Current Users may opt to re-tailor their systems to reduce the number of connections, move to 10 Gb IP network connections, re-tailor become Hosted Customers, or cross-connect to another User. Such choices, any of which would reduce revenue, may be more attractive to Users as a consequence of the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the

[32] 15 U.S.C. 78f(b)(8).

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)(iii) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35] 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.[36]

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) [37] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–29. 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–NYSENAT–2019–29 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26847 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87692; File No. SR–CboeEDGX–2019–064]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Order Approving a Proposed Rule Change To Adopt Rule 21.23 (Complex Solicitation Auction Mechanism)

December 9, 2019.

I. Introduction

On October 23, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rule 21.23, the Complex Solicitation Auction Mechanism (''C–SAM''), a solicited order mechanism for larger-sized complex orders. The proposed rule change was published for comment in the **Federal Register** on November 6, 2019.[3] The Commission has received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice,[4] the Exchange proposes to adopt Rule 21.23 [5] allowing complex orders to be submitted to and processed in its solicited order mechanism. The proposal permits an Options Member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87435 (October 31, 2019), 84 FR 59866 (''Notice'').

[4] *See id.*

[5] For purposes of proposed Rule 21.23, the term ''SBBO'' means the synthetic best bid or offer calculated using the best displayed price for each component of a complex strategy from the simple book at the particular point in time applicable to the reference. The Exchange notes that there is no national best bid or offer for complex orders, as complex orders may be executed without consideration of any prices for the complex strategy that might be available on other exchanges trading the same complex strategy. *See* Rule 21.20(c)(2)(E).

(the ''Initiating Member'') to execute electronically a larger-sized complex order it represents as agent (''Agency Order'') against a solicited complex order(s) (''Solicited Order''), provided that it submits both the Agency Order and Solicited Order into the C–SAM.[6]

A. Eligibility and C–SAM Auction Process

The Initiating Member may initiate a C–SAM in any class traded on the Exchange.[7] The smallest leg of an Agency Order marked for C–SAM processing must be at least the minimum size designated by the Exchange, which may not be less than 500 standard option contracts or 5,000 mini-option contracts.[8] The size of the Solicited Order(s) must be for/total the same size as the Agency Order.[9] The system will automatically handle each of the Agency Order and Solicited Order as an all-or-none (''AON'') order,[10] and the price of the Agency Order and Solicited Order must be in an increment of $0.01.[11] Also, an Initiating Member may not designate an Agency Order or Solicited Order as Post Only [12] and may only submit an Agency Order after the complex order book (''COB'') opens.[13]

The Solicited Order must stop the entire buy (sell) Agency Order at a price that is at or better than the then-current SBO (SBB) or the price of the best-priced sell (buy) complex order on the COB.[14] Regarding resting simple orders that are on the same side as the Agency Order, the proposal provides that if the Agency Order is to buy (sell), the stop price must be at or better than the SBB (SBO), unless the applicable side of the BBO on any component of the complex strategy represents a Priority Customer order on the simple book, in which case the stop price must be at least $0.01 better than the SBB (SBO).[15] Regarding resting complex orders that are on the same side as the Agency Order, the proposal provides that if the Agency Order is to buy (sell), the stop price must be at least $0.01 better than the bid (offer) of the resting complex order, unless the Agency Order is a Priority Customer order and the resting order on the COB is not a Priority Customer, in which case the stop price must be at or better than the bid (offer) of the resting complex order.[16] Regarding resting simple orders that are on the opposite side as the Agency Order, the proposal provides that if the Agency Order is to buy (sell), the stop price must be at or better than the SBO (SBB), unless the BBO of any component of the complex strategy represents a Priority Customer order on the simple book, in which case the stop price must be at least $0.01 better than the SBO (SBB).[17] Regarding resting complex orders that are on the opposite side as the Agency Order, the proposal provides that if the Agency Order is to buy (sell) and the best-priced sell (buy) complex order on the COB represents (i) a complex order that is not a Priority Customer, the stop price must be at or better than the price of the resting complex order; or (ii) a Priority Customer complex order, the stop price must be at least $0.01 better than the SBO (SBB).[18]

The Exchange system will initiate the C–SAM process by sending a C–SAM auction notification message detailing the side, size, price, capacity, auction ID, and complex strategy of the Agency Order to all Options Members that elect to receive C–SAM auction notification messages.[19] C–SAM auction notification messages will not be disseminated to the Options Price Reporting Authority (''OPRA'').[20] The C–SAM auction will last for a period of time determined by the Exchange (the ''C–SAM auction period''), which may be no less than 100 milliseconds and no more than one second.[21] An Initiating Member may not modify or cancel an Agency Order or Solicited Order after submission to a C–SAM auction.[22]

Any user other than the Initiating Member (determined by EFID) may submit responses to a C–SAM auction that are properly marked specifying size, side of the market, and the auction ID for the C–SAM auction to which the user is submitting the response.[23] C–SAM responses must be on the opposite side of the market as the Agency Order,[24] and the minimum price increment for C–SAM responses is $0.01.[25] C–SAM buy (sell) responses are capped at the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB, or $0.01 better than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order.[26] For purposes of the C–SAM auction, the system will aggregate all of a user's complex orders on the COB and C–SAM responses for the same EFID at the same price.[27] The system will cap the size of a C–SAM response, or the aggregate size of a user's complex orders on the COB and C–SAM responses for the same EFID at the same price, at the size of the Agency Order (*i.e.,* the system will ignore size in excess of the size of the Agency Order when processing a C–SAM auction).[28] C–SAM responses will not be visible to C–SAM auction participants or disseminated to OPRA.[29] A user may modify or cancel its C–SAM responses during the C–SAM auction.[30]

One or more C–SAM auctions in the same complex strategy may occur at the same time, C–SAM auctions in different complex strategies may be ongoing at any given time (even if the complex strategies have overlapping components), and a C–SAM auction may be ongoing at the same time as a SAM auction in any component of the complex strategy.[31] To the extent there is more than one C–SAM auction in a complex strategy underway at a time, the C–SAM auctions will conclude sequentially based on the exact time each C–SAM commenced, unless terminated early pursuant to proposed Rule 21.23(d).[32] In the event there are multiple C–SAM auctions underway that are each terminated early pursuant

[6] The Solicited Order cannot have a capacity of F for the same EFID as the Agency Order. The Agency Order and Solicited Order cannot both be for the accounts of a customer.

[7] *See* proposed Rule 21.23(a)(1).

[8] *See* proposed Rule 21.23(a)(3).

[9] *See id.*

[10] *See id.* The Exchange notes that it intends to separately amend Rule 21.21, which currently states that an Initiating Member must designate the Agency Order and Solicited Order as AON, to conform to proposed Rule 21.23(a)(3). *See* Notice, *supra* note 3, at 59867 n.12.

[11] *See* proposed Rule 21.23(a)(4).

[12] *See* proposed Rule 21.23(a)(5).

[13] *See* proposed Rule 21.23(a)(6).

[14] *See* proposed Rule 21.23(b).

[15] *See* proposed Rule 21.23(b)(1).

[16] *See* proposed Rule 21.23(b)(2).

[17] *See* proposed Rule 21.23(b)(3).

[18] *See* proposed Rule 21.23(b)(4).

[19] *See* proposed Rule 21.23(c)(2).

[20] *See id.*

[21] *See* proposed Rule 21.23(c)(3). The Exchange will announce the length of the C–SAM auction period to Options Members pursuant to Rule 16.3.

[22] *See* proposed Rule 21.23(c)(4).

[23] *See* proposed Rule 21.23(c)(5).

[24] *See* proposed Rule 21.23(c)(5)(E).

[25] *See* proposed Rule 21.23(c)(5)(A).

[26] *See* proposed Rule 21.23(c)(5)(B).

[27] *See* proposed Rule 21.23(c)(5)(C). The Exchange notes that this is similar to the corresponding provision for the Exchange's simple SAM auction. *See* Rule 21.22(c)(5)(C). The Exchange also notes that this (combined with the proposed size cap) is intended to prevent an Options Member from submitting multiple orders or responses at the same price to obtain a larger pro-rata share of the Agency Order. *See* Notice, *supra* note 3, at 59870.

[28] *See* proposed Rule 21.23(c)(5)(D). The Exchange notes that this is similar to the corresponding provision for the Exchange's simple SAM auction. *See* Rule 21.22(c)(5)(D). The Exchange notes that this is intended to prevent an Options Member from submitting an order or response with an extremely large size in order to obtain a larger pro-rata share of the Agency Order. *See* Notice, *supra* note 3, at 59870.

[29] *See* proposed Rule 21.23(c)(5)(F).

[30] *See* proposed Rule 21.23(c)(5)(G).

[31] *See* proposed Rule 21.23(c)(1)(A).

[32] *See* proposed Rule 21.23(c)(1)(B).

to proposed Rule 21.23(d), the system will process the C–SAM auctions sequentially based on the exact time each C–SAM auction commenced.[33] If the system receives a simple order that causes a SAM auction and C–SAM auction (or multiple SAM and/or C–SAM auctions) to conclude pursuant to Rule 21.23(d) and Rule 21.21(d), the system will first process SAM auctions (in price-time priority) and then process C–SAM auctions (in price-time priority).[34] At the time each C–SAM auction concludes, the system will allocate the Agency Order pursuant to proposed Rule 21.23(e) and will take into account all C–SAM responses and unrelated orders and quotes in place at the exact time of conclusion.[35]

B. Conclusion of the C–SAM Auction

The C–SAM will conclude at the sooner of the following: (i) The end of the C–SAM auction period; (ii) upon receipt by the system of an unrelated non-Priority Customer complex order on the same side of market as the Agency Order that would post to the COB at a price better than the stop price; (iii) upon receipt by the system of an unrelated Priority Customer complex order on the same side of the market as the Agency Order that would post to the COB at a price equal to or better than the stop price; (iv) upon receipt by the system of an unrelated non-Priority Customer order or quote that would post to the simple book and cause the SBBO on the same side of the market as the Agency Order to be better than the stop price; (v) upon receipt by the system of a Priority Customer order in any component of the complex strategy that would post to the simple book and cause the SBBO on the same side of the market as the Agency Order to be equal to or better than the stop price; (vi) upon receipt by the system of a simple non-Priority Customer order that would cause the SBBO on the opposite side of market as the Agency Order to be better than the stop price, or a Priority Customer order that would cause the SBBO on the opposite side of market as the Agency Order to be equal to or better than the stop price; (vii) upon receipt by the system of an order that would cause the SBBO to be a price not permissible under the Limit Up-Limit Down Plan or Regulation SHO, provided, however, that in such instance, the C–SAM auction would conclude without execution; (viii) the market close; and (ix) any time the Exchange halts trading in the complex strategy, provided, however, that in such instance the C–SAM auction will conclude without execution.[36]

An unrelated market or marketable limit complex order (against the SBBO or the best price of a complex order resting in the COB), including a Post Only complex order, on the opposite side of the Agency Order received during the C–SAM will not cause the C–SAM auction to end early and will execute against interest outside of the C–SAM auction or be posted to the COB.[37] If contracts remain from such unrelated complex order at the time the C–SAM auction ends, they may be allocated for execution against the Agency Order pursuant to proposed Rule 21.23(e).[38]

C. Priority and Allocation

At the conclusion of the C–SAM auction, the system will execute the Agency Order against the Solicited Order or contra-side complex interest (which includes complex orders on the COB and C–SAM responses) at the best price(s) as follows (provided that any execution price(s) must be at or between the SBBO and the best prices of any complex orders resting on each side of the COB at the conclusion of the C–SAM auction): [39]

- The system will execute the Agency Order against the Solicited Order at the stop price if there are no Priority Customer complex orders resting on the COB on the opposite side of the Agency Order at or better than the stop price and the aggregate size of contra-side interest at an improved price(s) is insufficient to satisfy the Agency Order.[40]
- The system will execute the Agency Order against contra-side interest (and cancel the Solicited Order) if (A) there is a Priority Customer complex order resting on the COB on the opposite side of the Agency Order at or better than the stop price and the aggregate size of that order and other contra-side interest is sufficient to satisfy the Agency Order; or (B) the aggregate size of contra-side interest at an improved price(s) is sufficient to satisfy the Agency Order.[41] The Agency Order execution against such contra-side interest will occur at each price level, to the price at which the balance of the Agency Order can be fully executed, first against Priority Customer complex orders on the COB (in time priority) and then against remaining contra-side interest (including non-Priority Customer orders on the COB and C–SAM responses) in a pro-rata manner.[42]
- The system will cancel the Agency Order and Solicited Order with no execution if (i) execution of the Agency Order against the Solicited Order at the stop price would not be at or between the SBBO at the conclusion of the C–SAM auction, better than the SBBO if there is a Priority Customer order in any leg component in the simple book, at or better than the best-priced complex order resting on the COB, or better than the best-priced complex order resting on the COB if it is a Priority Customer complex order; (ii) there is a Priority Customer complex order resting on the COB on the opposite side of the Agency Order at or better than the stop price, and the aggregate size of the Priority Customer complex order and any other contra-side interest is insufficient to satisfy the Agency Order; or (iii) there is a non-Priority Customer complex order resting on the COB on the opposite side of the Agency Order at a price better than the stop price, and the aggregate size of the resting complex order and any other contra-side interest is insufficient to satisfy the Agency Order.[43]

Executions following a C–SAM Auction for a complex Agency Order are subject to the complex order price restrictions and priority in Rule 21.20(f)(2).[44] The system will cancel or reject any unexecuted C–SAM responses (or unexecuted portions) at the conclusion of the C–SAM auction.[45] The Agency Order will only execute against the Solicited Order or C–SAM responses and complex orders resting in the COB, and will not leg into the simple book, at the conclusion of a C–SAM auction.[46]

D. Notification Requirement and Order Exposure Rule

Proposed Rule 21.23, Interpretation and Policy .01 provides that prior to entering Agency Orders into a C–SAM auction on behalf of customers, Initiating Members must deliver to the customer a written notification informing the customer that his order may be executed using the C–SAM

[33] *See id. See also* Notice, *supra* note 3, at 59868–69.

[34] *See* proposed Rule 21.23(c)(1)(B).

[35] *See* proposed Rule 21.23(c)(1)(C).

[36] *See* proposed Rule 21.23(d)(1).

[37] *See* proposed Rule 21.23(d)(2).

[38] *See id.*

[39] *See* proposed Rule 21.23(e). Additionally, if there is a Priority Customer order representing any leg of the SBBO in the simple book, the execution price must be better than the SBBO, in accordance with complex order priority. *See* Rule 21.20(f)(2). Additionally, any execution price must be better than the price of any resting Priority Order complex order on the COB.

[40] *See* proposed Rule 21.23(e)(1).

[41] *See* proposed Rule 21.23(e)(2).

[42] *See id.*

[43] *See* proposed Rule 21.23(e)(3).

[44] *See* proposed Rule 21.23(e)(4).

[45] *See* proposed Rule 21.23(e)(5).

[46] *See* Notice, *supra* note 3, at 59871.

auction. The written notification must disclose the terms and conditions contained in proposed Rule 21.23 and be in a form approved by the Exchange.[47]

Under Rule 21.23, Initiating Members may enter contra-side orders that are solicited. C–SAM provides a facility for Options Members that locate liquidity for their customer orders. Proposed Rule 21.23, Interpretation and Policy .02 provides that Options Members may not use the C–SAM auction to circumvent Rule 21.19 or 21.22 limiting principal transactions. This may include, but is not limited to, Options Members entering contra-side orders that are solicited from (a) affiliated broker-dealers or (b) broker-dealers with which the Options Member has an arrangement that allows the Options Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal.[48]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[49] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[50] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Commission believes that allowing Options Members to enter complex orders into the C–SAM could provide additional opportunities for such large-sized complex orders to receive price improvement. The Commission further believes that the proposal to establish the C–SAM may allow for greater flexibility in executing large-sized complex orders, is not novel, and does not otherwise raise any issues of first impression.[51] The Commission believes that the proposal includes appropriate terms and conditions to assure that the Agency Order is exposed to Options Members for the possibility of price improvement and that Priority Customer orders on the Exchange are protected. At the conclusion of a C–SAM, the Agency Order would either be executed in full (at a price at or between the SBBO and at or better than the best-priced complex order resting on the COB at the conclusion of the C–SAM auction) or cancelled. The Agency Order will be executed against the Solicited Order at the proposed stop price if (i) there is insufficient size among contra-side trading interest at a price better than the stop price to execute the Agency Order; and (ii) there are no Priority Customer complex orders resting in the COB on the opposite side of the Agency Order at or better than the stop price.[52] If there are Priority Customer complex orders and there is sufficient size to execute the Agency Order (considering all eligible interest), then the Agency Order will be executed against these interests and the Solicited Order will be cancelled.[53] If, however, there are resting Priority Customer complex orders at the stop price, but there is not sufficient size to execute the Agency Order in full, then both the Agency Order and the Solicited Order will be cancelled.[54] Finally, if there is sufficient size to execute the Agency Order in full at an improved price equal to or better than the SBBO and the best-priced complex order resting on the COB at the conclusion of the C–SAM auction, the Agency Order will execute at the improved price and the Solicited Order will be cancelled. The Commission believes that the priority and allocation rules for the C–SAM, which are consistent with similar mechanisms on other exchanges,[55] are reasonable and consistent with the Act.

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act[56] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[57] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[58] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Commission believes that Exchange Options Members entering orders into the C–SAM would satisfy the requirements of Rule 11a2–2(T).

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[59] The Exchange represents that its trading system and the proposed C–SAM receive all orders electronically through remote terminals

[47] *See* proposed Rule 21.23, Interpretation and Policy .01.

[48] *See* proposed Rule 21.23, Interpretation and Policy .02.

[49] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f(b)(5).

[51] The Commission also notes that the proposal is nearly identical to the requirements set forth for the complex order solicitation mechanism on another options exchange. *See* Cboe Options Rule 5.40. *See also* Nasdaq ISE, LLC Options 3, Section 11(e).

[52] *See* proposed Rule 21.23(e)(1).

[53] *See* proposed Rule 21.23(e)(2).

[54] *See* proposed Rule 21.23(e)(3).

[55] *See, e.g.,* Cboe Options Rule 5.40 (Complex Solicitation Auction Mechanism).

[56] 15 U.S.C. 78k(a)(1).

[57] 17 CFR 240.11a2–2(T).

[58] This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

[59] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

or computer-to-computer interfaces.[60] The Exchange also represents that orders for covered accounts from Options Members will be transmitted from a remote location directly to the proposed C–SAM by electronic means. Because no Exchange Options Member may submit orders into the C–SAM from on the floor of the Exchange, the Commission believes that the C–SAM satisfies the off-floor transmission requirement.

Second, the Rule requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. The Exchange represents that at no time following the submission to the C–SAM of an order or C–SAM response is an Options Member able to acquire control or influence over the result or timing of the order's or response's execution.[61] According to the Exchange, the execution of an order (including the Agency and the Solicited Order) or a C–SAM response sent to the C–SAM is determined by what other orders and responses are present and the priority of those orders and responses.[62] Accordingly, the Commission believes that an Options Member does not participate in the execution of an order or response submitted to the C–SAM.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the C–SAM, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[63] The Exchange represents that the C–SAM is designed so that no Options Member has any special or unique trading advantage in the handling of its orders or responses after transmitting its orders to the mechanism.[64] Based on the Exchange's representation, the Commission believes that the C–SAM satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[65] The Exchange represents that Options Members relying on Rule 11a2–2(T) for transactions effected through the C–SAM must comply with this condition of the Rule and that the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.[66]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[67] that the proposed rule change (SR–CboeEDGX–2019–064) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–26851 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[60] *See* Notice, *supra* note 3, at 59876.

[61] *See id.* (also representing, among other things, that no Options Member, including the Initiating Member, will see a C–SAM response submitted into C–SAM and therefore will not be able to influence or guide the execution of their Agency Orders, Solicited Orders, or C–SAM responses, as applicable).

[62] *See id.* The Exchange notes that an Initiating Member may not cancel or modify an Agency Order or Solicited Order after it has been submitted into C–SAM, but that Options Members may modify or cancel their responses after being submitted to a C–SAM. *See id.* at 59876 n.77. As the Exchange notes, the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'').

[63] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 48.

[64] *See* Notice, *supra* note 3, at 59876.

[65] In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 51, at 11548 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[66] *See* Notice, *supra* note 3, at 59876–77.

[67] 15 U.S.C. 78s(b)(2).

[68] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 147A(f)(1)(iii) Written Representation as to Purchaser Residency, SEC File No. 270–806, OMB Control No. 3235–0757.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 147A(f)(1)(iii) (17 CFR 230.147A(f)(1)(iii)) requires the issuer to obtain from the purchaser a written representation as to the pruchase's residency in order to qualify for safe harbor under Securities Act Rule 147A (17 CFR 230.147A). Rule 147A is an exemption from registration under Securities Act Section 28 (15 U.S.C. 77z–3). Under Rule 147A, the purchaser in the offering must be a resident of the same state or territory in which the issuer is a resident. While the formal representation of residency by itself is not sufficient to establish a reasonable belief that such purchasers are in-state residents, the representation requirement, together with the reasonable belief standard, may result in better compliance with the rule and maintaining appropriate investor protections. The representation of residency is not provided to the Commission. Approximately 700 respondents provide the information required by Rule 147A(f)(1)(iii) at an estimated 2.75 hours per response for a total annual reporting burden of 1,925 hours (2.75 hours x 700 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 9. 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–26869 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87695; File No. SR–NYSENAT–2019–30]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

December 9, 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 27, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to eliminate the fees currently charged for MPL orders that add liquidity on the Exchange and provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee. 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 Fee Schedule to (1) eliminate the fee currently charged for non-tiered MPL orders adding liquidity in securities priced at or above $1.00, (2) eliminate the fee currently charged for liquidity-adding MPL orders in Adding Tiers 1, 2, and 3, and (3) revise its rates for removing liquidity to provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee.

The Exchange proposes to implement the rule change on December 2, 2019.

Background

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.'' [3]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [4] Indeed, equity trading is currently dispersed across 13 exchanges,[5] 31 alternative trading systems,[6] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 17% of the market share of executed volume of equity trades (whether excluding or including auction volume).[7] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in each of the last three months, the Exchange had approximately 2% market share of executed volume of equity trades (whether excluding or including auction volume).[8]

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 products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7–10–04) (Final Rule) (''Regulation NMS'').

[4] *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'').

[5] *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.*

[6] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[7] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[8] *See id.*

pricing levels at those other venues to be more favorable.

The Exchange utilizes a ''taker-maker'' or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange generally charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the Exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes to amend its transaction fees as follows.

First, by eliminating the $0.0010 fee currently applied to non-tiered MPL orders adding liquidity in securities priced at or above $1.00. To effect this change, the Exchange proposes to revise the table in Section C of the Fee Schedule to replace the ''$0.0010 per share'' text with ''No charge'' in the first row under the ''Adding Liquidity'' header. The Exchange's General Rates would otherwise remain the same.

The Exchange believes that eliminating the per share charge for MPL orders that add liquidity to the Exchange will incentivize ETP Holders to route liquidity-providing MPL orders to the Exchange, thereby attracting liquidity-providing and price improving order flow to the Exchange and enhancing order execution opportunities, to the benefit of all ETP Holders seeking to remove liquidity. In addition, by eliminating this charge in its General Rates, the Exchange believes that ETP Holders may be more likely to contribute liquidity-adding MPL order flow even if they do not qualify for an Adding Tier.

Second, by eliminating the $0.0005 fee currently applied to MPL orders adding liquidity in Adding Tiers 1, 2, and 3 (as set forth in Section D.1. of the Fee Schedule). Currently, MPL orders adding liquidity, on all Tapes, are subject to a $0.0005 fee in Adding Tiers 1, 2, and 3. To effect the proposed change, the Exchange proposes to revise the table in Section D.1. to replace the current fee of $0.0005 with ''No charge'' in the ''Adding MPL Rate'' column for Adding Tiers 1, 2, and 3. The Exchange's Tiered Rates for Adding Liquidity would otherwise remain the same.

The Exchange believes that the elimination of the fee currently charged for MPL orders adding liquidity at these tiers will encourage ETP Holders to send additional mid-point liquidity to the Exchange, thereby enhancing order execution and price improvement opportunities for ETP Holders seeking to remove liquidity.

Finally, by amending its rates for removing liquidity to provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee, across all Removing Tiers set forth in Section D.2. of the Fee Schedule. Under the Exchange's current Tiered Rates for Removing Liquidity, as reflected in Section D.2. of the Fee Schedule, MPL orders removing liquidity receive a rebate of $0.0002 at Removing Tiers 1, 2, and 3.

To effect this proposed change, the Exchange proposes to revise the table in Section D.2. to reflect that all orders removing liquidity (not just MPL orders) that execute at a price better than the contra-side NBBO will carry no charge and will not be eligible for a rebate. The Exchange proposes to revise the header of the third column in the table in Section D.2. to ''Removing Rate for Orders that Execute at a Price Better than Contra-Side NBBO'' and replace ''($0.0002)'' with ''No Charge'' as the rate applicable to each Removing Tier in this column. The remainder of the Removing Rates in this section would remain unchanged.

The Exchange believes that the proposed change reflects a reasonable effort to both encourage ETP Holders to route liquidity-removing order flow to the Exchange and remain consistent with the Exchange's taker-maker fee model. The Exchange proposes to eliminate credits available to removing orders that execute at a price better than the contra-side NBBO because such orders receive the benefit of an execution at a price superior to the best protected quote in the national market system (including the Exchange's best protected bid or offer). As proposed, the tiered rates for such orders would be at no charge, which remains better than the current General Rate to remove liquidity, which is $0.0005 per share. The Exchange believes that the proposed change would continue to promote market quality and execution opportunities for ETP Holders. Accordingly, the Exchange proposes that while such orders will not receive a rebate, they also will not be subject to a fee at any of the Removing Tiers.

Although the Exchange does not have a full view of ETP Holders' activity on other markets and off-exchange venues, the Exchange believes that these changes would be significant enough to incentivize market participants to direct increased order flow to the Exchange. The Exchange believes that the changes will encourage ETP Holders to route additional liquidity to the Exchange and further believes that ETP Holders are likely to respond by in turn routing more liquidity-providing order flow to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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

As discussed above, the Exchange operates in a highly fragmented and competitive market. 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. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any one of the registered exchanges or non-exchange trading venues that a firm routes order flow to, which vary month to month, and not all of which are publicly known. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders 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.

Given the current competitive environment, the Exchange believes that this proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that eliminating the fees currently charged for both tiered and non-tiered MPL orders adding liquidity, as described above, is

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) & (5).

reasonable because ETP Holders will have an incentive to route additional liquidity-providing orders to the Exchange without incurring any transaction fees, thereby providing meaningful liquidity and increasing the opportunity for contra-side order flow to receive price improvement. In addition, the Exchange believes that the proposed changes to the Removing Tiers are reasonable because they would promote execution opportunities for ETP Holders routing order flow to the Exchange.

The Exchange believes that the proposal as a whole represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposed change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants. The Exchange believes that eliminating fees in connection with MPL orders adding liquidity would encourage the submission of additional liquidity to a national securities exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders seeking to remove liquidity would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because the revised fees would apply equally to all similarly situated ETP Holders.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. 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 at prices more favorable than the NBBO. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same rates, and, in this case, benefit from the elimination of fees previously charged to ETP Holders. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

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,[11] 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 change would encourage the submission of additional liquidity and order flow to a public exchange, thereby enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [12]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that its proposal to eliminate certain fees applying to MPL orders adding liquidity and apply no charge to liquidity-removing orders that execute at a price better than the contra-side NBBO would provide additional incentives for market participants to route orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity. The proposed revised fees would be available to all similarly-situated market participants, and thus, 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 exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading was less than 2% in each of the last three months. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and 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.

[11] 15 U.S.C. 78f(b)(8).

[12] Regulation NMS, 70 FR at 37498–99.

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) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] 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) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–30, and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–26853 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87699; File Nos. SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–NYSEArca–2019–61, SR–NYSEAMER–2019–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the Exchanges' Co-Location Price Lists To Offer Co-Location Users Access to the NMS Network and Establish Associated Fees

December 9, 2019.

I. Introduction

On August 22, 2019, New York Stock Exchange LLC, NYSE National, Inc., and NYSE Arca, Inc. each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend their co-location fee schedules to offer co-location Users [3] access to the ''NMS Network''—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (''SIAC'') is engaged as the exclusive securities information processor (''SIP'')—and establish associated fees. NYSE American LLC filed with the Commission a substantively identical filing on August 23, 2019.[4] The proposed rule changes were published for comment in the **Federal Register** on September 10, 2019.[5] On October 24, 2019, the Commission extended the time period within which to approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to approve or disapprove the proposed rule changes, to December 9, 2019.[6] The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter.[7] This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File Nos. SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 11 defining ''Users.''

[4] The New York Stock Exchange LLC, NYSE National, Inc., NYSE Arca, Inc., and NYSE American, LLC are collectively referred to herein as ''NYSE'' or the ''Exchanges.''

[5] *See* Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (SR–NYSE–2019–46); 86869 (September 4, 2019), 84 FR 47600 (SR–NYSENAT–2019–19); 86868 (September 4, 2019), 84 FR 47610 (SR–NYSEArca–2019–61); 86867 (September 4, 2019), 84 FR 47563 (SR–NYSEAMER–2019–34) (collectively, the ''Notices''). For ease of reference, page citations are to the Notice for SR–NYSE–2019–46.

[6] *See* Securities Exchange Act Release Nos. 87399, 84 FR 58189 (October 30, 2019) (SR–NYSE–2019–46); 87402, 84 FR 58187 (October 30, 2019) (SR–NYSENAT–2019–19); 87400, 84 FR 58189 (October 30, 2019) (SR–NYSEArca–2019–61); 87401, 84 FR 58188 (October 30, 2019) (SR–NYSEAMER–2019–34).

[7] *See,* respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (''Nasdaq''), to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter''); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter''); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Second Nasdaq Letter'').

NYSEArca–2019–61, SR–NYSEAMER–2019–34.[8]

II. Description of the Proposed Rule Changes

A. Background

As more fully set forth in the Notices, the Exchanges' affiliate, SIAC, is engaged as the exclusive SIP for (i) the CTA Plan (providing last-sale price information in Tape A and Tape B-listed securities); (ii) the CQ Plan (providing quotation information in Tape A and B-listed securities) (together, the ''CTA/CQ Plans''); and (iii) the Options Price Reporting Authority (''OPRA'') Plan (providing quotation and last-sale price information in all exchange options trading).[9] SIAC operates in the same data center (''Data Center'') in Mahwah, New Jersey where the Exchanges operate and also offer co-location services.[10] The Exchanges make co-location services available to market participants (''Users'') upon request for fees set forth on price lists filed with the Commission.[11] In the Data Center, Users currently can connect to the CTA Plan, CQ Plan, and OPRA Plan data feeds (the ''SIAC NMS Feeds'') over the same network connections through which they access other co-location services.[12] Specifically, a User can connect to any or all of the SIAC NMS Feeds via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the Data Center.[13] When a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (defined in the price lists as the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed.[14] The SIAC NMS Feeds are among the Included Data Products.[15] As such, the price lists currently do not specify any separate fees for connectivity to the SIAC NMS Feeds.

The Exchanges propose to: (i) Offer co-location Users access to the NMS Network as a new service providing dedicated network access for Users to connect to the SIAC NMS Feeds at lower latency than is currently available;[16] and (ii) establish fees for connections to the NMS Network.

B. Access to the NMS Network

As more fully set forth in the Notices, the Exchanges propose to make access to the new NMS Network available to co-location Users. The Exchanges state that the build-out of the NMS Network was approved by the operating committees for the CTA and CQ Plans, which until recently had mandated that the SIAC NMS Feeds be accessed via the IP network—a secure network designed for resiliency and redundancy, but not low latency.[17] The NMS Network would offer an alternative option to Users to connect to the SIAC NMS Feeds in the Data Center with the anticipated benefit of providing a one-way reduction in latency, as compared to the IP network and LCN, of over 140 microseconds.[18] As proposed, connections to the NMS Network would be available over 10 Gb and 40 Gb circuits only.[19] The Exchanges state that access to the NMS Network as a service available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest as required by Section 6(b)(5) of the Act because offering access to the dedicated, low-latency NMS Network would provide Users with an additional option to connect to the SIAC NMS Feeds, giving them greater choice consistent with the directive of the operating committees for the CTA/CQ Plans.[20]

C. Proposed Fees for NMS Network Connections

As more fully set forth in the Notices, the Exchanges propose associated fees for connectivity to the SIAC NMS Feeds. As proposed, a User could connect to the SIAC NMS Feeds via the new NMS Network at no additional charge over and above their current fees if they purchase a 10 Gb or 40 Gb connection to either the IP network or the LCN, subject to certain limits.[21] Specifically, the Exchanges' price lists would be amended to state that if a User purchases access to the LCN or IP network and requests a connection to the NMS Network, that User and its Affiliates,[22] taken together, would not be charged for up to eight corresponding NMS Network connections (each a ''No Additional Fee NMS Network Connection''), if such User, together with its Affiliates, purchases access to the LCN or IP Network and:

(i) Designates no more than four No Additional Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

(ii) Designates no more than four No Additional Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

(iii) Does not use the LCN or IP network connections that correspond to the No Additional Fee NMS Network Connections to access the SIAC NMS Feeds;[23] and

(iv) Each of the No Additional Fee NMS Network Connections is of equal size or smaller than the associated LCN

[8] 15 U.S.C. 78(s)(b)(2)(B).

[9] *See* Notices *supra* note 5, at n. 8.

[10] *See* Notices, *supra* note 5, 84 FR at 47593.

[11] As stated in the Notices, for purposes of the Exchanges' co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Notices, *supra* note 5, at n. 5. As stated in the price list of each of the Exchanges, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by another of the Exchanges. *See id.*

[12] *See id.*

[13] The Exchanges offer IP network and LCN access in a variety of ways (*e.g.,* in bandwidths of 1 Gb, 10 Gb, 40 Gb and in packages) for different prices. *See* NYSE Price List dated November 1, 2019, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.* The price lists for the other Exchanges reflect the same fee structure for IP network and LCN access.

[14] *See* Notices, *supra* note 5, 84 FR at 47593.

[15] *See id.* The other Included Data Products are proprietary feeds of the Exchanges and its affiliate, NYSE Chicago. *Id.* A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the Exchanges, and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity. *See id.* at 47593–47594.

[16] The Exchanges state that the NMS Network would not be available outside of the Data Center. *See* Notices, *supra* note 5 at n. 15.

[17] *See* Notices, *supra* note 5, 84 FR at 47594. The Exchanges note that Users connecting to the SIAC NMS Feeds through the LCN go through the IP network before reaching those feeds, so the LCN connection to the SIAC NMS Feeds is slower than the IP network connection. *See id.* The Exchanges also state that the LCN does not connect to the IP network for access to the Exchanges' systems or connectivity to the other Included Data Products. *See* Notices, *supra* note 5 at n. 13.

[18] *See* Notices, *supra* note 5, 84 FR at 47594.

[19] *See id.* and proposed General Note 5 to price lists. As is currently the case to connect to the SIAC NMS Feeds via the LCN or IP networks, connection to the SIAC NMS Feeds via the new NMS Network would require that a User separately be authorized to receive those data feeds (*i.e.,* by virtue of separately purchasing the data feed content). *See id.* at 47593.

[20] *See* Notices, *supra* note 5, 84 FR at 47597.

[21] *See id.* at 47594–47595.

[22] *See* Notices, *supra* note 5, at n. 17, noting that ''Affiliate'' of a User is defined in the price list as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User;'' that a ''Hosted Customer'' is a customer of a Hosting User that is hosted in a Hosting User's co-location space; and a ''Hosting User'' is a User of colocation services that hosts a Hosted Customer in the User's co-location space. Hosting Users are subject to Hosting fees.

[23] Users would still have the option to connect to the SIAC NMS Feeds using their LCN or IP network connections, but they would be charged the proposed fee for the NMS Network connection, as described below.

or IP network connection purchased by it or its Affiliates.[24]

To help implement the limitation on the number of No Additional Fee NMS Network Connections available to a User together with its Affiliates, the Exchanges propose that a User must certify whether any other Users or Hosted Customers are Affiliates of the certificating User.[25]

In addition to the ''No Additional Fee NMS Network Connections,'' the Exchanges propose that an NMS Network Connection could be purchased separately for a charge (each a ''Charged NMS Connection''), which typically would apply to Users that (i) would like to purchase access to the NMS Network and have not purchased a 10 Gb or 40 Gb LCN or IP network connection; (ii) have purchased an LCN or IP connection but would like NMS Network connections in excess of permitted number of corresponding No Additional Fee NMS Network Connections; and/or (iii) would like to use their LCN and IP connections to continue to access the SIAC NMS Feeds.[26] The proposed charge is the same as that assessed for the same-sized 10 Gb or 40 Gb IP network connection: (i) $10,000 per connection initial charge and $11,000/month for a 10 Gb connection; or (ii) $10,000 per connection initial charge and $18,000/month for a 40 Gb connection.[27]

The Exchanges state that the proposed fee structure is consistent with Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act principally because current Users will have an improved service at no additional cost; the fee structure is anticipated to be revenue neutral; there are unlikely to be any Users requiring Charged NMS Connections (and if there are, they would not pay more than Users must currently pay to access the SIAC NMS Feeds); and all Users are treated equally.[28] More specifically, in support of their justification that the proposed fee structure is reasonable, the Exchanges acknowledge that the pricing decisions relating to the dedicated NMS Network are not constrained by competitive market forces.[29] The Exchanges provide information on the costs and expected revenue associated with establishment of the NMS Network: They estimate the cost to provide the NMS Network to be $3.8 million initially, and $215,000 annually for ongoing maintenance and operation, with refresh expenses to be necessary in three to four years; and they estimate no net revenue gain, assuming revenue from five new Charged NMS Connections.[30] In addition, they state that the proposed No Additional Fee NMS Network Connections would free up bandwidth over Users' current LCN and IP connections, so that Users may lower the number of LCN or IP network connections they purchase and a net decline in revenue is therefore possible.[31]

In support of their justification that the proposed fee structure is equitably allocated and not unfairly discriminatory, the Exchanges emphasize that it has been designed so that the majority of Users would not have any new or different charges if they connect to the NMS Network.[32] They state further, that they believe that none of the Current Users will have to pay to connect to the NMS Network, so that the proposed $11,000 and $18,000 monthly recurring charges are ''largely theoretical.'' [33] They argue that the fee for the Charged NMS Connections would encourage Users to not subscribe to more NMS Network connections than needed, which would reduce the burden on the network infrastructure and result in lower costs to the Exchanges.[34]

In addition, the Exchanges state that the proposed fee structure would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because SIAC is the single plan processor for Tape A and B equity securities and all options securities, and therefore does not currently compete with any other provider in delivering these services, and further, all Users are treated equally.[35]

III. Summary of Comments

The Commission received one comment letter on the proposal from Nasdaq, a response from the Exchanges, and a second letter from Nasdaq.[36] In its original comment letter, Nasdaq observes that the Exchanges' proposal would permit market participants who separately pay the Exchanges to connect to their trading venue(s) to receive up to eight free connections to the faster NMS Network; whereas market participants who elect a stand-alone connection to the SIAC NMS Feeds will be charged.[37] The commenter expresses concern that the proposal is potentially anti-competitive.[38] According to the commenter, the proposed ''commingling'' of pricing for NMS Network connectivity with connectivity to the NYSE venues, including access to NYSE proprietary data feeds, creates a burden on inter-market competition, and also hinders potential providers from competing to serve as network processor in place of SIAC.[39] Nasdaq states that the proposals' failure to offer market participants the opportunity to subscribe to only one or two of the SIAC NMS Feeds at a lower cost also hinders competition.[40]

In response to the Nasdaq Letter, the Exchanges emphasize that Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.[41] They argue that NYSE sought and received approval from both the CTA Operating Committee and OPRA Management Committee (both of which include Nasdaq as a member).[42] They emphasize that the NMS Network would be offered at no additional cost to current Users, that the proposals would promote the protection of investors and the public interest, and that these considerations outweigh any purported concerns raised by Nasdaq that the proposal may be anti-competitive.[43] The Exchanges further counter Nasdaq's arguments, stating that: (i) Inter-market competition as contemplated by the Exchange Act does not extend to exclusive SIPs because

[24] *See* Notices *supra* note 5, 84 FR at 47594. Accordingly, a User's access to a 1 Gb connection would not entitle a User to a No Additional Fee NMS Network Connection.

[25] *See id.* The Exchanges state that this proposed requirement would avoid disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. *Id.* at 47598.

[26] *See id.* at 47595.

[27] *See id.*

[28] *See* Notices *supra* note 5, 84 FR at 47597–47600. The Exchanges state that there are currently 48 Users would benefit from the No Additional Fee NMS Network Connections and they estimate hypothetically five new Charged NMS Connections. *See* Notices *supra* note 5, 84 FR at 47595, 47597.

[29] *See id.* at 47596.

[30] *See id.* at 47597.

[31] *Id.*

[32] *See id.* at 47598–47599.

[33] *See id.* at 47595.

[34] *See id.* at 47598.

[35] *See id.* 47599–47600.

[36] *See* Nasdaq Letter, NYSE Response Letter, and Second Nasdaq Letter, *supra* note 7.

[37] *See* Nasdaq Letter at 1.

[38] *Id.*

[39] *Id.* at 1–2.

[40] *Id.* at 2.

[41] *See* NYSE Response Letter at 3.

[42] *See* NYSE Response Letter at 2–3. The Exchanges further note that Nasdaq, in its role as a member of the CTA Operating Committee and OPRA Management Committee, did not raise objections to the NYSE's proposal to fund and enhance SIAC performance. *Id.* at n. 6.

[43] *Id.* at 3–4.

these entities, by definition, do not offer their services in competition with other exclusive SIPs at the same time;[44] (ii) any suggestion that access to the NMS Network is contingent on a User purchasing a connection to one or more of the Exchanges' trading venues is incorrect because Users may purchase a stand-alone NMS Network connection;[45] (iii) there is competition for connectivity to the SIAC NMS Feeds in the Data Center, as Hosting Users could purchase NMS Network connections and then re-sell connectivity to the SIAC NMS Feeds to their Hosted Customers at fee discounts;[46] and (iv) the only way to address Nasdaq's concerns about competition would be to increase fees, which they state would be ''a perverse result that benefits neither investors nor the public.''[47]

In addition, the Exchanges analogize to how Nasdaq charges for connectivity to the Nasdaq UTP SIP Feed, noting that Nasdaq provides two free ports and then charges nominal fees for connectivity to a third-party network for access to the UTP SIP Feed.[48] The Exchanges state that they similarly propose to leverage the fees they charge to connect to their own venues in order to keep costs down for providing connectivity to the SIP.[49] They state:

> Similar to Nasdaq's structure, the proposed NMS [N]etwork provides connectivity only to SIP data. But unlike Nasdaq, NYSE is not proposing that current Users receiving [SIAC] NMS Feeds must use the NMS [N]etwork. The [SIAC] NMS Feeds will continue to be available over existing connections and the NYSE Exchanges are not proposing any changes to those fees. The sole purpose of the NMS Network Filings is to establish the basis for connecting to the [SIAC] NMS Feeds via the standalone, high-performance network that the industry and the Operating Committee and its advisors demanded.[50]

According to the Exchanges, keeping costs low for data recipients should be the prevailing principle and if an exchange that also operates a SIP can achieve this goal by leveraging the existing fees it charges for connectivity to its exchanges, that benefits SIP data recipients.[51]

In its second letter, Nasdaq states its general support for the proposed NMS Network, but reiterates its view that NYSE's proposed fee structure threatens competitors from bidding to replace SIAC as the SIP, and its belief that this is an impermissible burden on competition.[52] Nasdaq urges that such burden could be overcome if, for example, NYSE were to separate the pricing for NMS Network Connectivity from the pricing for NYSE connectivity, including access to the proprietary data feeds; price each NMS Feed connection separately and allow market participants the opportunity to acquire any of the NMS Network Connections separately; and/or separate the OPRA NMS Feed from the CTA/CQ NMS Feeds.[53]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[54] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule changes to inform the Commission's analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,[55] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule changes' consistency with the Act, and particularly:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,''[56]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,''[57] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[58]

The Exchanges propose to offer co-location Users connectivity to the SIAC NMS Feeds via the new NMS Network, a dedicated network that is anticipated to reduce one-way latency relative to the IP network and LCN by over 140 microseconds. As discussed above, the Exchanges propose to make the NMS Network available at no additional charge to Users that satisfy certain conditions (those that, together with their Affiliates, purchase up to four LCN and four IP network connections in 10 Gb or 40 Gb sizes and do not use the LCN and IP network connections to access the SIAC NMS Feeds), and impose a substantial charge on Users that seek access to the NMS Network that do not meet these conditions. The Commission believes additional data and information is necessary to assess the Exchanges' arguments that the proposed NMS Network fee structure is consistent with the Exchange Act's requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

More specifically, it is not clear from the information provided why the proposed fee for a Charged NMS Connection ($10,000 initially and $11,000 or $18,000 monthly for a 10 Gb or 40 Gb connection, respectively) is reasonable. Although the Exchanges urge that there will be few, if any, Charged NMS Connections, it is not clear why the level of the proposed fee for a Charged NMS Connection is reasonable for Users that do not meet the proposed conditions for receiving a No Additional Fee NMS Network Connection (*e.g.,* why the proposed fee

[44] *Id.* at 4. On that point, NYSE also states, ''the benefit of providing enhancements to the SIP at no additional cost to Users that already connect to the NMS Feeds outweighs any concerns about how an alternate bidder would make its commercial decision to replace the SIP, and specifically how it would charge for connectivity. *Id.* at 7.

[45] *Id.* at 5.

[46] *Id.*

[47] *Id.* at 5–7.

[48] The Exchanges refer to SR–Nasdaq–2016–120, in which Nasdaq proposed to unbundle Nasdaq exchange and Nasdaq SIP connectivity fees and establish the ''Third Party Connectivity Service.'' *See* Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768 (September 2, 2016). Following negative comment, Nasdaq ultimately amended its proposal, and the Commission approved Nasdaq's proposal to provide every customer two third-party circuit connections free of charge if used solely to receive the Nasdaq UTP SIP feeds and provide UTP-only connectivity beyond the two free connections for nominal fees (an installation fee of $100 per connection and an ongoing monthly fee of $100 per connection). *See* Securities Exchange Act Release No. 80558 (April 28, 2017), 82 FR 20923 (May 4, 2017).

[49] *Id.* at 6.

[50] *Id.* at 6–7.

[51] *Id.*

[52] *See* Second Nasdaq Letter *supra* note 7 at 1–2.

[53] *Id.* at 3.

[54] 15 U.S.C. 78s(b)(2)(B).

[55] 15 U.S.C. 78s(b)(2)(B).

[56] 15 U.S.C. 78f(b)(4).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78f(b)(8).

for a Charged NMS Connection would defray expenses or why it is otherwise reasonably related to the cost to provide access to the NMS Network).

In addition, it is not clear from the information provided why it is equitable and not unfairly discriminatory for those Users that purchase access to the IP network or LCN on the proposed conditions to receive connections to the NMS Network at no additional charge, whereas other Users (*e.g.,* those seeking connections to the NMS Network that do not satisfy the proposed conditions, or those who do not otherwise require access to the LCN or IP network) would be required to pay $10,000 initially and $11,000 or $18,000 monthly for a 10 Gb or 40 Gb connection, respectively. In particular, it is unclear the basis on which the Exchanges have determined the proposed conditions for making available a No Additional Fee NMS Network Connection, and whether that basis is reasonable, equitable, and not unfairly discriminatory as required by the Exchange Act.

Further, the Commission solicits additional comment on whether the Exchanges' proposed fee structure for the NMS Network would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposals. In particular, the Commission invites the written views of interested persons concerning whether the proposals are consistent with Sections 6(b)(4),[59] 6(b)(5),[60] 6(b)(8)[61] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[62] any request for an opportunity to make an oral presentation.[63]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposals should be approved or disapproved by January 3, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 17, 2020. 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 Numbers SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–NYSEArca–2019–61, SR–NYSEAMER–2019–34 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 Numbers SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–NYSEArca–2019–61, SR–NYSEAMER–2019–34. 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 Numbers SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–NYSEArca–2019–61, SR–NYSEAMER–2019–34 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26846 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[59] 15 U.S.C. 78f(b)(4).

[60] 15 U.S.C. 78f(b)(5).

[61] 15 U.S.C. 78f(b)(8).

[62] 17 CFR 240.19b–4.

[63] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87696; File No. SR–NSCC–2019–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change To Require Confirmation of Cybersecurity Program

December 9, 2019.

I. Introduction

On October 15, 2019, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–NSCC–2019–003. The proposed rule change was published for comment in the **Federal Register** on October 30, 2019.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

NSCC proposes to modify its Rules and Procedures (''Rules'')[4] in order to (1) define the term ''Cybersecurity Confirmation'' as a written representation that addresses a submitting entity's cybersecurity program (described more fully below);

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 87392 (October 24, 2019), 84 FR 58183 (October 30, 2019) (SR–NSCC–2019–003) (''Notice'').

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.* References to ''members'' in this Order include both Members and Limited Members, as such terms are defined in the Rules.

(2) require NSCC's members and applicants for membership to submit to NSCC a Cybersecurity Confirmation (both as part of an initial application for membership, and on an ongoing basis for members, at least every two years); and (3) provide that NSCC may require a Cybersecurity Confirmation from organizations that report trade data to NSCC for comparison and trade recording.

A. Background

NSCC plays a prominent role in providing clearance, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, American depository receipts, exchange traded funds, and unit investment trusts.[5] In light of NSCC's critical role in the marketplace, NSCC was designated a Systemically Important Financial Market Utility (''SIFMU'') under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[6] Due to NSCC's unique position in the marketplace, a failure or a disruption to NSCC could, among other things, increase the risk of significant liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.[7]

NSCC's members and trade data reporting organizations connect to NSCC, either through the Securely Managed and Reliable Technology (''SMART'') network or through other electronic means, such as a third party service provider, service bureau, network, or the internet. The SMART network is a technology managed by NSCC's parent company, The Depository Trust & Clearing Corporation (''DTCC''), that connects a nationwide complex of networks, processing centers, and control facilities. Currently, NSCC does not require its members, applicants for membership, or trade data reporting organizations to represent that they maintain a cybersecurity program as a condition for connecting to NSCC via the SMART network or other means.

NSCC states that many of its members, applicants for membership, and trade data reporting organizations may currently be subject to regulations that are designed, in part, to protect against cyberattacks.[8] Accordingly, such entities would currently be required to follow standards established by national or international organizations focused on information security management, and they would currently maintain protocols for their senior management to verify the existence of cybersecurity programs sufficient to meet regulatory obligations. NSCC further believes that some of its members, applicants for membership, and trade data reporting organizations might also currently follow protocols substantially similar to the regulations referred to earlier in this paragraph in order to meet the evolving cybersecurity expectations of regulators and/or their own institutional customers.[9]

Although NSCC believes that its members, applicants for membership, and trade data reporting organizations may currently maintain robust cybersecurity programs, NSCC seeks to better ensure the protection of its network by requiring its members, applicants for membership, and trade data reporting organizations to confirm that they are meeting certain cybersecurity standards in order to connect to NSCC via the SMART network or other means. Therefore, NSCC proposes to require all members, applicants for membership, and certain trade data reporting organizations to submit a written Cybersecurity Confirmation that includes specific representations regarding the submitting entity's cybersecurity program and framework. NSCC states that the information contained in the Cybersecurity Confirmation would help NSCC to better understand the cybersecurity programs and frameworks of entities seeking to connect to NSCC, and thereby identify possible cyber risk exposures.[10] As a result, NSCC would be better able to establish appropriate controls to mitigate such risks and their possible impacts on NSCC's operations.

B. Proposed Changes

NSCC proposes to modify its Rules to: (1) Provide a detailed definition of the Cybersecurity Confirmation; (2) require NSCC's members and applicants for membership to submit to NSCC a Cybersecurity Confirmation (both as part of an initial application for membership, and on an ongoing basis for members, at least every two years); and (3) provide that NSCC may require a Cybersecurity Confirmation from organizations that report trade data to NSCC. Each of these proposed rule changes is described in greater detail below.

1. Cybersecurity Confirmation

NSCC proposes to define the term ''Cybersecurity Confirmation'' to mean a written form, in a format provided by NSCC and signed by the submitting entity's designated senior executive with the authority to attest to the cybersecurity matters contained in the form.[11] The form would contain specific representations regarding the submitting entity's cybersecurity program and framework. Such representations would cover the two years prior to the date of the most recently provided Cybersecurity Confirmation. The Cybersecurity Confirmation would include the following representations:

- The submitting entity has defined and maintains a comprehensive cybersecurity program and framework that considers potential cyber threats that impact the submitting entity's organization, and protects the confidentiality, integrity, and availability requirements of its systems and information.
- The submitting entity has implemented and maintains a written enterprise cybersecurity policy or policies approved by the submitting entity's senior management or board of directors, and the submitting entity's cybersecurity framework is in alignment with standard industry best practices and guidelines.[12]

[5] *See* Financial Stability Oversight Counsel 2012 Annual Report, Appendix A (''FSOC 2012 Report''), *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[6] 12 U.S.C. 5465(e)(1). *See* FSOC 2012 Report, *supra* note 5.

[7] *See* FSOC 2012 Report, *supra* note 5.

[8] For example, depending on the type of entity, NSCC states that its members may be subject to one or more of the following regulations: (1) Regulation S–ID, which requires ''financial institutions'' or ''creditors'' under the rule to adopt programs to identify and address the risk of identity theft of individuals (17 CFR 248.201—202); (2) Regulation S–P, which requires broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (17 CFR 248.1—30); and (3) Rule 15c3–5 under the Act, known as the ''Market Access Rule,'' which requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of its management controls and supervisory procedures (17 CFR 240.15c3–5). Notice, *supra* note 3, at 58184.

[9] *Id.*

[10] Notice, *supra* note 3, at 58183.

[11] Notice, *supra* note 3, at 58183. *See also* NSCC Cybersecurity Confirmation Form, submitted as Exhibit 3 to SR–FICC–2019–003, *available at https://www.sec.gov/rules/sro/nscc/2019/34-87392-ex3.pdf.*

[12] Examples of recognized frameworks, guidelines and standards that NSCC believes are adequate include the Financial Services Sector Coordinating Council Cybersecurity Profile, the National Institute of Standards and Technology Cybersecurity Framework (''NIST CSF''), International Organization for Standardization (''ISO'') standard 27001/27002 (''ISO 27001''), Federal Financial Institutions Examination Council (''FFIEC'') Cybersecurity Assessment Tool, Critical Security Controls Top 20, and Control Objectives for

• If the submitting entity uses a third party service provider or service bureau(s) to connect or transact business or to manage the connection with NSCC, the submitting entity has an appropriate program to evaluate the cyber risks and impact of these third parties and to review the third party assurance reports.

• The submitting entity's cybersecurity program and framework protects the segment of its system that connects to and/or interacts with NSCC.

• The submitting entity has in place an established process to remediate cyber issues identified to meet its regulatory and/or statutory requirements.

• The submitting entity periodically updates the risk processes of its cybersecurity program and framework based on a risk assessment or changes to technology, business, threat ecosystem, and/or regulatory environment.

• The submitting entity's cybersecurity program and framework has been reviewed by one of the following: (1) The submitting entity, if it has filed and maintains a current Certification of Compliance with the Superintendent of the New York State Department of Financial Services confirming compliance with its Cybersecurity Requirements for Financial Services Companies; [13] (2) a regulator who assesses the submitting entity's cybersecurity program and framework against an industry cybersecurity framework or industry standard, including those that are listed on the Cybersecurity Confirmation form and in an Important Notice that is issued by NSCC from time to time; [14] (3) an independent external entity with cybersecurity domain expertise in relevant industry standards and practices, including those that are listed on the Cybersecurity Confirmation form and in an Important Notice that is issued by NSCC from time to time; [15] or (4) an independent internal audit function reporting directly to the submitting entity's board of directors or designated board of directors committee, such that the findings of that review are shared with these governance bodies.

NSCC states that it designed the representations in the Cybersecurity Confirmation to provide information on how each submitting entity manages cybersecurity with respect to its connectivity to NSCC.[16] NSCC believes that by requiring these representations from members, applicants for membership, and trade data reporting organizations, the proposed Cybersecurity Confirmation would provide useful information designed to enable NSCC to make informed decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and otherwise protect the NSCC network.[17]

2. Initial and Ongoing Membership Requirement

NSCC proposes to require new applicants for NSCC membership to submit a Cybersecurity Confirmation as part of their application materials. NSCC also proposes to require all NSCC members to submit a Cybersecurity Confirmation at least every two years. With respect to the requirement to submit a Cybersecurity Confirmation at least every two years, NSCC would provide all members with notice of the date on which the Cybersecurity Confirmation would be due no later than 180 calendar days prior to the due date.

3. Organizations Reporting Trade Data to NSCC

NSCC proposes to modify the Rules to provide that, when determining whether to accept trade data from an organization for comparison and trade recording,[18] NSCC may require the organization to submit a Cybersecurity Confirmation. Since such organizations are not NSCC members, contracts (*i.e.,* separate from the Rules) govern the relationships between NSCC and such organizations. NSCC states that this proposal would provide transparency regarding the steps NSCC may take when determining whether to accept trade data from such organizations.[19]

C. Implementation Timeframe

The proposed rule change would be effective upon Commission approval. New applicants for NSCC membership would be required to submit a Cybersecurity Confirmation as part of their application materials. The requirement to submit a Cybersecurity Confirmation would also apply to applicants whose applications are pending with NSCC at the time the Commission approves the proposed rule change. For existing NSCC members, NSCC would provide notice of the due date to submit a Cybersecurity Confirmation, not later than 180 days prior to the due date. Finally, NSCC would provide such notice to its members at least every two years going forward.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [20] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[21] and Rules 17Ad–22(e)(17)(i) and (e)(17)(ii) promulgated under the Act,[22] for the reasons described below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of

Information and Related Technologies. NSCC would identify recognized frameworks, guidelines and standards in the form of Cybersecurity Confirmation and in an Important Notice that NSCC would issue from time to time. NSCC would also consider accepting other standards upon request. Notice, *supra* note 3, at 58184.

[13] 23 N.Y. Comp. Codes R. & Regs. tit. 23, § 500 *et seq.* (2017). NSCC states that this regulation requires entities to confirm that they have comprehensive cybersecurity programs as described in the regulation, and NSCC believes this regime is sufficient to meet the objectives of the proposed Cybersecurity Confirmation. Notice, *supra* note 3, at 58184.

[14] NSCC states that current industry cybersecurity frameworks and industry standards could include, for example, the Office of the Comptroller of the Currency or the FFIEC Cybersecurity Assessment Tool. NSCC would identify acceptable industry cybersecurity frameworks and standards in the Cybersecurity Confirmation form and in an Important Notice that NSCC would issue from time to time. NSCC would also consider accepting other industry cybersecurity frameworks and standards upon request. Notice, *supra* note 3, at 58185.

[15] NSCC states that a third party with cybersecurity domain expertise is one that follows and understands applicable industry standards, practices, and regulations, such as ISO 27001 certification or NIST CSF assessment. NSCC would identify acceptable industry standards and practices in the Cybersecurity Confirmation form and in an Important Notice that NSCC would issue from time to time. NSCC would also consider accepting other industry standards and practices upon request. Notice, *supra* note 3, at 58185.

[16] Notice, *supra* note 3, at 58185.

[17] *Id.*

[18] *See* Rule 7 (Comparison and Trade Recording Operation), *supra* note 4.

[19] Notice, *supra* note 3, at 58185.

[20] 15 U.S.C. 78s(b)(2)(C).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

the clearing agency or for which it is responsible.[23]

As described above, NSCC proposes to require its members, applicants for membership, and trade data reporting organizations seeking to connect to NSCC via the SMART network or other means, to submit a Cybersecurity Confirmation, confirming the existence and nature of their cybersecurity programs. The Cybersecurity Confirmations should provide NSCC with useful information regarding the cybersecurity programs of the submitting entities. By conditioning an entity's connectivity to NSCC via the SMART network or other means on the submission of a Cybersecurity Confirmation, NSCC should be better enabled to reduce the cyber risks of electronically connecting to entities that have not confirmed the existence and nature of their cybersecurity programs. Accordingly, the proposed Cybersecurity Confirmation requirement should provide NSCC with information to better identify its exposure to cyber risks and to take steps to mitigate those risks.

If not adequately addressed, the risk of cyberattacks and other cyber vulnerabilities could affect NSCC's network and NSCC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in NSCC's custody or control, or for which it is responsible. The proposed Cybersecurity Confirmation requirement is a tool designed to address those risks as described above. Therefore, the Commission finds the proposed Cybersecurity Confirmation requirement would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[24]

B. Consistency With Rule 17Ad–22(e)(17)(i) Under the Act

Rule 17Ad–22(e)(17)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[25] NSCC's operational risks include protecting its electronic systems from cyber risks.

As described above, entities connect electronically to NSCC via the SMART network or other means. The proposed Cybersecurity Confirmation requirement should reduce cyber risks to NSCC by requiring members, applicants for membership, and trade data reporting organizations to confirm that they have defined and maintain cybersecurity programs and frameworks that meet standard industry best practices and guidelines. The representations in each submitting entity's Cybersecurity Confirmation would provide information that should help NSCC to mitigate its exposure to cyber risks, and thereby decrease the operational risks presented to NSCC by its connections to such entities. Thus, the proposed Cybersecurity Confirmations should enable NSCC to better identify potential sources of external operational risks and mitigate the possible impacts of those risks. Because the proposed changes would help NSCC identify and mitigate plausible sources of external operational risk, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(17)(i) under the Act.[26]

C. Consistency With Rule 17Ad–22(e)(17)(ii) Under the Act

Rule 17Ad–22(e)(17)(ii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring, in part, that systems have a high degree of security, resiliency, and operational reliability.[27] As noted above, NSCC's operational risks include protecting its electronic systems from cyber risks.

Although NSCC believes that its members, applicants for membership, and trade data reporting organizations may currently maintain robust cybersecurity programs, NSCC currently does not require those entities to represent that they maintain a cybersecurity program as a condition for connecting to NSCC via the SMART network or other means. NSCC designed the proposed Cybersecurity Confirmation requirement to reduce cyber risks by requiring its members, applicants, and trade data reporting organizations to confirm that they have defined and maintain cybersecurity programs and frameworks that meet standard industry best practices and guidelines. The representations in each submitting entity's Cybersecurity Confirmation would provide more security for NSCC's SMART network and other systems by providing NSCC with information designed to help manage its cyber-related operational risks, which in turn, would enable NSCC to take steps necessary to strengthen the security of its network to mitigate those risks. Since the proposal would enhance NSCC's ability to ensure that its systems have a high degree of security, resiliency, and operational reliability, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(17)(ii) under the Act.[28]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act[29] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[30] that proposed rule change SR–NSCC–2019–003, be, and hereby is, *approved*.[31]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26843 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] *Id.*

[25] 17 CFR 240.17Ad–22(e)(17)(i).

[26] *Id.*

[27] 17 CFR 240.17Ad–22(e)(17)(ii).

[28] *Id.*

[29] 15 U.S.C. 78q–1.

[30] 15 U.S.C. 78s(b)(2).

[31] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87685; File No. SR–NYSEARCA–2019–85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services

December 9, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

November 25, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to co-location services to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location [4] services offered by the Exchange to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users.[5]

Proposed Change

LCN 10 Gb Circuit

Among other connectivity options, Users are able to connect to the Exchange over the Liquidity Center Network (''LCN''), a local area network available in the data center.[6] LCN access is available at 1, 10 and 40 Gb bandwidth capacities. Currently, Users have two 10 Gb options for LCN access:

- LCN 10 Gb, which has been in place since 2010,[7] and
- LCN 10 Gb LX, which was introduced in 2013.[8]

The LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection, and has latency levels substantially similar to those of the LCN 40 Gb connection.[9] Between the two 10 Gb LCN alternatives, the vast majority (80%) of User connections are the newer LCN 10Gb LX connections.

The Exchange proposes to cease offering the LCN 10 Gb connection. The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Fee Schedules would eliminate a connectivity option previously available to Users. For the reasons discussed below, however, the Exchange has concluded that the proposed change is necessary because it believes that if it does not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users with LCN 10 Gb connections would be compromised.

For each LCN connection, the network hardware relies on a switch, which acts as the ''gatekeeper'' for a User's inbound messaging (*e.g.,* orders and quotes) sent to the Exchange's trading and execution system and the Exchange's outbound messaging (*e.g.,* market data and drop copies) within the data center.[10] Switches are manufactured and sold to the Exchange by third parties. Currently, the LCN 1 Gb and LCN 10 Gb connections use one type of switch (the ''First Switch'') and the LCN 10 Gb LX and LCN 40 Gb connections use a second type of switch (the ''Second Switch'').[11]

The manufacturer of the First Switch made an ''end of life'' (''EOL'') announcement notifying customers that the First Switch is being discontinued. The manufacturer stated that it is phasing out the provision of replacement parts and support for the First Switch. Per its EOL notice, it has ceased offering the First Switch, and, as of January 1, 2020:[12]

- It has no commitment to furnish software engineering level support for the operating system software licensed for the First Switch. No further service or maintenance releases or patches will be created to support the First Switch.
- It has no commitment to perform hardware engineering level support, including hardware modifications and failure analysis, for hardware defects.

As a consequence, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to existing ones, and so it proposes to discontinue the service and remove it from the Fee Schedules.[13]

The Exchange plans to implement the change during the first half of 2020.[14] It

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] The other local area network is the internet protocol (''IP'') network. *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[7] *See* 75 FR 70048, *supra* note 4, at 70050.

[8] *See* Securities Exchange Act Release Nos. 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR–NYSEArca–2013–123); and 70981 (December 4, 2013), 78 FR 74203 (December 10, 2013) (SR–NYSEARCA–2013–131).

[9] *See* 78 FR 69897, *supra* note 8, at 69898.

[10] *See id.*

[11] *See id.* at note 7.

[12] ''JTAC Technical Bulletin,'' at *https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL_BULLETINS/16000/TSB16960/en_US/TSB16960.pdf. See also* ''Juniper Networks Product End-of-Life,'' at *https://support.juniper.net/support/pdf/eol/990833.pdf.*

[13] The Fee Schedules provide that a User that purchased five 10 Gb LCN connections would be charged the initial fee for a sixth 10 Gb LCN connection but would not be charged the monthly fee that would otherwise be applicable. Currently, no Users qualify for the discount. As part of the proposed change, the provision would be deleted.

[14] Also during the first half of 2020, the Exchange expects to update the network hardware of the LCN 10 Gb LX and LCN 40 Gb connections by replacing the Second Switch with a new switch (the ''New Switch''). The Exchange plans to update the LCN 1 Gb network hardware with the New Switch as well, which would allow the Exchange to continue to offer the LCN 1 Gb circuit despite the EOL of the First Switch. Because the New Switch, like the Second Switch, will provide a lower-latency connection, the Exchange expects that the latency of the LCN 1 Gb will decrease.

The Exchange does not propose to make a similar change to the LCN 10 Gb network hardware

Continued

will announce the implementation date through a customer notice. After the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections.[15]

To provide time for Users that have LCN 10 Gb connections (''Current Users'') to implement any changes, the Exchange proposes to give them a six month grace period, starting on the implementation date. After the grace period ends, any remaining LCN 10 Gb connections will be terminated. The Exchange also proposes to waive any change fees [16] and non-recurring charges [17] that a Current User would otherwise incur as a result of the proposed change.

Bundled Network Access

The Exchange currently offers a pair of ''bundled'' connectivity options (''Bundled Network Access'') at 1 and 10 Gb bandwidths,[18] but no User is utilizing one. Accordingly, the Exchange proposes to discontinue the Bundled Network Access options and remove references to the related pricing from the Fee Schedules.

The change would be consistent with previous practice: In 2014 and 2016 previously existing bundled network access connectivity options were discontinued, as they were no longer utilized by Users.[19]

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedules are applied uniformly to all Users.

LCN 10 Gb

As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to the nine Current Users' existing LCN 10 Gb connections. Accordingly, after the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections and, after the grace period, it will terminate any remaining LCN 10 Gb connections. The Exchange also proposes to waive any change fees and non-recurring charges that a Current User would otherwise incur as a result of the proposed change.

The Current Users have several options available to them upon termination of the LCN 10 GB connections:

- A Current User may move to the faster LCN 10 Gb LX connection. The change would increase the User's monthly recurring charge from $14,000 to $22,000, but the User would benefit from a faster connection while maintaining the same amount of bandwidth and system redundancy.
- A Current User may move to the slower IP Network, which offers a 10 Gb circuit alternative. The change would lower the User's monthly recurring charge from $14,000 to $11,000. The connection would have greater latency, but the User would maintain the same bandwidth and resiliency.
- A Current User may opt to re-tailor its system to reduce the number of LCN connections it has. For example, a Current User with two LCN 10 Gb connections could consolidate them into one LCN 40 Gb connection. The change would decrease the User's monthly recurring charge from $28,000 to $22,000 while allowing it to benefit from a faster connection and increased bandwidth, although it would reduce the redundancy of its connection.
- A Current User may opt to become a ''Hosted Customer'' by being hosted by another User (a ''Hosting User''), or to cross connect to another User within co-location, either of which would likely decrease its monthly connectivity costs and available bandwidth.[20]

The Exchange expects to work with the Current Users to implement the change.

Bundled Network Access

As no Users utilize a Bundled Network Access option, no Users will be impacted by the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. 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.'' [21]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [22] and (iii) a User would only

because, if it did, there would be no difference between the LCN 10 Gb and the LCN 10 Gb LX connection: They would have the same bandwidth and latency levels. However, the two services cannot have the same latency. Rather, as the Exchange has stated, the LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection. 78 FR 69897, *supra* note 8, at 69898. Its latency levels are similar to those of the LCN 40 Gb connection, and the same fees are assessed for both services. *See* 78 FR 74203, *supra* note 8, at 74204. In addition, the Exchange does not believe that it would be reasonable or equitable to charge different fees for equivalent services. *See id.*

[15] The Exchange believes that it has enough First Switches to fulfil any orders it may receive prior to the implementation date.

[16] The Exchange charges a User a ''Change Fee'' if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User. *See* Securities Exchange Act Release Nos. 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR–NYSEArca–2012–62) and 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63).

[17] Co-location connectivity services have a non-recurring initial charge. For example, the LCN 10 Gb LX has a $15,000 initial charge per connection. *See* 78 FR 74203, *supra* note 8, at 74204.

[18] *See* Securities Exchange Act Release No. 77977 (June 2, 2016), 81 FR 36981 (June 8, 2016) (SR–NYSEArca–2016–77.

[19] *See id.* and Securities Exchange Act Release No. 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81).

[20] *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). The Exchange does not have visibility into what other Users, including Hosting Users, charge or the bandwidth they offer, but to the best of its knowledge no Hosting User offers its hosted customers a 10 Gb connection.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not

incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] 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. In addition, it is designed 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

As a consequence of the manufacturer's declaration of the First Switch's EOL, the Exchange believes that, if it did not eliminate the LCN 10 Gb connections, it would be unable to provide the current level of support to Users that have such connections. More specifically, pursuant to its EOL, the manufacturer is ceasing to offer the First Switch and terminating its software and hardware engineering level support. As a result, when the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. Accordingly, the Exchange believes that it is reasonable to eliminate the LCN 10 Gb connectivity option.

The Exchange believes that the proposed change will facilitate its compliance with the requirements of Regulation Systems Compliance and Integrity (''SCI'').[26] The LCN is an SCI system[27] of the Exchange, which is itself an SCI entity. Accordingly, the Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[28] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Accordingly, the Exchange believes that, in light of the EOL of the First Switch, the proposed change to eliminate the LCN 10 Gb connectivity option is a reasonable solution.

The Exchange believes the situation is analogous to when an SCI entity determines to utilize a third party to operate an SCI system on its behalf. As the Commission has noted, in such case, the SCI entity ''is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party.''[29] Likewise, ''if an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.''[30] In the present case, the third party that provides the First Switch, an important part of the network hardware for the LCN 10 Gb connection, has declared its intention to discontinue both production of and technical support for the First Switch. Given that, the Exchange has assessed its ability to manage the LCN 10 Gb connection going forward, and has concluded that it cannot continue to offer a product that relies on the First Switch.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be reasonable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change. The fee waivers would help to alleviate the burden of the change on the Current Users.

With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedules, make the Fee Schedules easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of

co-located, in sending orders to, and receiving market data from, the Exchange.

[23] *See* 78 FR 50459, *supra* note 5, at 50459. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–66, SR–NYSEAmer–2019–52, SR–NYSECHX–2019–23, and SR–NYSENAT–2019–29.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] 17 CFR 242.1000 through 242.1007; *see also* Securities Exchange Act Release No. 73639, 79 FR 72251 (December 5, 2015) (adopting Regulation Systems Compliance and Integrity).

[27] ''SCI systems'' means ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.'' 17 CFR 242.1000.

[28] 79 FR 72251, *supra* note 26, at 72256–72257.

[29] *Id.* at 72276.

[30] *Id.*

its fees and credits for the following reasons.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be equitable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change.

The fee waivers would help to alleviate the burden of the change on the Current Users. With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedules, make the Fee Schedules easier to read, understand and administer.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer an older connectivity option that it could not support at current levels, or if, as a consequence of the EOL, Users' connectivity was compromised or they were wholly unable to use it to connect to the Exchange. As noted above, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange believes it would be unable to provide the current level of support to Users that have such connections. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one.

The Exchange believes that the proposed change will protect investors and the public interest because it will facilitate the Exchange's compliance with the requirements of Regulation SCI. The Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN, as an SCI system, has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[31] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedules, make the Fee Schedules easier to read, understand and administer.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide any Users with new LCN 10 Gb connections or give the present level of support to Current Users' existing ones. In addition, no Users would be able to purchase the Bundled Network Access. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

At the same time, Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these 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,[32] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: No Users would be able to purchase a LCN 10 Gb connection or Bundled Network Access.

The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Fee Schedules would eliminate a connectivity option previously available to Users. As a consequence of the change, nine Current Users would be required to terminate their LCN 10 Gb connections and either move to LCN 10 Gb LX connections, move to 10 Gb IP network connections, re-tailor their systems to reduce the number of connections, become Hosted Customers, cross-connect to other Users, or otherwise adjust for the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence

[31] *Id.*

[32] 15 U.S.C. 78f(b)(8).

of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would not place any burden on intramarket competition that is not necessary or appropriate because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connections and adjust for the change, while the fee waivers would help to alleviate the burden of the change.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would not place any burden on intramarket competition that is not necessary or appropriate, as currently no Users utilize the service, and so no Users would be affected. The change would permit the Exchange to streamline the offerings available to Users in the data center and, by removing references to related pricing from the Fee Schedules, make the Fee Schedules easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

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.'' [33]

As noted above, the Exchange recognizes that removing the LCN 10 Gb connection from its Fee Schedules would eliminate a connectivity option previously available to Users. Indeed, the proposed change may negatively impact the Exchange's revenues, since Current Users may opt to re-tailor their systems to reduce the number of connections, move to 10 Gb IP network connections, re-tailor become Hosted Customers, or cross-connect to another User. Such choices, any of which would reduce revenue, may be more attractive to Users as a consequence of the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)(iii) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35] 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.[36]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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) [37] 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–NYSEARCA–2019–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2019–85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2019–85 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26835 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87694; File No. SR–NYSE–2019–66]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services

December 9, 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 25, 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 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 the Exchange's Price List related to co-location services to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users.[5]

Proposed Change

LCN 10 Gb Circuit

Among other connectivity options, Users are able to connect to the Exchange over the Liquidity Center Network (''LCN''), a local area network available in the data center.[6] LCN access is available at 1, 10 and 40 Gb bandwidth capacities. Currently, Users have two 10 Gb options for LCN access:

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] The other local area network is the internet protocol (''IP'') network. *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92).

• LCN 10 Gb, which has been in place since 2010,[7] and

• LCN 10 Gb LX, which was introduced in 2013.[8]

The LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection, and has latency levels substantially similar to those of the LCN 40 Gb connection.[9] Between the two 10 Gb LCN alternatives, the vast majority (80%) of User connections are the newer LCN 10Gb LX connections.

The Exchange proposes to cease offering the LCN 10 Gb connection. The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Price List would eliminate a connectivity option previously available to Users. For the reasons discussed below, however, the Exchange has concluded that the proposed change is necessary because it believes that if it does not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users with LCN 10 Gb connections would be compromised.

For each LCN connection, the network hardware relies on a switch, which acts as the ''gatekeeper'' for a User's inbound messaging (*e.g.,* orders and quotes) sent to the Exchange's trading and execution system and the Exchange's outbound messaging (*e.g.,* market data and drop copies) within the data center.[10] Switches are manufactured and sold to the Exchange by third parties. Currently, the LCN 1 Gb and LCN 10 Gb connections use one type of switch (the ''First Switch'') and the LCN 10 Gb LX and LCN 40 Gb connections use a second type of switch (the ''Second Switch'').[11]

The manufacturer of the First Switch made an ''end of life'' (''EOL'') announcement notifying customers that the First Switch is being discontinued. The manufacturer stated that it is phasing out the provision of replacement parts and support for the First Switch. Per its EOL notice, it has ceased offering the First Switch, and, as of January 1, 2020:[12]

• It has no commitment to furnish software engineering level support for the operating system software licensed for the First Switch. No further service or maintenance releases or patches will be created to support the First Switch.

• It has no commitment to perform hardware engineering level support, including hardware modifications and failure analysis, for hardware defects.

As a consequence, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to existing ones, and so it proposes to discontinue the service and remove it from the Price List.[13]

The Exchange plans to implement the change during the first half of 2020.[14] It will announce the implementation date through a customer notice. After the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections.[15]

To provide time for Users that have LCN 10 Gb connections (''Current Users'') to implement any changes, the Exchange proposes to give them a six month grace period, starting on the implementation date. After the grace period ends, any remaining LCN 10 Gb connections will be terminated. The Exchange also proposes to waive any change fees[16] and non-recurring charges[17] that a Current User would otherwise incur as a result of the proposed change.

Bundled Network Access

The Exchange currently offers a pair of ''bundled'' connectivity options (''Bundled Network Access'') at 1 and 10 Gb bandwidths,[18] but no User is utilizing one. Accordingly, the Exchange proposes to discontinue the Bundled Network Access options and remove references to the related pricing from the Price List.

The change would be consistent with previous practice: In 2014 and 2016 previously existing bundled network access connectivity options were discontinued, as they were no longer utilized by Users.[19]

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List is applied uniformly to all Users.

LCN 10 Gb

As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to the nine Current Users' existing LCN 10 Gb connections. Accordingly, after the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections and, after the grace period, it will terminate any remaining LCN 10 Gb connections. The Exchange also proposes to waive any change fees and non-recurring charges that a Current User would otherwise incur as a result of the proposed change.

The Current Users have several options available to them upon termination of the LCN 10 GB connections:

• A Current User may move to the faster LCN 10 Gb LX connection. The

[7] *See* 75 FR 59310, *supra* note 4, at 59311.

[8] *See* Securities Exchange Act Release Nos. 70888 (November 15, 2013), 78 FR 69907 (November 21, 2013) (SR–NYSE–2013–73); and 70979 (December 4, 2013), 78 FR 74200 (December 10, 2013) (SR–NYSE–2013–77).

[9] *See* 78 FR 69907, *supra* note 8, at 69907.

[10] *See id.* at 69908.

[11] *See id.* at note 7.

[12] ''JTAC Technical Bulletin,'' at *https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL_BULLETINS/16000/TSB16960/en_US/TSB16960.pdf. See also* ''Juniper Networks Product End-of-Life,'' at *https://support.juniper.net/support/pdf/eol/990833.pdf.*

[13] The Price List provides that a User that purchased five 10 Gb LCN connections would be charged the initial fee for a sixth 10 Gb LCN connection but would not be charged the monthly fee that would otherwise be applicable. Currently, no Users qualify for the discount. As part of the proposed change, the provision would be deleted.

[14] Also during the first half of 2020, the Exchange expects to update the network hardware of the LCN 10 Gb LX and LCN 40 Gb connections by replacing the Second Switch with a new switch (the ''New Switch''). The Exchange plans to update the LCN 1 Gb network hardware with the New Switch as well, which would allow the Exchange to continue to offer the LCN 1 Gb circuit despite the EOL of the First Switch. Because the New Switch, like the Second Switch, will provide a lower-latency connection, the Exchange expects that the latency of the LCN 1 Gb will decrease.

The Exchange does not propose to make a similar change to the LCN 10 Gb network hardware because, if it did, there would be no difference between the LCN 10 Gb and the LCN 10 Gb LX connection: They would have the same bandwidth and latency levels. However, the two services cannot have the same latency. Rather, as the Exchange has stated, the LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection. 78 FR 69907, *supra* note 8, at 69907. Its latency levels are similar to those of the LCN 40 Gb connection, and the same fees are assessed for both services. *See* 78 FR 74200, *supra* note 8, at 74201–74202. In addition, the Exchange does not believe that it would be reasonable or equitable to charge different fees for equivalent services. *See id.*

[15] The Exchange believes that it has enough First Switches to fulfil any orders it may receive prior to the implementation date.

[16] The Exchange charges a User a ''Change Fee'' if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User. *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18).

[17] Co-location connectivity services have a non-recurring initial charge. For example, the LCN 10 Gb LX has a $15,000 initial charge per connection. *See* 78 FR 74200, *supra* note 8, at 74202.

[18] *See* Securities Exchange Act Release No. 77975 (June 2, 2016), 81 FR 36973 (June 8, 2016) (SR–NYSE–2016–39).

[19] *See id.* and Securities Exchange Act Release No. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37).

change would increase the User's monthly recurring charge from $14,000 to $22,000, but the User would benefit from a faster connection while maintaining the same amount of bandwidth and system redundancy.

- A Current User may move to the slower IP Network, which offers a 10 Gb circuit alternative. The change would lower the User's monthly recurring charge from $14,000 to $11,000. The connection would have greater latency, but the User would maintain the same bandwidth and resiliency.
- A Current User may opt to re-tailor its system to reduce the number of LCN connections it has. For example, a Current User with two LCN 10 Gb connections could consolidate them into one LCN 40 Gb connection. The change would decrease the User's monthly recurring charge from $28,000 to $22,000 while allowing it to benefit from a faster connection and increased bandwidth, although it would reduce the redundancy of its connection.
- A Current User may opt to become a ''Hosted Customer'' by being hosted by another User (a ''Hosting User''), or to cross connect to another User within co-location, either of which would likely decrease its monthly connectivity costs and available bandwidth.[20]

The Exchange expects to work with the Current Users to implement the change.

Bundled Network Access

As no Users utilize a Bundled Network Access option, no Users will be impacted by the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. 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.'' [21]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] 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. In addition, it is designed 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

As a consequence of the manufacturer's declaration of the First Switch's EOL, the Exchange believes that, if it did not eliminate the LCN 10 Gb connections, it would be unable to provide the current level of support to Users that have such connections. More specifically, pursuant to its EOL, the manufacturer is ceasing to offer the First Switch and terminating its software and hardware engineering level support. As a result, when the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. Accordingly, the Exchange believes that it is reasonable to eliminate the LCN 10 Gb connectivity option.

The Exchange believes that the proposed change will facilitate its compliance with the requirements of Regulation Systems Compliance and Integrity (''SCI'').[26] The LCN is an SCI system [27] of the Exchange, which is itself an SCI entity. Accordingly, the Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[28] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable

[20] *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). The Exchange does not have visibility into what other Users, including Hosting Users, charge or the bandwidth they offer, but to the best of its knowledge no Hosting User offers its hosted customers a 10 Gb connection.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[23] *See* 78 FR 51765, *supra* note 5, at 51766. Each Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2019–52, SR–NYSEArca–2019–85, SR–NYSECHX–2019–23, and SR–NYSENAT–2019–29.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] 17 CFR 242.1000 through 242.1007; *see also* Securities Exchange Act Release No. 73639, 79 FR 72251 (December 5, 2015) (adopting Regulation Systems Compliance and Integrity).

[27] ''SCI systems'' means ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.'' 17 CFR 242.1000.

[28] 79 FR 72251, *supra* note 26, at 72256–72257.

to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Accordingly, the Exchange believes that, in light of the EOL of the First Switch, the proposed change to eliminate the LCN 10 Gb connectivity option is a reasonable solution.

The Exchange believes the situation is analogous to when an SCI entity determines to utilize a third party to operate an SCI system on its behalf. As the Commission has noted, in such case, the SCI entity ''is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party.'' [29] Likewise, ''if an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.'' [30] In the present case, the third party that provides the First Switch, an important part of the network hardware for the LCN 10 Gb connection, has declared its intention to discontinue both production of and technical support for the First Switch. Given that, the Exchange has assessed its ability to manage the LCN 10 Gb connection going forward, and has concluded that it cannot continue to offer a product that relies on the First Switch.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be reasonable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change. The fee waivers would help to alleviate the burden of the change on the Current Users.

With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be equitable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change.

The fee waivers would help to alleviate the burden of the change on the Current Users. With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer an older connectivity option that it could not support at current levels, or if, as a consequence of the EOL, Users' connectivity was compromised or they were wholly unable to use it to connect to the Exchange. As noted above, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange believes it would be unable to provide the current level of support to Users that have such connections. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one.

The Exchange believes that the proposed change will protect investors and the public interest because it will facilitate the Exchange's compliance with the requirements of Regulation SCI. The Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN, as an SCI system, has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[31] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal.

[29] *Id.* at 72276.

[30] *Id.*

[31] *Id.*

With respect to the Bundled Network Access, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer.

The Proposed Change is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide any Users with new LCN 10 Gb connections or give the present level of support to Current Users' existing ones. In addition, no Users would be able to purchase the Bundled Network Access. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

At the same time, Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these 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,[32] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: No Users would be able to purchase a LCN 10 Gb connection or Bundled Network Access.

The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Price List would eliminate a connectivity option previously available to Users. As a consequence of the change, nine Current Users would be required to terminate their LCN 10 Gb connections and either move to LCN 10 Gb LX connections, move to 10 Gb IP network connections, re-tailor their systems to reduce the number of connections, become Hosted Customers, cross-connect to other Users, or otherwise adjust for the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would not place any burden on intramarket competition that is not necessary or appropriate because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connections and adjust for the change, while the fee waivers would help to alleviate the burden of the change.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would not place any burden on intramarket competition that is not necessary or appropriate, as currently no Users utilize the service, and so no Users would be affected. The change would permit the Exchange to streamline the offerings available to Users in the data center and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

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

[32] 15 U.S.C. 78f(b)(8).

system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [33]

As noted above, the Exchange recognizes that removing the LCN 10 Gb connection from its Price List would eliminate a connectivity option previously available to Users. Indeed, the proposed change may negatively impact the Exchange's revenues, since Current Users may opt to re-tailor their systems to reduce the number of connections, move to 10 Gb IP network connections, re-tailor become Hosted Customers, or cross-connect to another User. Such choices, any of which would reduce revenue, may be more attractive to Users as a consequence of the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 [34] and Rule 19b–4(f)(6) thereunder.[35] 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.[36]

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) [37] 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–2019–66 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–2019–66. 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–2019–66 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–26852 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–315, OMB Control No. 3235–0357]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736,

Extension:

Regulation S

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S (17 CFR 230.901 through 230.905) sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Regulation S clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 9, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–26868 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87686; File No. SR–NYSECHX–2019–23]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fee Schedule of NYSE Chicago, Inc. Related to Co-Location Services

December 9, 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 25, 2019, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') related to co-location services to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule related to co-location [4] services offered by the Exchange to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users.[5]

Proposed Change

LCN 10 Gb Circuit

Among other connectivity options, Users are able to connect to the Exchange over the Liquidity Center Network (''LCN''), a local area network available in the data center.[6] LCN access is available at 1, 10 and 40 Gb bandwidth capacities. Currently, Users have two 10 Gb options for LCN access:

- LCN 10 Gb, which has been in place since 2010,[7] and
- LCN 10 Gb LX, which was introduced in 2013.[8]

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in October 2019. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–27) (''Co-location Notice''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. *See id.* at note 6. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See id.* at 58779.

[6] The other local area network is the internet protocol (''IP'') network. *See* Co-location Notice, *supra* note 4, at 58780.

[7] *See* Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56); 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80); and 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). In July 2018, the Exchange and its direct parent company were acquired by NYSE Group, Inc. As a result, the Exchange and the Affiliate SROs are direct or indirect subsidiaries of NYSE Group, Inc. and, indirectly, Intercontinental Exchange, Inc. *See* Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR–CHX–2018–004); *see also* Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004).

[8] *See* Securities Exchange Act Release Nos. 70888 (November 15, 2013), 78 FR 69907 (November 21, 2013) (SR–NYSE–2013–73); 70979 (December 4, 2013), 78 FR 74200 (December 10, 2013) (SR–

The LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection, and has latency levels substantially similar to those of the LCN 40 Gb connection.[9] Between the two 10 Gb LCN alternatives, the vast majority (80%) of User connections are the newer LCN 10Gb LX connections.

The Exchange proposes to cease offering the LCN 10 Gb connection. The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Fee Schedule would eliminate a connectivity option previously available to Users. For the reasons discussed below, however, the Exchange has concluded that the proposed change is necessary because it believes that if it does not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users with LCN 10 Gb connections would be compromised.

For each LCN connection, the network hardware relies on a switch, which acts as the ''gatekeeper'' for a User's inbound messaging (*e.g.,* orders and quotes) sent to the Exchange's trading and execution system and the Exchange's outbound messaging (*e.g.,* market data and drop copies) within the data center.[10] Switches are manufactured and sold to the Exchange by third parties. Currently, the LCN 1 Gb and LCN 10 Gb connections use one type of switch (the ''First Switch'') and the LCN 10 Gb LX and LCN 40 Gb connections use a second type of switch (the ''Second Switch'').[11]

The manufacturer of the First Switch made an ''end of life'' (''EOL'') announcement notifying customers that the First Switch is being discontinued. The manufacturer stated that it is phasing out the provision of replacement parts and support for the First Switch. Per its EOL notice, it has ceased offering the First Switch, and, as of January 1, 2020:[12]

- It has no commitment to furnish software engineering level support for the operating system software licensed for the First Switch. No further service or maintenance releases or patches will be created to support the First Switch.
- It has no commitment to perform hardware engineering level support, including hardware modifications and failure analysis, for hardware defects.

As a consequence, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to existing ones, and so it proposes to discontinue the service and remove it from the Fee Schedule.[13]

The Exchange plans to implement the change during the first half of 2020.[14] It will announce the implementation date through a customer notice. After the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections.[15]

To provide time for Users that have LCN 10 Gb connections (''Current Users'') to implement any changes, the Exchange proposes to give them a six month grace period, starting on the implementation date. After the grace period ends, any remaining LCN 10 Gb connections will be terminated. The Exchange also proposes to waive any change fees[16] and non-recurring charges[17] that a Current User would otherwise incur as a result of the proposed change.

Bundled Network Access

The Exchange currently offers a pair of ''bundled'' connectivity options (''Bundled Network Access'') at 1 and 10 Gb bandwidths,[18] but no User is utilizing one. Accordingly, the Exchange proposes to discontinue the Bundled Network Access options and remove references to the related pricing from the Fee Schedule.

The change would be consistent with previous practice: In 2014 and 2016 previously existing bundled network access connectivity options were discontinued, as they were no longer utilized by Users.[19]

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

LCN 10 Gb

As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to the nine Current Users' existing LCN 10 Gb connections. Accordingly, after the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections and, after the grace period, it will terminate any remaining LCN 10 Gb connections. The Exchange also proposes to waive any change fees and non-recurring charges that a Current User would otherwise incur as a result of the proposed change.

The Current Users have several options available to them upon termination of the LCN 10 GB connections:

- A Current User may move to the faster LCN 10 Gb LX connection. The change would increase the User's

NYSE–2013–77); 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92); 70982 (December 4, 2013), 78 FR 74197 (December 10, 2013) (SR–NYSEMKT–2013–97); 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR–NYSEArca–2013–123); and 70981 (December 4, 2013), 78 FR 74203 (December 10, 2013) (SR–NYSEARCA–2013–131).

[9] *See* 78 FR 69907, *supra* note 8, at 69907.

[10] *See id.* at 69908.

[11] *See id.* at note 7.

[12] ''JTAC Technical Bulletin,'' at *https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL_BULLETINS/16000/TSB16960/en_US/TSB16960.pdf. See also* ''Juniper Networks Product End-of-Life,'' at *https://support.juniper.net/support/pdf/eol/990833.pdf.*

[13] The Fee Schedule provides that a User that purchased five 10 Gb LCN connections would be charged the initial fee for a sixth 10 Gb LCN connection but would not be charged the monthly fee that would otherwise be applicable. Currently, no Users qualify for the discount. As part of the proposed change, the provision would be deleted.

[14] Also during the first half of 2020, the Exchange expects to update the network hardware of the LCN 10 Gb LX and LCN 40 Gb connections by replacing the Second Switch with a new switch (the ''New Switch''). The Exchange plans to update the LCN 1 Gb network hardware with the New Switch as well, which would allow the Exchange to continue to offer the LCN 1 Gb circuit despite the EOL of the First Switch. Because the New Switch, like the Second Switch, will provide a lower-latency connection, the Exchange expects that the latency of the LCN 1 Gb will decrease.

The Exchange does not propose to make a similar change to the LCN 10 Gb network hardware because, if it did, there would be no difference between the LCN 10 Gb and the LCN 10 Gb LX connection: They would have the same bandwidth and latency levels. However, the two services cannot have the same latency. Rather, the LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection. *See, e.g.,* 78 FR 69907, *supra* note 8, at 69907. Its latency levels are similar to those of the LCN 40 Gb connection, and the same fees are assessed for both services. *See* 78 FR 74200, *supra* note 8, at 74201–74202. In addition, the Exchange does not believe that it would be reasonable or equitable to charge different fees for equivalent services. *See id.*

[15] The Exchange believes that it has enough First Switches to fulfil any orders it may receive prior to the implementation date.

[16] The Exchange charges a User a ''Change Fee'' if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User. *See* Co-location Notice, *supra* note 4, at 58785.

[17] Co-location connectivity services have a non-recurring initial charge. For example, the LCN 10 Gb LX has a $15,000 initial charge per connection. *See id.* at 58783.

[18] *See id.*

[19] *See* Securities Exchange Act Release Nos. 77975 (June 2, 2016), 81 FR 36973 (June 8, 2016) (SR–NYSE–2016–39); 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37); 77973 (June 2, 2016), 81 FR 36975 (June 8, 2016) (SR–NYSEMKT–2016–57); 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61; 77977 (June 2, 2016), 81 FR 36981 (June 8, 2016) (SR–NYSEArca–2016–77; and 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81).

monthly recurring charge from $14,000 to $22,000, but the User would benefit from a faster connection while maintaining the same amount of bandwidth and system redundancy.

• A Current User may move to the slower IP Network, which offers a 10 Gb circuit alternative. The change would lower the User's monthly recurring charge from $14,000 to $11,000. The connection would have greater latency, but the User would maintain the same bandwidth and resiliency.

• A Current User may opt to re-tailor its system to reduce the number of LCN connections it has. For example, a Current User with two LCN 10 Gb connections could consolidate them into one LCN 40 Gb connection. The change would decrease the User's monthly recurring charge from $28,000 to $22,000 while allowing it to benefit from a faster connection and increased bandwidth, although it would reduce the redundancy of its connection.

• A Current User may opt to become a ''Hosted Customer'' by being hosted by another User (a ''Hosting User''), or to cross connect to another User within co-location, either of which would likely decrease its monthly connectivity costs and available bandwidth.[20]

The Exchange expects to work with the Current Users to implement the change.

Bundled Network Access

As no Users utilize a Bundled Network Access option, no Users will be impacted by the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. 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.'' [21]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] 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. In addition, it is designed 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

As a consequence of the manufacturer's declaration of the First Switch's EOL, the Exchange believes that, if it did not eliminate the LCN 10 Gb connections, it would be unable to provide the current level of support to Users that have such connections. More specifically, pursuant to its EOL, the manufacturer is ceasing to offer the First Switch and terminating its software and hardware engineering level support. As a result, when the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. Accordingly, the Exchange believes that it is reasonable to eliminate the LCN 10 Gb connectivity option.

The Exchange believes that the proposed change will facilitate its compliance with the requirements of Regulation Systems Compliance and Integrity (''SCI'').[26] The LCN is an SCI system [27] of the Exchange, which is itself an SCI entity. Accordingly, the Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[28] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity

[20] *See* Co-location Notice, *supra* note 4, at 58782–58783. The Exchange does not have visibility into what other Users, including Hosting Users, charge or the bandwidth they offer, but to the best of its knowledge no Hosting User offers its hosted customers a 10 Gb connection.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[23] *See* Co-location Notice, *supra* note 4, at 58790. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–66, SR–NYSEAmer–2019–52, SR–NYSEArca–2019–85, and SR–NYSENAT–2019–29.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] 17 CFR 242.1000 through 242.1007; *see also* Securities Exchange Act Release No. 73639, 79 FR 72251 (December 5, 2015) (adopting Regulation Systems Compliance and Integrity).

[27] ''SCI systems'' means ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.'' 17 CFR 242.1000.

[28] 79 FR 72251, *supra* note 26, at 72256–72257.

option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Accordingly, the Exchange believes that, in light of the EOL of the First Switch, the proposed change to eliminate the LCN 10 Gb connectivity option is a reasonable solution.

The Exchange believes the situation is analogous to when an SCI entity determines to utilize a third party to operate an SCI system on its behalf. As the Commission has noted, in such case, the SCI entity ''is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party.'' [29] Likewise, ''if an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.'' [30] In the present case, the third party that provides the First Switch, an important part of the network hardware for the LCN 10 Gb connection, has declared its intention to discontinue both production of and technical support for the First Switch. Given that, the Exchange has assessed its ability to manage the LCN 10 Gb connection going forward, and has concluded that it cannot continue to offer a product that relies on the First Switch.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be reasonable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change. The fee waivers would help to alleviate the burden of the change on the Current Users.

With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be equitable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change.

The fee waivers would help to alleviate the burden of the change on the Current Users. With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer an older connectivity option that it could not support at current levels, or if, as a consequence of the EOL, Users' connectivity was compromised or they were wholly unable to use it to connect to the Exchange. As noted above, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange believes it would be unable to provide the current level of support to Users that have such connections. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one.

The Exchange believes that the proposed change will protect investors and the public interest because it will facilitate the Exchange's compliance with the requirements of Regulation SCI. The Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN, as an SCI system, has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[31] Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal.

[29] *Id.* at 72276.

[30] *Id.*

[31] *Id.*

With respect to the Bundled Network Access, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide any Users with new LCN 10 Gb connections or give the present level of support to Current Users' existing ones. In addition, no Users would be able to purchase the Bundled Network Access. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

At the same time, Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these 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,[32] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: No Users would be able to purchase a LCN 10 Gb connection or Bundled Network Access.

The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Fee Schedule would eliminate a connectivity option previously available to Users. As a consequence of the change, nine Current Users would be required to terminate their LCN 10 Gb connections and either move to LCN 10 Gb LX connections, move to 10 Gb IP network connections, re-tailor their systems to reduce the number of connections, become Hosted Customers, cross-connect to other Users, or otherwise adjust for the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would not place any burden on intramarket competition that is not necessary or appropriate because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connections and adjust for the change, while the fee waivers would help to alleviate the burden of the change.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would not place any burden on intramarket competition that is not necessary or appropriate, as currently no Users utilize the service, and so no Users would be affected. The change would permit the Exchange to streamline the offerings available to Users in the data center and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

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

[32] 15 U.S.C. 78f(b)(8).

system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [33]

As noted above, the Exchange recognizes that removing the LCN 10 Gb connection from its Fee Schedule would eliminate a connectivity option previously available to Users. Indeed, the proposed change may negatively impact the Exchange's revenues, since Current Users may opt to re-tailor their systems to reduce the number of connections, move to 10 Gb IP network connections, re-tailor become Hosted Customers, or cross-connect to another User. Such choices, any of which would reduce revenue, may be more attractive to Users as a consequence of the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 [34] and Rule 19b–4(f)(6) thereunder.[35] 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.[36]

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) [37] 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–NYSECHX–2019–23 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–NYSECHX–2019–23. 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–NYSECHX–2019–23 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26836 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 12h–1(f), SEC File No. 270–570, OMB Control No. 3235–0632.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12h–1(f) (17 CFR 240.12h–1(f)) under the Securities Exchange Act of 1934 (''Exchange Act'') provides an exemption from the Exchange Act Section 12(g) registration requirements for compensatory employee stock options of issuers that are not required to file periodic reports under the Exchange Act. The information required under Exchange Act Rule 12h–1 is not filed with the Commission. Exchange Act Rule 12h–1(f) permits issuers to provide the required information to the option holders either by: (i) Physical or electronic delivery of the information; or (ii) written notice to the option holders of the availability of the information on a password-protected internet site. We estimate that it takes approximately 2 burden hours per response to prepare and provide the information required under Rule 12h–1(f) and that the information is prepared and provided by approximately 40 respondents. We estimate that 25% of the 2 hours per response (0.5 hours) is prepared by the company for a total annual reporting burden of 20 hours (0.5 hours per response × 40 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 9, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–26870 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87693; File No. SR–MIAX–2019–48]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1400, Definitions

December 9, 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 December 3, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 515, Execution of Orders and Quotes; Exchange Rule 516, Order Types Defined; Exchange Rule 517, Quote Types Defined; Exchange Rule 518, Complex Orders; Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors; and Exchange Rule 1400, Definitions.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1400, Definitions, to adopt a definition for a Complex Trade, which will mean, ''(i) the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock-option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than eight (8) option contracts per unit of trading of the underlying stock or convertible security established for that series by The Options Clearing Corporation.''

The Exchange is a Participant[3] in the Options Order Protection and Locked/Crossed Market Plan (''Plan''), along with all other option exchanges.[4] All

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Participant'' is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

[4] On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX, Inc. (''Phlx''), NYSE Amex, LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). *See also* Securities Exchange Act Release No. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. (''BATS'') as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010)(adding C2 Options Exchange, Incorporated (''C2'') as a Participant); 66969 (May 11, 2012), 77 FR 29396 (May 17, 2012) (adding BOX Options

participating exchanges have adopted substantially similar definitions of a Complex Trade for purposes of the Plan.[5] However, when the rules relating to the Plan were adopted by the Exchange, the definition of a Complex Trade was inadvertently omitted. The Exchange now proposes to remedy this unintentional oversight.

Additionally, the Exchange proposes to make non-substantive changes to Rule 1400 to renumber existing definitions to allow the Exchange to insert the proposed definition for ''Complex Trade'' into the proper alphabetically ordered position among currently existing definitions.

As a result of the proposed amendment to Exchange Rule 1400, a number of non-substantive amendments must be made to correct internal cross-references in other rules within the Exchange's rulebook. Specifically, the internal cross-reference to Eligible Exchanges in the definition of ABBO or Away Best Bid or Offer, in Exchange Rule 100, must be updated from Rule 1400(f) to Rule 1400(g). The internal cross-reference to Eligible Exchanges in Exchange Rule 503(e)(1)(iii) must be updated from Rule 1400(f) to Rule 1400(g). The internal cross-reference to Intermarket Sweep Orders in Rule 503(f)(2)(iv)(A)2. must be updated from Rule 1400(h) to Rule 1400(i). The internal cross-reference to the NBBO in Exchange Rule 515(a) must be updated from Rule 1400(j) to Rule 1400(k). The internal cross-reference to Intermarket Sweep Orders in Exchange Rule 516(f) must be updated from Rule 1400(h) to Rule 1400(i). Similarly in Rule 516(f) the internal cross-references to Protected Quotes and Eligible Exchanges must be updated from 1400(p) and (f) to 1400(q) and (g) respectively. Lastly, in Rule 516(f), the internal cross-reference to Protected Bid or Protected Offer must be updated from 1400(o) to 1400(p). The internal cross-references to Protected Bid and Protected Offer in Exchange Rule 517(a)(2)(vi) must be updated from 1400(o) to 1400(p). The internal cross-reference to Eligible Exchanges in Exchange Rule 518(a)(1) must be updated from Rule 1400(f) to Rule 1400(g). Finally, the internal cross-reference to the Options Order Protection and Locked/Crossed Market Plan in Exchange Rule 521(j) must be updated from Rule 1400(n) to Rule 1400(o).

The Exchange believes these changes add clarity and precision to the Exchange's rules.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms 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 adopt a definition of a Complex Trade 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange is a Participant in the Options Order Protection and Locked/Crossed Market Plan along with all other option exchanges.[8] The Exchange believes using common definitions promotes the protection of investors and the public interest as using consistent terms across exchanges promotes consistency in rule interpretation and application under the Plan. The Exchange notes that its proposed definition of a Complex Trade is identical to that of Nasdaq Phlx,[9] and substantially similar to the definition of a Complex Trade used on other exchanges.[10] Further, the Exchange believes that its proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, as the proposal harmonizes the Exchange's rules to those of other Participants in the Plan and promotes the objectives of the Plan to enable the Participants to act jointly in establishing a framework for providing order protection and addressing Locked[11] and Crossed Markets.[12]

The Exchange believes that the proposed non-substantive rule changes to update internal cross-references within the Exchange's Rules will provide greater clarity to Members[13] and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and precise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposal will impose any burden on intermarket competition as the proposed definition of a Complex Trade serves to harmonize the Exchange's definition of a Complex Trade to that used by other Plan participants.[14] Additionally, the minor non-substantive edits to update internal cross-references in the Exchange's rulebook provides precision and accuracy in the Exchange's rules.

The Exchange does not believe that its proposal to adopt a definition for a Complex Trade will impose any burden on intramarket competition as the definition is intended to harmonize the Exchange's rules with those of other Plan Participants. Additionally, the non-substantive changes to update internal cross-references in the Exchange's rulebook proposed by the Exchange

Exchange LLC (''BOX Options'') as a Participant); 70763 (October 28, 2013), 78 FR 65740 (November 1, 2013) (adding Topaz Exchange, LLC (''Topaz'') as a Participant);70762 (October 28, 2013), 78 FR 65743 (November 1, 2013) (adding MIAX International Securities Exchange, LLC (''MIAX'') as a Participant); 76823 (January 5, 2016), 81 FR 1260 (January 11, 2016) (adding EDGX Exchange, Inc. (''EDGX'') as a Participant); 77324 (March 8, 2016), 81 FR 13425 (March 14, 2016) (adding ISE MERCURY, LLC (''ISE Mercury'') as a Participant); 79896 (January 30, 2017), 82 FR 9264 (February 3, 2017) (adding MIAX Pearl (''Pearl'') as a Participant); and 85229 (March 1, 2019), 84 FR 8347 (March 7, 2019) (adding MIAX Emerald, LLC (''MIAX Emerald'') as a Participant).

[5] *See* Cboe Exchange Rule 5.65(d); Cboe BZX Exchange Rule 27.1(a)(4); Cboe EDGX Exchange Rule 27.1(a)(4); Nasdaq ISE Exchange Rule, Options 5, Section 1(d); Nasdaq BX Exchange Rule, Options 5, Section 1(d); Nasdaq Phlx Exchange Rule 1083(d); Nasdaq Options Market (''NOM'') Chapter XII, Section 1(4); NYSE American Exchange Rule 990NY(4); NYSE Arca Exchange Rule 6.92–O(a)(4); and BOX Exchange Rule 1500(e).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 4.

[9] *See* Nasdaq Phlx Exchange Rule 1083(d).

[10] *See supra* note 5.

[11] A ''Locked Market'' means a quoted market in which a Protected Bid is equal to a Protected Offer in a series of an Eligible Options Class. *See* Exchange Rule 1400(i).

[12] A ''Crossed Market'' means a quoted market in which a Protected Bid is higher than a Protected Offer in a series of an Eligible Class. *See* Exchange Rule 1400(d).

[13] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[14] *See supra* note 5.

provide additional clarity and detail in the Exchange's rules. The Exchange does not believe that its proposal to make non-substantive changes to update internal cross-references in the Exchange's rulebook imposes any burden on intramarket competition as the rules of the Exchange apply equally to all Exchange Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) under the Act [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to immediately harmonize its rules with the rules of the other Plan Participants, which would promote consistency in the interpretation and application of rules under the Plan and further the objectives of the Plan to enable Participants to act jointly in establishing a framework for providing order protection and addressing Locked and Crossed markets. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay to allow the Exchange to adopt a definition of Complex Trade, which the Exchange inadvertently omitted when it adopted rules relating to the Plan. The Commission notes that the proposed change does not raise new or novel regulatory issues because the Exchange's proposed definition of Complex Trade is identical to the definition of Complex Trade adopted by one exchange [19] and substantially similar to the definition of Complex Trade adopted by other exchanges.[20] Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–48 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–MIAX–2019–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2019–48 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26842 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See supra* note 9.

[20] *See supra* note 5.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87697; File No. SR–FICC–2019–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Require Confirmation of Cybersecurity Program

December 9, 2019.

I. Introduction

On October 15, 2019, FICC Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule change SR–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

FICC–2019–005. The proposed rule change was published for comment in the **Federal Register** on October 30, 2019.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

FICC proposes to modify its Government Securities Division (''GSD'') Rulebook (''GSD Rules''), Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules''), and the Electronic Pool Notification (''EPN'') Rules of MBSD (''EPN Rules,'' and, together with the GSD Rules and the MBSD Rules, the ''Rules'')[4] in order to (1) define the term ''Cybersecurity Confirmation'' as a written representation that addresses a submitting entity's cybersecurity program (described more fully below); and (2) require FICC's members and applicants for membership to submit to FICC a Cybersecurity Confirmation (both as part of an initial application for membership, and on an ongoing basis for members, at least every two years).

A. Background

FICC plays a prominent role in the fixed income markets as the sole clearing agency in the United States acting as a central counterparty and provider of significant clearance and settlement services for cash settled U.S. treasury and agency securities and the non-private label mortgage-backed securities markets.[5] In light of FICC's critical role in the marketplace, FICC was designated a Systemically Important Financial Market Utility (''SIFMU'') under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[6] Due to FICC's unique position in the marketplace, a failure or a disruption to FICC could, among other things, increase the risk of significant liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.[7]

FICC's members connect to FICC, either through the Securely Managed and Reliable Technology (''SMART'') network or through other electronic means, such as a third party service provider, service bureau, network, or the internet. The SMART network is a technology managed by FICC's parent company, The Depository Trust & Clearing Corporation (''DTCC''), that connects a nationwide complex of networks, processing centers, and control facilities. Currently, FICC does not require its members or applicants for membership to represent that they maintain a cybersecurity program as a condition for connecting to FICC via the SMART network or other means.

FICC states that many of its members and applicants for membership may currently be subject to regulations that are designed, in part, to protect against cyberattacks.[8] Accordingly, such entities would currently be required to follow standards established by national or international organizations focused on information security management, and they would currently maintain protocols for their senior management to verify the existence of cybersecurity programs sufficient to meet regulatory obligations. FICC further believes that some of its members and applicants for membership might also currently follow protocols substantially similar to the regulations referred to earlier in this paragraph in order to meet the evolving cybersecurity expectations of regulators and/or their own institutional customers.[9]

Although FICC believes that its members and applicants for membership may currently maintain robust cybersecurity programs, FICC seeks to better ensure the protection of its network by requiring its members and applicants for membership to confirm that they are meeting certain cybersecurity standards in order to connect to FICC via the SMART network or other means. Therefore, FICC proposes to require all members and applicants for membership to submit a written Cybersecurity Confirmation that includes specific representations regarding the submitting entity's cybersecurity program and framework. FICC states that the information contained in the Cybersecurity Confirmation would help FICC to better understand the cybersecurity programs and frameworks of entities seeking to connect to FICC, and thereby identify possible cyber risk exposures.[10] As a result, FICC would be better able to establish appropriate controls to mitigate such risks and their possible impacts on FICC's operations.

B. Proposed Changes

FICC proposes to modify its Rules to: (1) Provide a detailed definition of the Cybersecurity Confirmation; and (2) require FICC's members and applicants for membership to submit to FICC a Cybersecurity Confirmation (both as part of an initial application for membership, and on an ongoing basis for members, at least every two years). Each of these proposed rule changes is described in greater detail below.

1. Cybersecurity Confirmation

FICC proposes to define the term ''Cybersecurity Confirmation'' to mean a written form, in a format provided by FICC and signed by the submitting entity's designated senior executive with the authority to attest to the cybersecurity matters contained in the form.[11] The form would contain specific representations regarding the submitting entity's cybersecurity program and framework. Such representations would cover the two years prior to the date of the most recently provided Cybersecurity Confirmation. The Cybersecurity Confirmation would include the following representations:

- The submitting entity has defined and maintains a comprehensive cybersecurity program and framework that considers potential cyber threats that impact the submitting entity's organization, and protects the confidentiality, integrity, and availability requirements of its systems and information.
- The submitting entity has implemented and maintains a written

[3] Securities Exchange Act Release No. 87394 (October 24, 2019), 84 FR 58194 (October 30, 2019) (SR–FICC–2019–005) (''Notice'').

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.* References to ''members'' in this Order include the participants of GSD and MBSD, including GSD Netting Members, GSD Comparison-Only Members, GSD Sponsoring Members, GSD CCIT Members, GSD Funds-Only Settling Bank Members, MBSD Clearing Members, MBSD Cash Settling Bank Members, and MBSD EPN Users as such terms are defined in the respective Rules.

[5] *See* Financial Stability Oversight Counsel 2012 Annual Report, Appendix A (''FSOC 2012 Report''), *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[6] 12 U.S.C. 5465(e)(1). *See* FSOC 2012 Report, *supra* note 5.

[7] *See* FSOC 2012 Report, *supra* note 5.

[8] For example, depending on the type of entity, FICC states that its members may be subject to one or more of the following regulations: (1) Regulation S–ID, which requires ''financial institutions'' or ''creditors'' under the rule to adopt programs to identify and address the risk of identity theft of individuals (17 CFR 248.201–202); (2) Regulation S–P, which requires broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (17 CFR 248.1–30); and (3) Rule 15c3–5 under the Act, known as the ''Market Access Rule,'' which requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of its management controls and supervisory procedures (17 CFR 240.15c3–5). Notice, *supra* note 3, at 58195.

[9] *Id.*

[10] Notice, *supra* note 3, at 58194–95.

[11] Notice, *supra* note 3, at 58195. *See also* FICC Cybersecurity Confirmation Form, submitted as Exhibit 3 to SR–FICC–2019–005, *available at https://www.sec.gov/rules/sro/ficc/2019/34-87394-ex3.pdf.*

enterprise cybersecurity policy or policies approved by the submitting entity's senior management or board of directors, and the submitting entity's cybersecurity framework is in alignment with standard industry best practices and guidelines.[12]

- If the submitting entity uses a third party service provider or service bureau(s) to connect or transact business or to manage the connection with FICC, the submitting entity has an appropriate program to evaluate the cyber risks and impact of these third parties and to review the third party assurance reports.
- The submitting entity's cybersecurity program and framework protects the segment of its system that connects to and/or interacts with FICC.
- The submitting entity has in place an established process to remediate cyber issues identified to meet its regulatory and/or statutory requirements.
- The submitting entity periodically updates the risk processes of its cybersecurity program and framework based on a risk assessment or changes to technology, business, threat ecosystem, and/or regulatory environment.
- The submitting entity's cybersecurity program and framework has been reviewed by one of the following: (1) The submitting entity, if it has filed and maintains a current Certification of Compliance with the Superintendent of the New York State Department of Financial Services confirming compliance with its Cybersecurity Requirements for Financial Services Companies;[13] (2) a regulator who assesses the submitting entity's cybersecurity program and framework against an industry cybersecurity framework or industry standard, including those that are listed on the Cybersecurity Confirmation form and in an Important Notice that is issued by FICC from time to time;[14] (3) an independent external entity with cybersecurity domain expertise in relevant industry standards and practices, including those that are listed on the Cybersecurity Confirmation form and in an Important Notice that is issued by FICC from time to time;[15] or (4) an independent internal audit function reporting directly to the submitting entity's board of directors or designated board of directors committee, such that the findings of that review are shared with these governance bodies.

FICC states that it designed the representations in the Cybersecurity Confirmation to provide information on how each submitting entity manages cybersecurity with respect to its connectivity to FICC.[16] FICC believes that by requiring these representations from members and applicants for membership, the proposed Cybersecurity Confirmation would provide useful information designed to enable FICC to make informed decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and otherwise protect the FICC network.[17]

2. Initial and Ongoing Membership Requirement

FICC proposes to require new applicants for FICC membership to submit a Cybersecurity Confirmation as part of their application materials. FICC also proposes to require all FICC members to submit a Cybersecurity Confirmation at least every two years. With respect to the requirement to submit a Cybersecurity Confirmation at least every two years, FICC would provide all members with notice of the date on which the Cybersecurity Confirmation would be due no later than 180 calendar days prior to the due date.

C. Implementation Timeframe

The proposed rule change would be effective upon Commission approval. New applicants for FICC membership would be required to submit a Cybersecurity Confirmation as part of their application materials. The requirement to submit a Cybersecurity Confirmation would also apply to applicants whose applications are pending with FICC at the time the Commission approves the proposed rule change. For existing FICC members, FICC would provide notice of the due date to submit a Cybersecurity Confirmation, not later than 180 days prior to the due date. Finally, FICC would provide such notice to its members at least every two years going forward.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[18] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[19] and Rules 17Ad–22(e)(17)(i) and (e)(17)(ii) promulgated under the Act,[20] for the reasons described below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[21]

As described above, FICC proposes to require its members and applicants for membership to submit a Cybersecurity Confirmation, confirming the existence

[12] Examples of recognized frameworks, guidelines and standards that FICC believes are adequate include the Financial Services Sector Coordinating Council Cybersecurity Profile, the National Institute of Standards and Technology Cybersecurity Framework (''NIST CSF''), International Organization for Standardization (''ISO'') standard 27001/27002 (''ISO 27001''), Federal Financial Institutions Examination Council (''FFIEC'') Cybersecurity Assessment Tool, Critical Security Controls Top 20, and Control Objectives for Information and Related Technologies. FICC would identify recognized frameworks, guidelines and standards in the form of Cybersecurity Confirmation and in an Important Notice that FICC would issue from time to time. FICC would also consider accepting other standards upon request. Notice, *supra* note 3, at 58195.

[13] 23 N.Y. Comp. Codes R. & Regs. tit. 23, § 500 *et seq.* (2017). FICC states that this regulation requires entities to confirm that they have comprehensive cybersecurity programs as described in the regulation, and FICC believes this regime is sufficient to meet the objectives of the proposed Cybersecurity Confirmation. Notice, *supra* note 3, at 58196.

[14] FICC states that current industry cybersecurity frameworks and industry standards could include, for example, the Office of the Comptroller of the Currency or the FFIEC Cybersecurity Assessment Tool. FICC would identify acceptable industry cybersecurity frameworks and standards in the Cybersecurity Confirmation form and in an Important Notice that FICC would issue from time to time. FICC would also consider accepting other industry cybersecurity frameworks and standards upon request. Notice, *supra* note 3, at 58196.

[15] FICC states that a third party with cybersecurity domain expertise is one that follows and understands applicable industry standards, practices, and regulations, such as ISO 27001 certification or NIST CSF assessment. FICC would identify acceptable industry standards and practices in the Cybersecurity Confirmation form and in an Important Notice that FICC would issue from time to time. FICC would also consider accepting other industry standards and practices upon request. Notice, *supra* note 3, at 58196.

[16] Notice, *supra* note 3, at 58196.

[17] *Id.*

[18] 15 U.S.C. 78s(b)(2)(C).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

[21] 15 U.S.C. 78q–1(b)(3)(F).

and nature of their cybersecurity programs. The Cybersecurity Confirmations should provide FICC with useful information regarding the cybersecurity programs of the submitting entities. By conditioning an entity's connectivity to FICC via the SMART network or other means on the submission of a Cybersecurity Confirmation, FICC should be better enabled to reduce the cyber risks of electronically connecting to entities that have not confirmed the existence and nature of their cybersecurity programs. Accordingly, the proposed Cybersecurity Confirmation requirement should provide FICC with information to better identify its exposure to cyber risks and to take steps to mitigate those risks.

If not adequately addressed, the risk of cyberattacks and other cyber vulnerabilities could affect FICC's network and FICC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in FICC's custody or control, or for which it is responsible. The proposed Cybersecurity Confirmation requirement is a tool designed to address those risks as described above. Therefore, the Commission finds the proposed Cybersecurity Confirmation requirement would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[22]

B. Consistency With Rule 17Ad–22(e)(17)(i) Under the Act

Rule 17Ad–22(e)(17)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[23] FICC's operational risks include protecting its electronic systems from cyber risks.

As described above, entities connect electronically to FICC via the SMART network or other means. The proposed Cybersecurity Confirmation requirement should reduce cyber risks to FICC by requiring members and applicants for membership to confirm that they have defined and maintain cybersecurity programs and frameworks that meet standard industry best practices and guidelines. The representations in each submitting entity's Cybersecurity Confirmation would provide information that should help FICC to mitigate its exposure to cyber risks, and thereby decrease the operational risks presented to FICC by its connections to such entities. Thus, the proposed Cybersecurity Confirmations should enable FICC to better identify potential sources of external operational risks and mitigate the possible impacts of those risks. Because the proposed changes would help FICC identify and mitigate plausible sources of external operational risk, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(17)(i) under the Act.[24]

C. Consistency With Rule 17Ad–22(e)(17)(ii) Under the Act

Rule 17Ad–22(e)(17)(ii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring, in part, that systems have a high degree of security, resiliency, and operational reliability.[25] As noted above, FICC's operational risks include protecting its electronic systems from cyber risks.

Although FICC believes that its members and applicants for membership may currently maintain robust cybersecurity programs, FICC currently does not require those entities to represent that they maintain a cybersecurity program as a condition for connecting to FICC via the SMART network or other means. FICC designed the proposed Cybersecurity Confirmation requirement to reduce cyber risks by requiring its members and applicants for membership to confirm that they have defined and maintain cybersecurity programs and frameworks that meet standard industry best practices and guidelines. The representations in each submitting entity's Cybersecurity Confirmation would provide more security for FICC's SMART network and other systems by providing FICC with information designed to help manage its cyber-related operational risks, which in turn, would enable FICC to take steps necessary to strengthen the security of its network to mitigate those risks. Since the proposal would enhance FICC's ability to ensure that its systems have a high degree of security, resiliency, and operational reliability, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(17)(ii) under the Act.[26]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act[27] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[28] that proposed rule change SR–FICC–2019–005, be, and hereby is, APPROVED.[29]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26844 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[22] *Id.*

[23] 17 CFR 240.17Ad–22(e)(17)(i).

[24] *Id.*

[25] 17 CFR 240.17Ad–22(e)(17)(ii).

[26] *Id.*

[27] 15 U.S.C. 78q–1.

[28] 15 U.S.C. 78s(b)(2).

[29] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87698; File No. SR–DTC–2019–008]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Require Confirmation of Cybersecurity Program

December 9, 2019.

I. Introduction

On October 15, 2019, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–DTC–2019–008. The proposed rule change was published for comment in the **Federal Register** on October 30, 2019.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 87393 (October 24, 2019), 84 FR 58189 (October 30, 2019) (SR–DTC–2019–008) (''Notice'').

below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

DTC proposes to modify the Rules, By-Laws and Organization Certificate of DTC (''Rules'')[4] in order to (1) define the term ''Cybersecurity Confirmation'' as a written representation that addresses a submitting entity's cybersecurity program (described more fully below); and (2) require DTC's Participants, Pledgees, and applicants for membership as a Participant or Pledgee (''Applicants'') to submit to DTC a Cybersecurity Confirmation (both as part of an initial application for membership and on an ongoing basis for Participants and Pledgees, at least every two years).

A. Background

DTC serves as the central securities depository for substantially all corporate and municipal debt and equity securities available for trading in the United States.[5] DTC provides depository services and asset servicing for a wide range of security types such as money market instruments, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, and collateralized mortgage obligations.[6] DTC's custodial services include the safekeeping, record keeping, book entry transfer, and pledge of securities among its Participants and Pledgees.[7] DTC also provides services to securities issuers, such as maintaining current ownership records and distributing payments to shareholders.[8] In light of DTC's critical role in the marketplace, DTC was designated a Systemically Important Financial Market Utility (''SIFMU'') under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[9] Due to DTC's unique position in the marketplace, a failure or a disruption to DTC could, among other things, increase the risk of significant liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.[10]

DTC's Participants and Pledgees connect to DTC, either through the Securely Managed and Reliable Technology (''SMART'') network or through other electronic means, such as a third party service provider, service bureau, network, or the internet. The SMART network is a technology managed by DTC's parent company, The Depository Trust & Clearing Corporation (''DTCC''), that connects a nationwide complex of networks, processing centers, and control facilities. Currently, DTC does not require its Participants, Pledgees, or Applicants to represent that they maintain a cybersecurity program as a condition for connecting to DTC via the SMART network or other means.

DTC states that many of its Participants, Pledgees, and Applicants may currently be subject to regulations that are designed, in part, to protect against cyberattacks.[11]

Accordingly, such entities would currently be required to follow standards established by national or international organizations focused on information security management, and they would currently maintain protocols for their senior management to verify the existence of cybersecurity programs sufficient to meet regulatory obligations. DTC further believes that some of its Participants, Pledgees, and Applicants might also currently follow protocols substantially similar to the regulations referred to earlier in this paragraph in order to meet the evolving cybersecurity expectations of regulators and/or their own institutional customers.[12]

Although DTC believes that its Participants, Pledgees, and Applicants may currently maintain robust cybersecurity programs, DTC seeks to better ensure the protection of its network by requiring its Participants, Pledgees, and Applicants to confirm that they are meeting certain cybersecurity standards in order to connect to DTC via the SMART network or other means. Therefore, DTC proposes to require all Participants, Pledgees, and Applicants to submit a written Cybersecurity Confirmation that includes specific representations regarding the submitting entity's cybersecurity program and framework. DTC states that the information contained in the Cybersecurity Confirmation would help DTC to better understand the cybersecurity programs and frameworks of entities seeking to connect to DTC, and thereby identify possible cyber risk exposures.[13] As a result, DTC would be better able to establish appropriate controls to mitigate such risks and their possible impacts on DTC's operations.

B. Proposed Changes

DTC proposes to modify its Rules to: (1) Provide a detailed definition of the Cybersecurity Confirmation; and (2) require DTC's Participants, Pledgees, and Applicants to submit to DTC a Cybersecurity Confirmation (both as part of an initial application for membership, and on an ongoing basis for members, at least every two years). Each of these proposed rule changes is described in greater detail below.

1. Cybersecurity Confirmation

DTC proposes to define the term ''Cybersecurity Confirmation'' to mean a written form, in a format provided by DTC and signed by the submitting entity's designated senior executive with the authority to attest to the cybersecurity matters contained in the form.[14] The form would contain specific representations regarding the submitting entity's cybersecurity program and framework. Such representations would cover the two years prior to the date of the most recently provided Cybersecurity Confirmation. The Cybersecurity Confirmation would include the following representations:

- The submitting entity has defined and maintains a comprehensive cybersecurity program and framework that considers potential cyber threats that impact the submitting entity's organization, and protects the confidentiality, integrity, and availability requirements of its systems and information.
- The submitting entity has implemented and maintains a written enterprise cybersecurity policy or policies approved by the submitting entity's senior management or board of directors, and the submitting entity's

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] *See* Financial Stability Oversight Counsel 2012 Annual Report, Appendix A (''FSOC 2012 Report''), *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] 12 U.S.C. 5465(e)(1). *See* FSOC 2012 Report, *supra* note 5.

[10] *See* FSOC 2012 Report, *supra* note 5.

[11] For example, depending on the type of entity, DTC states that its members may be subject to one or more of the following regulations: (1) Regulation S–ID, which requires ''financial institutions'' or ''creditors'' under the rule to adopt programs to identify and address the risk of identity theft of individuals (17 CFR 248.201–202); (2) Regulation S–P, which requires broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (17 CFR 248.1–30); and (3) Rule 15c3–5 under the Act, known as the ''Market Access Rule,'' which requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of its management controls and supervisory procedures (17 CFR 240.15c3–5). Notice, *supra* note 3, at 58190.

[12] *Id.*

[13] *Id.*

[14] Notice, *supra* note 3, at 58191. *See also* DTC Cybersecurity Confirmation Form, submitted as Exhibit 3 to SR–DTC–2019–008, *available at https://www.sec.gov/rules/sro/dtc/2019/34-87393-ex3.pdf.*

cybersecurity framework is in alignment with standard industry best practices and guidelines.[15]

• If the submitting entity uses a third party service provider or service bureau(s) to connect or transact business or to manage the connection with DTC, the submitting entity has an appropriate program to evaluate the cyber risks and impact of these third parties and to review the third party assurance reports.

• The submitting entity's cybersecurity program and framework protects the segment of its system that connects to and/or interacts with DTC.

• The submitting entity has in place an established process to remediate cyber issues identified to meet its regulatory and/or statutory requirements.

• The submitting entity periodically updates the risk processes of its cybersecurity program and framework based on a risk assessment or changes to technology, business, threat ecosystem, and/or regulatory environment.

• The submitting entity's cybersecurity program and framework has been reviewed by one of the following: (1) The submitting entity, if it has filed and maintains a current Certification of Compliance with the Superintendent of the New York State Department of Financial Services confirming compliance with its Cybersecurity Requirements for Financial Services Companies;[16] (2) a regulator who assesses the submitting entity's cybersecurity program and framework against an industry cybersecurity framework or industry standard, including those that are listed on the Cybersecurity Confirmation form and in an Important Notice that is issued by DTC from time to time;[17] (3) an independent external entity with cybersecurity domain expertise in relevant industry standards and practices, including those that are listed on the Cybersecurity Confirmation form and in an Important Notice that is issued by DTC from time to time;[18] or (4) an independent internal audit function reporting directly to the submitting entity's board of directors or designated board of directors committee, such that the findings of that review are shared with these governance bodies.

DTC states that it designed the representations in the Cybersecurity Confirmation to provide information on how each submitting entity manages cybersecurity with respect to its connectivity to DTC.[19] DTC believes that by requiring these representations from Participants, Pledgees, and Applicants, the proposed Cybersecurity Confirmation would provide useful information designed to enable DTC to make informed decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and otherwise protect the DTC network.[20]

2. Initial and Ongoing Membership Requirement

DTC proposes to require new Applicants to submit a Cybersecurity Confirmation as part of their application materials. DTC also proposes to require all DTC Participants and Pledgees to submit a Cybersecurity Confirmation at least every two years. With respect to the requirement to submit a Cybersecurity Confirmation at least every two years, DTC would provide all Participants and Pledgees with notice of the date on which the Cybersecurity Confirmation would be due no later than 180 calendar days prior to the due date.

C. Implementation Timeframe

The proposed rule change would be effective upon Commission approval. New Applicants would be required to submit a Cybersecurity Confirmation as part of their application materials. The requirement to submit a Cybersecurity Confirmation would also apply to Applicants whose applications are pending with DTC at the time the Commission approves the proposed rule change. For existing DTC Participants and Pledgees, DTC would provide notice of the due date to submit a Cybersecurity Confirmation, not later than 180 days prior to the due date. Finally, DTC would provide such notice to its Participants and Pledgees at least every two years going forward.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[21] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[22] and Rules 17Ad–22(e)(17)(i) and (e)(17)(ii) promulgated under the Act,[23] for the reasons described below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[24]

As described above, DTC proposes to require its Participants, Pledgees, and Applicants to submit a Cybersecurity Confirmation, confirming the existence and nature of their cybersecurity programs. The Cybersecurity Confirmations should provide DTC with useful information regarding the cybersecurity programs of the

[15] Examples of recognized frameworks, guidelines and standards that DTC believes are adequate include the Financial Services Sector Coordinating Council Cybersecurity Profile, the National Institute of Standards and Technology Cybersecurity Framework (''NIST CSF''), International Organization for Standardization (''ISO'') standard 27001/27002 (''ISO 27001''), Federal Financial Institutions Examination Council (''FFIEC'') Cybersecurity Assessment Tool, Critical Security Controls Top 20, and Control Objectives for Information and Related Technologies. DTC would identify recognized frameworks, guidelines and standards in the form of Cybersecurity Confirmation and in an Important Notice that DTC would issue from time to time. DTC would also consider accepting other standards upon request. Notice, *supra* note 3, at 58191.

[16] 23 N.Y. Comp. Codes R. & Regs. tit. 23, § 500 *et seq.* (2017). DTC states that this regulation requires entities to confirm that they have comprehensive cybersecurity programs as described in the regulation, and DTC believes this regime is sufficient to meet the objectives of the proposed Cybersecurity Confirmation. Notice, *supra* note 3, at 58191.

[17] DTC states that current industry cybersecurity frameworks and industry standards could include, for example, the Office of the Comptroller of the Currency or the FFIEC Cybersecurity Assessment Tool. DTC would identify acceptable industry cybersecurity frameworks and standards in the Cybersecurity Confirmation form and in an Important Notice that DTC would issue from time to time. DTC would also consider accepting other industry cybersecurity frameworks and standards upon request. Notice, *supra* note 3, at 58191.

[18] DTC states that a third party with cybersecurity domain expertise is one that follows and understands applicable industry standards, practices, and regulations, such as ISO 27001 certification or NIST CSF assessment. DTC would identify acceptable industry standards and practices in the Cybersecurity Confirmation form and in an Important Notice that DTC would issue from time to time. DTC would also consider accepting other industry standards and practices upon request. Notice, *supra* note 3, at 58191.

[19] *Id.*

[20] *Id.*

[21] 15 U.S.C. 78s(b)(2)(C).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

[24] 15 U.S.C. 78q–1(b)(3)(F).

submitting entities. By conditioning an entity's connectivity to DTC via the SMART network or other means on the submission of a Cybersecurity Confirmation, DTC should be better enabled to reduce the cyber risks of electronically connecting to entities that have not confirmed the existence and nature of their cybersecurity programs. Accordingly, the proposed Cybersecurity Confirmation requirement should provide DTC with information to better identify its exposure to cyber risks and to take steps to mitigate those risks.

If not adequately addressed, the risk of cyberattacks and other cyber vulnerabilities could affect DTC's network and DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in DTC's custody or control, or for which it is responsible. The proposed Cybersecurity Confirmation requirement is a tool designed to address those risks as described above. Therefore, the Commission finds the proposed Cybersecurity Confirmation requirement would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[25]

B. Consistency With Rule 17Ad–22(e)(17)(i) Under the Act

Rule 17Ad–22(e)(17)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[26] DTC's operational risks include protecting its electronic systems from cyber risks.

As described above, entities connect electronically to DTC via the SMART network or other means. The proposed Cybersecurity Confirmation requirement should reduce cyber risks to DTC by requiring Participants, Pledgees, and Applicants to confirm that they have defined and maintain cybersecurity programs and frameworks that meet standard industry best practices and guidelines. The representations in each submitting entity's Cybersecurity Confirmation would provide information that should help DTC to mitigate its exposure to cyber risks, and thereby decrease the operational risks presented to DTC by its connections to such entities. Thus, the proposed Cybersecurity Confirmations should enable DTC to better identify potential sources of external operational risks and mitigate the possible impacts of those risks. Because the proposed changes would help DTC identify and mitigate plausible sources of external operational risk, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(17)(i) under the Act.[27]

C. Consistency With Rule 17Ad–22(e)(17)(ii) Under the Act

Rule 17Ad–22(e)(17)(ii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring, in part, that systems have a high degree of security, resiliency, and operational reliability.[28] As noted above, DTC's operational risks include protecting its electronic systems from cyber risks.

Although DTC believes that its Participants, Pledgees, and Applicants may currently maintain robust cybersecurity programs, DTC currently does not require those entities to represent that they maintain a cybersecurity program as a condition for connecting to DTC via the SMART network or other means. DTC designed the proposed Cybersecurity Confirmation requirement to reduce cyber risks by requiring its Participants, Pledgees, and Applicants to confirm that they have defined and maintain cybersecurity programs and frameworks that meet standard industry best practices and guidelines. The representations in each submitting entity's Cybersecurity Confirmation would provide more security for DTC's SMART network and other systems by providing DTC with information designed to help manage its cyber-related operational risks, which in turn, would enable DTC to take steps necessary to strengthen the security of its network to mitigate those risks. Since the proposal would enhance DTC's ability to ensure that its systems have a high degree of security, resiliency, and operational reliability, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(17)(ii) under the Act.[29]

[25] *Id.*

[26] 17 CFR 240.17Ad–22(e)(17)(i).

[27] *Id.*

[28] 17 CFR 240.17Ad–22(e)(17)(ii).

[29] *Id.*

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act[30] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[31] that proposed rule change SR–DTC–2019–008, be, and hereby is, *approved.*[32]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26845 Filed 12–12–19; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78q–1.

[31] 15 U.S.C. 78s(b)(2).

[32] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16216 and #16217; MISSISSIPPI Disaster Number MS–00117]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4470–DR), dated 12/06/2019.

Incident: Severe Storm, Straight-line Winds, and Flooding.

Incident Period: 10/26/2019.

DATES: Issued on 12/06/2019.

Physical Loan Application Deadline Date: 02/04/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 09/08/2020.

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 President's major disaster declaration on

12/06/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Alcorn, Covington, Itawamba, Jasper, Jefferson Davis, Leake, Lee, Marion Neshoba, Newton, Pontotoc, Prentiss, Scott, Simpson, Smith, Tippah.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.75
Non-Profit Organizations Without Credit Available Elsewhere	2.75
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.75

The number assigned to this disaster for physical damage is 16216B and for economic injury is 162170.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–26875 Filed 12–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16218 and #16219; Tennessee Disaster Number TN–00117]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA—4471—DR), dated 12/06/2019.

Incident: Severe Storm and Straight-line Winds.

Incident Period: 10/26/2019.

DATES: Issued on 12/06/2019.

Physical Loan Application Deadline Date: 02/04/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 09/08/2020.

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 President's major disaster declaration on 12/06/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Benton, Decatur, Hardin, Henderson, Houston, Humphreys, Mcnairy, Montgomery, Perry, Wayne

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16218B and for economic injury is 162190.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–26873 Filed 12–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16216 and #16217; MISSISSIPPI Disaster Number MS–00117]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of MISSISSIPPI (FEMA–4470–DR), dated 12/06/2019.

Incident: Severe Storm, Straight-line Winds, and Flooding.

Incident Period: 10/26/2019.

DATES: Issued on 12/06/2019.

Physical Loan Application Deadline Date: 02/04/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 09/08/2020.

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 President's major disaster declaration on 12/06/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Alcorn, Covington, Itawamba, Jasper, Jefferson Davis, Leake, Lee, Marion Neshoba, Newton, Pontotoc, Prentiss, Scott, Simpson, Smith, Tippah

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 16216B and for economic injury is 162170.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–26874 Filed 12–12–19; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36362]

New Orleans Public Belt Railroad Corporation—Lease and Operation Exemption—Line of Illinois Central Railroad Company

New Orleans Public Belt Railroad Corporation (NOPB Corp.), a Class III railroad,[1] has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Illinois Central Railroad Company (IC) and operate a line of railroad extending (1) between approximately IC milepost 906.1 at Central Avenue near East Bridge Junction in Shrewsbury, La., and the end of the track at approximately IC milepost 908.8 in Jefferson Parish, La., and (2) between approximately IC milepost 921.8 at Iris Avenue (approximately IC milepost 908.5 on the first segment) and approximately IC milepost 921.14 at Dakin Street near Lampert Junction in Jefferson Parish (the Line), a total distance of approximately 3.36 miles. Between East Bridge Junction and Iris Avenue the Line consists of parallel tracks known as the Main Track and the A2 Track.

The verified notice states that NOPB Corp. and IC will shortly execute a Track Lease Agreement providing for NOPB Corp.'s lease and operation of the Line and that NOPB Corp.'s operations will include providing local service and conducting maintenance on the Line.[2] According to NOPB Corp., existing trackage rights operations of Union Pacific Railroad Company and The Kansas City Southern Railway Company and operations of the National Railroad Passenger Corporation (Amtrak) on the Line will not be affected by the proposed transaction. IC will continue to perform dispatching on the Line and will retain rights to operate its own trains.

NOPB Corp. certifies that the proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

NOPB Corp. further certifies that its projected annual revenues as a result of the proposed transaction will not result in the creation of a Class II or Class I rail carrier. Pursuant to 49 CFR 1150.42(e), which applies ''[i]f the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million,'' on October 31, 2019, NOPB Corp. posted the 60-day notice of the transaction required by § 1150.42(e) at the workplaces of current IC employees on the Line, served the notice on the national offices of the labor unions for those employees, and certified both actions to the Board.

The earliest this transaction may be consummated is December 30, 2019 (60 days after the certification under 49 CFR 1150.42(e) was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 23, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36362, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NOPB Corp.'s representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to NOPB Corp., this action is categorically excluded from environmental review under 49 CFR 1105.7(e) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 9, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2019–26917 Filed 12–12–19; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notice states that NOPB Corp., a wholly owned subsidiary of the Board of Commissioners of the Port of New Orleans, is a switching and terminal railroad that provides services to local shippers and six Class I railroads in the New Orleans area. NOPB Corp. began operations in 2018 upon acquiring the railroad operating assets of the Public Belt Railroad Commission of the City of New Orleans. *See New Orleans Pub. Belt R.R.—Acquis. & Operation Exemption—Pub. Belt R.R. Comm'n,* FD 36149 (STB served Dec. 27, 2017).

[2] NOPB Corp. currently conducts overhead operations on a portion of the Line pursuant to trackage rights previously granted by IC. *See New Orleans Pub. Belt R.R.—Trackage Rights Exemption—Ill. Cent. R.R.,* FD 33182 (STB served Oct. 30, 1996).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36284]

Seven County Infrastructure Coalition—Rail Construction & Operation—in Utah, Carbon, Duchesne, and Uintah Counties, Utah

AGENCY:

Lead: Surface Transportation Board (Board).

Cooperating: U.S. Department of the Interior, Bureau of Indian Affairs; State of Utah Public Lands Policy Coordinating Office; Department of the Army, U.S. Army Corps of Engineers; U.S. Department of the Interior, Bureau of Land Management (BLM); U.S. Department of Agriculture, Forest Service (U.S. Forest Service).

ACTION: Notice of Availability of the Final Scope of Study for the Environmental Impact Statement (EIS).

SUMMARY: The Seven County Infrastructure Coalition (Coalition) intends to seek Board approval to construct and operate an approximately 85-mile rail line between the Uinta Basin in northeastern Utah and an existing rail line near Kyune, Utah. On June 19, 2019, the Board's Office of Environmental Analysis (OEA) issued a Notice of Intent to Prepare an EIS and a Notice of Availability of the Draft Scope of Study (Draft Scope), pursuant to National Environmental Policy Act (NEPA). OEA requested comments on the Draft Scope from federal, state, and local agencies; tribes; other interested stakeholders; and the public during the public scoping period and held six public meetings in the project area. After review and consideration of all comments received, this notice sets forth the Final Scope of Study (Final Scope) of the EIS. The Final Scope reflects additions and changes to the Draft Scope as a result of comments received during the scoping comment period. The Final Scope also summarizes and addresses the principal environmental concerns raised by the comments on the Draft Scope and explains if and how these issues will be addressed in the EIS.

FOR FURTHER INFORMATION CONTACT: Joshua Wayland, Office of Environmental Analysis, Surface Transportation Board, 395 E Street SW, Washington, DC 20423, or call the OEA's toll-free number for the project at 1–855–826–7596. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. The website for the Board is *https://www.stb.gov.* For further information about the Board's

environmental review process and the EIS, you may also visit the Board-sponsored project website at *www.uintabasinrailwayeis.com.*

SUPPLEMENTARY INFORMATION:

Background

The Coalition proposes to construct and operate an approximately 85-mile rail line between two terminus points in the Uinta Basin near Myton, Utah, and Leland Bench, Utah, and the interstate rail network. The Coalition anticipates that shippers would use the proposed rail line to transport crude oil, and potentially, other mineral and agricultural products, out of the Uinta Basin to markets across the United States. The proposed rail line could also be used to move products and commodities, such as fracturing sand, proppant, steel, and machinery, to markets in the Uinta Basin. Depending on future market conditions, the Coalition estimates that between 3.68 and 9.98 trains could move along the proposed rail line per day, on average, including loaded and unloaded trains.

The Coalition is proposing to construct a route that would extend generally southwest from terminus points in the Uinta Basin to a connection with an existing rail line owned by Union Pacific Railroad Company (UP) near Kyune, Utah (the Whitmore Park Alternative). That route would generally parallel U.S. Route 191 through Indian Canyon and would be located within Utah, Carbon, Duchesne, and Uintah Counties in Utah. In addition to the Whitmore Park Alternative, the EIS will also consider two additional alternatives that OEA believes would be reasonable and feasible to construct and operate and that would meet the purpose and need of the proposed project. Those alternatives are the Indian Canyon Alternative and the Wells Draw Alternative, both of which would have the same terminus points as the Whitmore Park Alternative but would follow different alignments. A fourth potential alternative—the Craig Route—was considered early in the NEPA process but was eliminated after new information collected during the scoping process indicated that the Craig Route would not meet the project's purpose and need and would result in disproportionately significant environmental impacts. The EIS will compare the environmental impacts of the three reasonable and feasible alternatives to the No-Action Alternative, which would occur if the Board were to deny the Coalition's request for construction and operation authority. Additional information regarding the proposed rail line, including detailed descriptions of the Whitmore Park, Indian Canyon, and Wells Draw routes, are set forth in the Final Scope below.

Possible Resource Management Plan Amendments

In compliance with NEPA and the Federal Land Policy and Management Act of 1976, as amended, BLM is participating as a cooperating agency on this EIS with the Board because construction of the proposed rail line would require an issuance of a right-of-way permit across BLM-managed lands. The three build alternatives may cross BLM-administered lands for which a rail right-of-way would not currently be in conformance with the applicable Resource Management Plans (RMPs). Therefore, BLM may need to consider amending one or more RMPs to permit the rail line right-of-way. If so, BLM intends to use the EIS to support decision-making regarding the issuance of a right-of-way and to consider amending the current Price RMP (2008), Vernal RMP (2008), and Salt Lake Pony Express RMP (1990), depending on which, if any, route is ultimately approved by the Board. Plan amendments change one or more of the terms, conditions, or decisions of an approved land use plan. These decisions may include those relating to desired outcomes; measures to achieve desired outcomes, including resource restrictions; or land tenure decisions. The BLM Authorized officer may consider plan amendments for any proposal or action that does not conform to the current plan. As part of BLM's planning process a 30-day protest period is required following the publication of the Final EIS for any amendment decisions to BLM RMPs. Additional information regarding the plan amendment process can be found in the BLM Land Use Planning Handbook (*https://www.blm.gov/policy/handbooks*).

Possible Forest Land Management Plan Amendment

In compliance with NEPA and the U.S. Forest Service's 2012 Planning Rule, Ashley National Forest is also participating as a cooperating agency on this EIS with the Board. Because the Indian Canyon Alternative and the Whitmore Park Alternative would cross National Forest System (NFS) lands, Forest Service approval for permitting the rail line right-of-way may be required. The Forest Service decision on whether to permit the rail right-of-way may also include determining whether to amend the Ashley Forest Land and Resource Management Plan (Ashley Forest Plan). The Forest Service will use the EIS to inform its decision on the necessary approvals and, if needed, the Ashley Forest Plan amendment. In the event that the Forest Service decides to amend the Ashley Forest Plan, the Forest Service has given notice that the scope is expected to be limited to the proposed rail line only, and the scale of the amendment is the project area that occurs on NFS lands. The Forest Service has also given notice that the substantive requirements of the 2012 Planning Rule (36 CFR 219) are likely to be directly related and, therefore, applicable to the Ashley Forest Plan amendments are 36 CFR 219.8(b)(1) and (2) (specifically scenic character), regarding social and economic sustainability, and 36 CFR 219.10(a)(1) (specifically scenery) and (3) (specifically transportation), regarding integrated resource management for multiple use. The Forest Service responsible official is the Ashley Forest Supervisor.

Environmental Review Process

Purpose and Need

The proposed project involves a request from the Coalition for Board authority to construct and operate a common carrier rail line as part of the interstate rail network. The proposed rail line is not a federal government-proposed or sponsored project. Accordingly, the project's purpose and need is informed by both the governing statute of the lead federal agency and the goals of the applicant. Under the Board's enabling statute—the Interstate Commerce Act as amended by the ICC Termination Act—construction and operation of new rail lines require prior authorization by the Board under 49 U.S.C 10901(c), which is a permissive authorization standard. It directs the Board to grant construction proposals ''unless'' the Board finds the proposal ''inconsistent with the public convenience and necessity.'' Thus, there is a statutory presumption that rail construction projects are in the public interest unless shown otherwise.

The Coalition has stated that the purpose of the proposed rail line is to provide common-carrier rail service connecting the Uinta Basin in northeastern Utah to the interstate common-carrier rail network using a route that would allow the Coalition to attract shippers with a cost-effective rail alternative to trucking. Currently, all freight moving into and out of the basin is transported by trucks on the area's limited road network, which includes

one north-south two-lane highway (U.S. Highway 191) and one east-west two-lane highway (U.S. Highway 40). According to the Coalition, the proposed rail line would provide customers in the Uinta Basin with multi-modal options for the movement of freight to and from the Uinta Basin; promote a safe and efficient system of freight transportation in and out of the Uinta Basin; further the development of a sound rail transportation system with effective competition among differing modes of transportation; and foster sound economic conditions in transportation and effective competition and coordination between differing modes of transportation.

Proposed Action and Alternatives

The proposed rail line would extend from two termini in the Uinta Basin near Myton and Leland Bench to a connection to an existing UP rail line near Kyune. It would consist of a single track constructed of continuous-welded rail and would require a right-of-way approximately 100-feet wide along much of its length, although the right-of-way could be substantially wider in some locations. Construction of the proposed rail line would require significant regrading and cut-and-fill to traverse the rugged topography of the project area; creation of new access roads for construction and right-of-way maintenance; construction of several railroad tunnels; and placement of new crossings at roads, streams, trails, and utility corridors. Maps of the Coalition's proposed route and reasonable and feasible alternative routes are available on the Board-sponsored project website at *www.uintabasinrailwayeis.com.*

The volume of rail traffic on the proposed rail line during operations would depend on future demand for products from the Uinta Basin, especially crude oil. Depending on future oil market conditions, the Coalition estimates that between 3.68 and 9.92 crude oil trains and between zero and 0.6 fracking trains would move along the proposed rail line per day, on average, including loaded and unloaded trains, for a total of between 3.68 and 9.98 trains per day, on average. The Coalition does not anticipate that volumes of other products moving into or out the Uinta Basin would be sufficient to require additional dedicated manifest trains. The Coalition expects that crude oil unit trains would have, on average, 110 rails cars per train, regardless of whether the train was loaded or empty. The destinations of outbound oil trains would depend on future market conditions, including future global demand for crude oil, but OEA anticipates that the majority of rail traffic on the proposed rail line would terminate at refineries on the Gulf Coast.

Alternatives To Be carried forward in the EIS:

The EIS will analyze and compare the potential impacts of construction and operation of the proposed rail line for all reasonable alternative routes and the No-Action alternative (denial of construction and operation authority). Following consultation with the cooperating agencies; other appropriate federal, state, and local agencies; tribes; other affected stakeholders; the public; and the Coalition, as the project applicant, OEA has determined that the reasonable alternatives that will be analyzed in detail in the EIS are:

- *Indian Canyon Alternative.* This 80-mile route would connect an existing UP rail line owned by UP near Kyune, Utah, to terminus points in the Uinta Basin near Myton, Utah and Leland Bench, Utah. Starting at Leland Bench, approximately 9.5 miles south of Fort Duchesne, Utah, this route would proceed westward, past the South Myton Bench area, until intersecting Indian Canyon approximately 2 miles south of Duchesne, Utah. After entering Indian Canyon, the route would turn southwest and follow Indian Creek upstream toward its headwaters below Indian Creek Pass, paralleling U.S. Highway 191 for approximately 21 miles. The Indian Canyon Alternative would use a summit tunnel to pass through the West Tavaputs Plateau and, after emerging from the tunnel, would descend the Roan Cliffs to reach Emma Park, an open grassy area at the base of the Roan Cliffs. The route would then run westward through Emma Park and connect to the UP Provo Subdivision near the railroad timetable station at Kyune.
- *Whitmore Park Alternative.* Based on information obtained through the scoping process (including data collection, technical evaluations, and public outreach) the Coalition developed the Whitmore Park Alternative as another alternative for further consideration in the EIS. The Whitmore Park Alternative would overlap for much of its length with the Indian Canyon Alternative but would deviate in certain areas to resolve issues with the Indian Creek Alternative identified through scoping. Specifically, the Whitmore Park Alternative would avoid impacts to residences in the Mini-Ranches area in Duchesne, Utah and to some other properties along the proposed rail line; would permit an improved crossing over U.S. Route 191; would allow the proposed rail line to avoid a slide area, which could improve the stability of the railway and reduce maintenance issues; and could potentially reduce impacts to greater sage-grouse leks in the Emma Park area of the Carbon Sage-Grouse Management Area, relative to the Indian Canyon Alternative. At this time, the Coalition has identified the Whitmore Park Alternative as the Coalition's preferred alternative.
- *Wells Draw Alternative.* This alternative would be approximately 105 miles long and would connect the existing UP rail line near Kyune, Utah to two terminus points in the Uinta Basin near Myton Bench, Utah and Leland Bench, Utah. The lines from those two terminus points would meet at a junction approximately 6.5 miles south of South Myton Bench. From that junction, the Wells Draw Alternative would run southward, generally following Wells Draw toward its headwaters. After reaching the headwaters of Wells Draw, the route would turn westward and enter Argyle Canyon. It would remain on the north wall of Argyle Canyon for approximately 25 miles, eventually reaching the floor of the canyon near the headwaters of Argyle Creek. The route would then enter a summit tunnel through the West Tavaputs Plateau and, after emerging from the tunnel, would descend the Roan Cliffs to reach Emma Park. The route would run westward through Emma Park and connect to the UP Provo Subdivision near Kyune.

Alternatives considered but eliminated from detailed study:

The three reasonable and feasible alternative alternatives described above were identified through several separate evaluations of potential routes for a rail line between the Uinta Basin and the interstate rail network. Because the Uinta Basin is surrounded by steep topography, the range of potential reasonable and feasible alternatives is greatly limited by engineering constraints, as well as by the costs of constructing a rail line through rugged and mountainous terrain. In a 2014 feasibility study, the Utah Department of Transportation (UDOT) initially identified 26 conceptual routes for a rail line to serve the Uinta Basin but eliminated 18 of those routes because they would require ruling grades that would be inconsistent with the safe and efficient operation of a rail line. In 2019, the Coalition reevaluated the 26 routes identified by UDOT and three additional routes that were not considered in the UDOT study. Among the 29 routes that the Coalition considered, 18 were eliminated because they would exceed the engineering standards that the Coalition set for safe

and efficient operation and three were eliminated because they would result in disproportionately significant environmental impacts. Of the remaining eight routes, five were eliminated after further analysis because they would not be technically or economically feasible to construct and operate.

Prior to the beginning of the scoping process, OEA reviewed the available information, including information submitted by the Coalition, and identified three routes as potential reasonable and feasible alternatives and requested public comments on those potential alternatives. In addition to the Indian Canyon Alternative and Wells Draw Alternative, OEA also initially considered the Craig Route, which would extend eastward approximately 185 miles from terminus points near Myton, Utah and Leland Bench, Utah to an existing rail line near Axial, Colorado. Based on comments received during scoping and OEA's independent review, OEA has now determined that the Craig Route is not a reasonable and feasible alternative because it would not meet the project's purpose and need and would result in disproportionate environmental impacts relative to the other routes that OEA has considered.

OEA received a number of comments during scoping, raising concerns regarding potential environmental impacts of the Craig Route, as well as the reasonableness and feasibility of that proposed alternative. On September 4, 2019, the Coalition submitted a comment letter to OEA explaining that the Coalition no longer believes the Craig Route would meet the project's purpose and need. First, the Coalition stated that two major segments of the Craig Route are currently private rail lines and the Coalition would need to obtain the right to operate over those private lines in order to construct and operate the Craig Route.[1] Second, the Coalition noted that if the Craig Route were constructed, shippers in the Uinta Basin would gain access only to a rail line owned and operated by UP, whereas both the Indian Canyon Alternative and the Wells Draw Alternative would give shippers access to both UP and BNSF Railway Company lines. According to the Coalition, the lack of access to two existing carriers on the Craig Route would result in higher rates for shippers and could affect the Coalition's ability to attract shippers and obtain financing. Third, the Coalition stated that the economic feasibility of the Craig Route could be affected by the high maintenance and operating costs on the UP Craig Subdivision, to which the Craig Route would connect. According to the Coalition, there is little current rail traffic on that UP rail line. Because trains from the proposed rail line would be the primary source of rail traffic on the UP Craig Subdivision, the Coalition could be forced to either purchase that UP line or incur substantial costs to ensure that it is adequately maintained. Finally, the Coalition noted the comments from federal, state, and local agencies discussed below regarding the disproportionate potential impact of the Craig Route to wildlife and other resources relative to the other proposed build alternatives.

Specifically, the Colorado State Office of the BLM (Colorado BLM) identified several potentially significant environmental impacts to specific resources that lead to the conclusion to dismiss the Craig Route from detailed analysis. Colorado BLM explained that the Craig Route would be inconsistent with BLM management decisions and would require an amendment to BLM resource management plans in order to permit a right-of-way. Colorado BLM identified potential significant environmental impacts to important greater sage-grouse and sharp-tailed grouse habitat, including several greater sage-grouse leks; important winter habitat for big game species, including pronghorn, mule deer, and elk; and habitat for the black footed ferret in the Wolf Creek Management Area. Other issues raised by Colorado BLM regarding the Craig Route include potential visual impacts and impacts to several threatened and endangered plant species known to occur in the project area. Because of its concerns concerning impacts, the Colorado BLM asked that OEA eliminate the Craig Route from further analysis.

The National Parks Service (NPS) submitted comments identifying potential environmental impacts—including increased air pollution, noise, and altered daytime viewsheds and dark night sky views—of the Craig Route on Dinosaur National Monument (DNM) that would be caused by the Craig Route's close proximity (within five miles) to the DNM. By comparison, the Indian Canyon Alternative and the Wells Draw Alternative would avoid these impacts because both routes would be more than 30 miles away from the DMN.

Colorado Parks and Wildlife (CPW) submitted comments raising concerns about the Craig Route due to the project area's extremely high value for numerous wildlife species and the potential of the proposed route to adversely affect those species. CPW identified eight properties in which CPW maintains an interest that would be bisected by the Craig Route, potentially resulting in the fragmentation of wildlife habitat or affecting public use of the properties. CPW noted that the Craig Route would cross numerous tributary streams of the White River and the Yampa River, which serve as spawning areas for federally and state listed threatened and endangered fish species. In addition, CPW commented that the Craig Route would cross crucial winter range areas and migration routes for mule deer and elk and also raised concerns regarding potential impacts to greater sage-grouse, sharp-tailed grouse, raptors, and blackfooted ferrets. Finally, CPW identified several proposed projects in the vicinity of the Craig Route that could potentially result in significant cumulative impacts to biological resources when considered in conjunction with the proposed rail line if the Craig Route is carried forward, including the Transwest Express Transmission Line, Energy Gateway South Transmission Line, Tri-State's Colowyo coal mine expansion, federal oil and gas leasing projects, and proposals for sand and gravel mining.

The comments of the commissioners of Moffat County, Colorado (Moffat County) did not ask OEA to eliminate the Craig Route, but raised several issues unique to the Craig Route that would need to be addressed if that route were carried forward in the EIS. Among these issues are the lack of the Craig Route's connection to an existing common carrier rail line in Colorado, which would require the Coalition to acquire rights to operate over private rail line in order to implement the proposed project if the Craig Route were approved. Moffatt County also pointed to potential bottleneck issues related to adding new rail traffic to parts of the proposed route that could make the Craig Route infeasible. Moffat County further noted the existence of several wildlife conservation easements along the Craig Route corridor and cited potential rail crossings that would need to intersect public roads and landowner concerns.

Based on careful consideration of the comments, and the results of its own environmental analysis conducted to date, OEA has concluded, based on the totality of the circumstances, that the Craig Route would not be a reasonable and feasible alternative for the proposed Uinta Basin Railway and that the route

[1] Private rail lines are not part of the interstate rail network, and therefore, are not subject to the Board's jurisdiction, including the railroads' common carrier obligation to provide rail service on reasonable request. *See* 49 U.S.C. 11101(a).

will not be carried forward for detailed analysis as an alternative in the EIS. Because of the substantially longer length relative to the other proposed alternatives and its location, construction and operation of the approximately 185-mile Craig Route would have disproportionate impacts on wildlife, the DNM, and other environmental resources. Based on OEA's analysis of available data, the Craig Route would require a greater number of water body crossings than the other proposed alternatives, would affect a greater area of wetlands, would likely require greater volumes of water during construction, and would have a greater potential to impact cultural resources, such as undiscovered archeological sites. The Craig Route is also the only one of the three initially proposed alternatives that would cross the Green River, which contains designated critical habitat for federally listed endangered fish species that are endemic to the Colorado River basin.

In summary, out of a total of 30 conceptual routes that have been considered to date, OEA has concluded that only three—the Whitmore Park Alternative, the Indian Canyon Alternative, and the Wells Draw Alternative—would meet the project's purpose and need and would be reasonable and feasible to construct and operate. Those three routes, as well as the No-Action Alternative, will be carried forward in the EIS.

Public participation, agency consultation and government-to-government consultation:

As part of the environmental review process to date, OEA has conducted broad outreach to inform the public, federally recognized tribes, and agencies about the proposed action and to facilitate participation in the NEPA process. OEA consulted with, and will continue to consult with, federal, state, and local agencies; tribes; affected communities; and all interested parties to gather and disseminate information about the proposed action. As part of that process, OEA has initiated government-to-government consultation with federally recognized tribal governments to seek, discuss, and consider the views of the tribes regarding the proposed action and alternatives.

Defining the project area:

In most rail construction and operation proposals, the railroad applicant defines the potential market areas to and from where it intends to transport goods. OEA is then able to assess potential environmental impacts within a defined geographic area. In this case, the destinations and origins of the trains that would travel on the proposed rail line would depend on future market conditions, including future global demand for crude oil. As part of its analysis in the EIS, OEA will use available information to identify potential markets for crude oil produced in the Uinta Basin and potential routes that trains could take to reach those destinations, to the extent feasible. As appropriate under the Board's environmental regulations, OEA will analyze potential environmental impacts on existing rail lines that would experience an increase in rail traffic as a result of the construction and operation of the proposed rail line. OEA will define an appropriate project area in the EIS that will inform the public, enable all interested parties to participate in the environmental review process, and disclose the potential impacts of the Coalition's proposal to the Board so that it can take the requisite hard look at the environmental effects before making a fully informed decision.

Summary of scoping comments:

- *Analysis of Safety.* Commenters requested that the EIS analyze the potential for a decrease in traffic accidents and releases of hazardous materials due to fewer tanker trucks and other trucks on roadways, as a result of the addition of a rail transportation option. Commenters also expressed concern regarding the risk of train derailment, hazardous material release, and train collisions with vehicles at road crossings. Commenters questioned the feasibility of installing active warning devices at road crossings due of lack of electricity along proposed routes. Additionally, commenters expressed concern regarding rail/road grade crossing safety in winter conditions; expressed concern that the railway would limit accessibility for residents and emergency vehicles; and questioned plans and financial responsibility for responding to hazardous material releases. The Final Scope reflects that the EIS will consider these issues, as appropriate.
- *Analysis of Transportation Systems.* Commenters suggested that the proposed rail line could either decrease wear on highways by reducing long-haul trucking traffic or increase wear on highways by increasing local trucking traffic. Commenters expressed concern about the impact of railroad operations on local traffic, including wait times at crossings, and the impact of the railroad on planned road improvement and upgrade projects. Commenters also questioned the cost of trucking versus transportation by rail. The Draft Scope has been revised to clarify that the EIS will evaluate these issues, as appropriate.
- *Analysis of Land Use.*
  - *BLM-Administered Lands:* Commenters requested that the EIS evaluate Special Designation Areas, Lands with Wilderness Characteristics, wildland fires, range, and wild and scenic rivers. Commenters also requested that the EIS evaluate potential resource conflicts with travel management designations, rights-of-way, Special Recreation Management Areas, federal surface estate and mineral leases, and Areas of Critical Environmental Concern (ACECs). The Draft Scope has been revised to reflect that the EIS will consider these issues.
  - *Forest Service Administered Lands:* Commenters expressed concern with potential adverse impacts that the proposed rail line would have on Ashley National Forest and conformance with inventoried roadless areas. The Draft Scope has been revised to reflect that the EIS will evaluate these issues.
  - *Agricultural Lands.* Several commenters requested that the EIS evaluate potential impacts on farm and pasture operations, access to pastures for livestock, impacts on cattle (barriers to livestock movement and potential collisions), and impacts on irrigation systems. The Draft Scope has been revised to reflect that the EIS will evaluate these issues.
  - *General Land Use:* Commenters expressed concern about the potential adverse impacts on property values, and potential conflicts with other approved rights-of-way, and existing and future oil and gas operations and infrastructure. The Final Scope indicates that the EIS will evaluate the compatibility of the proposed rail line with existing land uses, as appropriate. The EIS will not consider the impact of the proposed rail line on private property values because such an analysis would be beyond the scope of the environmental review process under NEPA.
- *Analysis of Parks and Recreation.* Commenters expressed concern about the potential negative impacts on recreation in the area due to the construction and operation of the proposed rail line, including destruction of wilderness areas used for recreation and the impacts noise, air pollution, and degradation of the visual surroundings have on the desire to recreate in the area. The Final Scope reflects that the EIS will consider these issues, as appropriate.
- *Analysis of Biological Resources.*
  - *Fish.* Commenters expressed concern related to the effects stream

crossing structures (*e.g.,* culverts) on fish passage and the effects of hazardous materials (*e.g.,* spills) on aquatic habitat. The Final Scope reflects that the EIS will evaluate these potential impacts.

○ *Wildlife.* Commenters expressed concern with habitat destruction and fragmentation, disruption of wildlife movement and migration, wildlife displacement, noise and vibration effects, light effects, removal of wildlife access to food and water (*e.g.,* springs) sources, spills of hazardous materials, and wildlife mortality from train collisions. Commenters also expressed concern with potential impacts on riparian habitat and associated wildlife, as well as big game, greater-sage grouse, Columbian sharp-tailed grouse, raptors, and migratory birds. The Final Scope reflects that the EIS will consider these potential impacts, as appropriate.

○ *Vegetation.* Commenters expressed concern with reclamation and potential impacts on plants and vegetation communities from the establishment and spread of invasive, exotic, and noxious weeds during and after construction. The Final Scope reflects that the EIS will evaluate these potential impacts.

○ *Threatened and Endangered Species and other Sensitive Species.* The U.S. Fish and Wildlife Service, U.S. Forest Service, and BLM expressed concern with threatened and endangered species and other sensitive species under their management. The Center for Biological Diversity also expressed concern with known occurrences and observations of sensitive species as indicated by Utah Natural Heritage Program information. The Final Scope reflects that the EIS will consider potential impacts on these species, as appropriate.

• *Analysis of Water Resources.*

○ *Surface Water.* The U.S. Environmental Protection Agency recommended an analysis of the proposed rail line's impact on waters of the United States, riparian habitat, stream morphology and surface water and groundwater movement and flow, and construction stormwater. Commenters also expressed concern with hazardous material spills on surface waters and potential effects on Clean Water Act Section 303(d) listed impaired waterbodies, as well as potential stream relocations and stream impacts at rail line crossings. The Colorado Department of Public Health and Environment expressed concern with potential impacts on Yampa River and Colorado River systems. Some commenters expressed concern regarding the effects on irrigation systems, including the Uinta Basin Irrigation Company's main piped canal and open canal. The Final Scope reflects that the EIS will consider these potential impacts, as appropriate.

○ *Groundwater.* Commenters expressed concern regarding groundwater and springs from construction activities (*e.g.,* blasting) that could affect the geologic layers that hold these waters, particularly to landowners with water rights for private wells and springs. Commenters also expressed concern with impacts of hazardous material spills on groundwater, alterations of groundwater movement and flow, and impacts on freshwater springs on private and public lands, including the effect of rail tunnels that may be below springs. The Final Scope reflects that the EIS will consider these potential impacts, as appropriate.

○ *Wetlands and Floodplains.* Commenters expressed concern with wetland impacts and compliance with statutes, permits, and executive orders pertaining to wetlands. Commenters also expressed concern with the proposed rail line's potential impact on floodplains; the potential for flash floods, including along the Indian Canyon route and drainages off the north slope of Nine Mile Canyon; the potential for rail car spills in the floodplain; and maintenance/drainage issues related to culvert and bridge blockage during storms that could cause washouts. The Final Scope reflects that the EIS will consider these potential impacts, as appropriate.

• *Analysis of Geology and Soils and Paleontological Resources.* Commenters expressed concern with soil and geologic instability during construction (including during blasting) and operations (vibrations), and resultant landslides and rockfalls that might occur and potentially derail trains; tunnel instability; soil erosion, subsidence, and compaction; and flammable and explosive subsurface hydrocarbon gases (*e.g.,* methane) that may be encountered during construction and operations. A commenter requested that the geology and soils analysis include review of paleontological and mineral resources, noting that the Coalition's preferred route and each alternative traverse BLM Potential Fossil Yield Class (PFYC) 4 and 5 areas. The Final Scope reflects that the EIS will consider these potential impacts, as appropriate.

• *Analysis of Air Quality.* Commenters expressed concern that the existing poor air quality, especially during weather inversions in winter, and the associated health-related impacts (such as asthma), would be made worse by a rail line and increased oil and gas production, and that this needs to be analyzed in the EIS. Commenters stated that air emissions related to the proposed rail line, including emissions of greenhouse gases, should be estimated as part of the EIS analysis and that such estimates should include consideration of potential changes in truck traffic. Commenters also stated that the analysis should consider air quality information in the Ashley Forest Plan, include evaluation of applicability of the Clean Air Act's General Conformity Regulations and Transportation Conformity Regulations and regional air quality impacts, such as acid deposition and criteria pollutant concentrations in Class I (*e.g.,* Mount Zirkel Wilderness Area) and sensitive Class II (*e.g.,* Dinosaur National Monument and Flaming Gorge National Recreation Area) areas. Commenters requested that the air quality analysis include impacts on air quality from new and increased refining capacity at the destinations where refining would take place. The Final Scope makes clear that these issues will be addressed in the EIS, as appropriate.

• *Analysis of Noise and Vibration.* Commenters raised concerns about noise impacts during construction and operation of the proposed rail line, including potential effects on livestock and wildlife, as well as quality of life and private property values. Commenters also expressed concern about potential vibration impacts, including rattling windows, rock fall, and damage to springs and irrigation pipelines. One commenter requested that, along with considering sound volume and A-weighted decibels (dBA), the noise and vibration impact analysis in the EIS provide a multi-octave analysis of both tonal and low frequency noise components. The Final Scope explains that the EIS will consider these issues, as appropriate, except for the requested multi-octave analysis, which is not required for evaluation of potential noise impacts and would be inconsistent with the Board's established approach for assessing those impacts.

• *Analysis of Energy Resources.* Comments on energy resources were related to the potential for the rail line to increase oil and gas production in the basin. That issue is encompassed in the Final Scope and will be addressed in the EIS, as appropriate.

• *Analysis of Socioeconomics.* Many comments involved job creation and commenters expressed opinions about the extent of temporary versus long-term job creation, the potential for the rail

line to displace trucking jobs, and the potential benefits of long-term job creation for communities. Commenters had conflicting opinions about the market sectors that would likely benefit from construction of the proposed rail line and whether rail construction and operation would result in adverse or beneficial social effects. Commenters stated that the proposed rail line would increase revenue generation on state lands for public education and result in increased tax revenue and royalty payments. Commenters also expressed concern about the impact that an influx of temporary workers would have on local communities and the potential for the workforce to exceed the capacity of hotels, housing, and other infrastructure; affect housing prices; and displace low-income tenants. Commenters specifically requested that the EIS include a cost-benefit analysis; an analysis of the economic benefits of more efficient transportation by rail; an analysis of the opportunity costs of the No-Action Alternative; and an analysis of impacts on ranchers. A cooperating agency requested that the EIS consider effects on nonmarket social values outside of defined communities, including impacts on opportunities for quiet recreation and sense of place. The Draft Scope has been revised to reflect that the EIS will analyze direct and indirect economic impacts, direct and indirect impacts on jobs, social impacts, impacts on communities, and impacts on nonmarket social values, as appropriate. The EIS will not include a cost-benefit analysis of the proposed rail line because such an analysis would be beyond the scope of the environmental review process under NEPA.

- *Analysis of Cultural and Historic Resources.* Commenters expressed concern regarding potential adverse impacts on historic sites and buildings, historic rock art, and petroglyphs. The Final Scope reflects that the EIS will consider these potential impacts, as appropriate.
- *Analysis of Aesthetics and Visual Resources.*
  - *Scenic Landscapes.* Commenters expressed concern regarding potential impacts on scenic landscapes, scenic byways, and lands with wilderness characteristics from construction and operation of the proposed rail line. Concerns were also expressed regarding light pollution. The Final Scope indicates that the EIS will evaluate these issues, as appropriate.
  - *Visual Resource Management (VRM).* The Nine Mile Canyon Coalition requested that the EIS use the BLM Visual Resource Inventory instead of BLM VRM for the baseline of the analysis. The Final Scope indicates that the EIS will reference applicable rating systems for assessing potential impacts on visual resources on federal lands.
- *Analysis of Environmental Justice.* One commenter recommended that OEA follow the methods outlined in the Environmental Justice Interagency Working Group's Promising Practices for Environmental Justice Methodologies in NEPA Reviews. A cooperating agency also provided agency-specific guidance on the methodology for identifying low-income, minority, and tribal populations. One commenter stated that the environmental justice analysis should consider impacts from noise, vibration, dust, and other air emissions, as well as impacts of the new rail line on traffic, emergency response times, and neighborhood connectivity. Some commenters requested that the scope of the environmental justice analysis include an assessment of downline environmental justice impacts along routes that would accommodate additional rail activity generated by the proposed rail line. The EIS will include an analysis of environmental justice impacts that is tiered to other resource analyses in the EIS and will consider whether analysis of downline impacts is warranted based on the projected number of train trips, where appropriate.

Final Scope of Study for the EIS

Proposed New Construction and Operation

Analysis in the EIS will address the proposed activities associated with the construction and operation of the proposed rail line and their potential environmental impacts, as appropriate.

Impact Categories

The EIS will analyze potential direct, indirect, and cumulative impacts [2] for the Coalition's proposed construction and operation of each reasonable and feasible alternative on the human and natural environment, or in the case of the No-Action Alternative, the lack of these activities. Impact areas addressed will include the categories of safety, transportation systems, land use, parks and recreation, biological resources, water resources including wetlands and other waters of the United States, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, cultural and historic resources, aesthetics, and environmental justice. The EIS will include a discussion of each impact area assessed as it currently exists in the project area and will address the potential direct impacts, indirect impacts, and cumulative impacts associated with each reasonable and feasible alternative and the No-Action Alternative.

1. Safety

If construction and operation of the proposed rail line would adversely or beneficially affect public safety in the project area, the EIS will:

a. Analyze the potential for a change in vehicle accident frequency and resulting hazardous material release frequency related to the operation of the proposed rail line.

b. Analyze the potential for increased probability of train accidents and hazardous material release.

c. Evaluate the potential for impacts on public safety due to operation-related wildfires and disruption and delays to the movement of emergency vehicles.

d. Propose mitigation measures to minimize or eliminate potential project impacts on safety, as appropriate.

2. Transportation Systems

Because construction and operation of the proposed rail line would affect transportation systems, the EIS will:

a. Evaluate the potential impacts, including vehicle traffic and delay at at-grade rail/road crossings, resulting from each alternative on the existing transportation network in the project area.

b. Propose mitigation measures to minimize or eliminate potential adverse project impacts on transportation systems, as appropriate.

3. Land Use

Because construction and operation of the proposed rail line would affect land use, the EIS will:

a. Assess potential impacts of the proposed rail line on public lands, including lands administered by BLM and the U.S. Forest Service. For example, the EIS will analyze potential impacts on Special Designation Areas; Lands with Wilderness Characteristics; wildland fires; range (grazing allotments); and, designated or eligible wild and scenic rivers. The EIS will evaluate potential resource conflicts with travel management designations, rights-of-way, Special Recreation Management Areas, federal surface estate and mineral leases, and ACECs.

[2] NEPA requires the Board to consider direct, indirect, and cumulative impacts. Direct and indirect impacts are both caused by the action. 40 CFR 1508.8(a) and (b). A cumulative impact is the ''incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.'' 40 CFR 1508.7.

b. Evaluate potential impacts of the proposed rail line on inventoried roadless areas within Ashley National Forest.

c. Analyze potential BLM and U.S. Forest Service land use plan amendments that may be required to permit the rail right-of-way on public lands.

d. Evaluate potential impacts of each alternative on existing land use patterns in the project area and identify those land uses that could be affected by construction and operation of the proposed rail line.

e. Analyze the direct and indirect impacts on farming and ranching practices and access, existing residences, and existing energy infrastructure (oil and gas). The EIS will analyze potential barriers to livestock movement, livestock collisions, and impacts on irrigation systems.

f. Analyze the potential direct and indirect impacts associated with each alternative on land uses identified in the project area. Potential impacts may include incompatibility with existing land use, conversion of land to railroad use, and, where readily available data exists, compatibility with conservation easements and other encumbrances on privately owned land.

g. Evaluate the potential for increased wildfire risk from construction and operation of the proposed rail line.

h. To the extent readily available data exists, the EIS will qualitatively describe Indian Trust Assets that may be affected by the proposed rail line, including surface and subsurface mineral rights, irrigable farmland, and local access, including access to allotted lands that may be isolated by the proposed rail line.

i. Propose mitigation measures to minimize or eliminate potential impacts on land use, as appropriate.

4. Parks and Recreation

If construction and operation of the proposed rail line would adversely or beneficially affect parks and recreational areas, the EIS will:

a. Evaluate existing conditions and the potential impacts of each alternative on parks, recreational trails, Special Recreation Management Areas, and other recreational opportunities provided in the project area. Analyze the potential direct and indirect impacts on recreation areas and recreational opportunities from construction and operation of the proposed rail line.

b. Evaluate the compatibility of each alternative with area management plans and local ordinances guiding recreational activities in the study area.

c. Propose mitigation measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

5. Biological Resources

If construction and operation of the proposed rail line would adversely or beneficially affect biological resources, the EIS will:

a. Evaluate the existing biological resources in the project area, including vegetative communities, wildlife, fish, and federal and state threatened or endangered species and other federal agency-managed sensitive species, and analyze the potential impacts on these resources resulting from the construction and operation of each alternative. For example, the EIS will include analyses on habitat removal and fragmentation (including riparian habitat); wildlife movement and migration disruptions, displacement, impedance of access to food and water sources; and mortality from collisions with trains. The EIS will also analyze potential impacts on federally and state-listed threatened and endangered species, other sensitive species managed by the Forest Service and BLM, and state sensitive species (*i.e.,* those species identified by the Utah Natural Heritage Data).

b. Specifically evaluate potential impacts to greater sage-grouse, greater sage-grouse habitat (including Priority Habitat Management Areas), and greater sage-grouse leks in the Carbon Sage-Grouse Management Area, one of eleven Sage-Grouse Management Areas in Utah.

c. Evaluate wildfire risk due to train operations (*e.g.,* sparks) and potential effects of wildfire on vegetation, habitat, and wildlife.

d. Evaluate the permanent and temporary impacts on vegetation communities from the proposed rail construction and operations and impacts from the potential introduction and spread of invasive and noxious weeds during and after construction.

e. Evaluate potential impacts from the proposed rail construction and operation on the aquatic habitat environment and fish, including the potential effects of stream-crossing structures (*i.e.,* culverts and bridges) on fish passage.

f. Evaluate impacts of contaminants and hazardous materials (*e.g.,* from possible oil spills) on the aquatic/terrestrial environments and aquatic/terrestrial wildlife for each of the alternatives, as appropriate.

g. Propose mitigation measures to avoid, minimize, or compensate for potential impacts on biological resources, as appropriate.

6. Water Resources

If construction and operation of the proposed rail line would adversely or beneficially affect water resources, the EIS will:

a. Describe the existing surface water and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, springs, and aquifers, and analyze the potential impacts on these resources resulting from the construction and operation of each alternative.

b. Describe existing floodplains in the project area and evaluate potential floodplain and flood flow impacts from construction and operation of each alternative.

c. Describe existing wetlands in the project area and evaluate potential impacts from construction and operation of each alternative, including permanent wetland fill, wetland alterations (*e.g.,* wetland vegetation clearing), and altered wetland functions.

d. Consider the potential impacts on groundwater and surface water quality, including 303(d) listed impaired surface waters, from rail construction and operation of each alternative.

e. Evaluate the potential impacts on water quantity from construction and operation of the proposed rail line, including use of surface water and groundwater, reductions in groundwater recharge, and impacts on irrigation systems, springs, and water rights.

f. Evaluate potential alterations of stream morphology and surface water and groundwater movement and flow from the presence of culverts, bridges, and rail embankments for each alternative.

g. Describe the permitting requirements for the various alternatives regarding wetlands, stream and river crossings, water quality, floodplains, and erosion control.

h. Propose mitigation measures to avoid, minimize, or compensate for potential project impacts on water resources, as appropriate.

7. Geology, Soils, and Paleontological Resources

If construction and operation of the proposed rail line would adversely or beneficially affect geology, soils, and paleontological resources, the EIS will:

a. Describe the geology, soils, and seismic conditions found in the project area, including landslide risk, soil erodibility, and seismic risk and analyze the potential impacts on these resources resulting from each alternative.

b. Evaluate potential impacts on the geologic and soil conditions (*i.e.,* stability) and potential for landslides during construction and operation of each alternatives.

c. Evaluate soil erosion, subsidence, and compaction impacts from construction and operation of each alternative.

d. Evaluate the potential for encountering flammable and explosive subsurface gases (*e.g.,* methane) during construction and operations, particularly during tunnel construction and operations through tunnels.

e. Propose mitigation measures to minimize or eliminate potential project impacts on geology and soils, as appropriate.

f. Describe existing paleontological localities and geologic units in the study areas of each alternative.

g. Evaluate the likelihood of rail construction impacts on scientifically significant paleontological resources.

h. Analyze the potential impact on paleontological resources in each alternative route right-of-way by identifying geologic units and the density of paleontological resources present within or near each alternative route right-of-way and propose mitigation for paleontological resources, as appropriate.

8. Air Quality

If construction and operation of the proposed rail line would adversely or beneficially affect air quality, the EIS will:

a. Evaluate the air emissions and air quality impacts from the potential operation of trains and project-related changes in truck traffic on the proposed rail line, including potential greenhouse gas emissions, as appropriate.

b. Evaluate the potential emissions from the freighted product, as appropriate.

c. Evaluate the potential air quality impacts resulting from new rail line construction activities.

d. Propose mitigation measures to minimize or eliminate potential project impacts on air quality, as appropriate.

9. Noise and Vibration

If construction and operation of the proposed rail line would result in noise and vibration impacts, the EIS will:

a. Describe the potential noise and vibration impacts during new rail line construction resulting from each alternative.

b. Describe the potential noise and vibration impacts of new rail line operations resulting from each alternative.

c. Propose mitigation measures to minimize or eliminate potential project impacts on sensitive noise receptors, as appropriate.

10. Energy Resources

If construction and operation of the proposed rail line would adversely or beneficially affect energy resources, the EIS will:

a. Describe and evaluate the potential impact of the proposed rail line on the distribution of energy resources in the project area resulting from each alternative, including petroleum and gas pipelines and overhead electric transmission lines, as appropriate.

b. Propose mitigation measures to minimize or eliminate potential project impacts on energy resources, as appropriate.

11. Socioeconomics

If construction and operation of the proposed rail line would result in adverse or beneficial socioeconomic impacts, the EIS will:

a. Analyze direct economic impacts of construction resulting from increased demand for labor and construction expenditures.

b. Analyze potential indirect economic impacts, such as induced job creation and economic growth, impacts on state and county revenue generation, and economic impacts on ranchers.

c. Analyze the effects of a potential influx of construction workers on the project area and the potential increase in demand for local services interrelated with natural or physical environmental effects.

d. Analyze temporary and permanent socioeconomic impacts related to the disruption or division of communities.

e. Consider effects on nonmarket social values outside of defined communities, including impacts on opportunities for quiet recreation and a diminished sense of place, and impacts on other noneconomic social values.

f. Propose mitigation measures to minimize or eliminate potential project-related adverse impacts on social and economic resources, as appropriate.

12. Cultural and Historic Resources

If construction and operation of the proposed rail line would adversely or beneficially affect cultural and historic resources, the EIS will:

a. Identify historic buildings, structures, sites, objects, or districts eligible for listing in or listed in the National Register of Historic Places (National Register) within the Area of Potential Effects (APE) for each alternative and analyze potential project impacts on them.

b. Identify properties of traditional religious and cultural importance to Indian tribes (Traditional Cultural Properties) and prehistoric or historic archaeological sites evaluated as potentially eligible, eligible, or listed in the National Register within the APE for each alternative and analyze potential project impacts on them.

c. Propose measures to avoid, minimize, or mitigate potentially adverse project impacts on Traditional Cultural Properties, built-environment historic properties, archaeological historic properties, and cultural and historic resources, as appropriate.

13. Aesthetics and Visual Resources

If construction and operation of the proposed rail line would have adverse or beneficial aesthetic impacts, the EIS will:

a. Describe the potential impacts of the proposed rail line on any areas identified or determined to be of high visual quality.

b. Establish candidate key observation points (KOPs) using the viewshed analysis and sensitive viewing points that would have views of the alternatives, document prominent visual features (*i.e.,* landforms, vegetation, rivers) associated with each candidate KOP and that may be affected by the alternatives, and record global positioning system (GPS) coordinates of the documentation photographs. Candidate KOPs will be evaluated against available design plans, factoring agency concerns and sensitive visual receptors, to determine which of the candidate KOPs should be selected for simulating.

c. Evaluate simulations by employing the BLM contrast rating system.

d. Evaluate changes to the existing visual character and quality of views, scenic vistas and scenic byways, and light and glare.

e. Analyze visual impacts associated with the proposed rail line and conformance with Forest Service and BLM visual resource classifications. Assess potential impacts on visual resources on federal lands by referencing the applicable rating systems, for example Forest Service Visual Quality Objectives (VQO) and BLM VRM system.

f. Describe the potential impacts of the proposed rail line on any waterways considered for or designated as wild and scenic.

g. Propose mitigation measures to minimize or eliminate potential project impacts on aesthetics and visual resources, as appropriate.

14. Environmental Justice

If construction and operation of the proposed rail line would adversely or

beneficially affect low-income or minority populations, the EIS will:

a. Evaluate the potential impacts resulting from each alternative on minority and low-income populations.

b. Determine if those effects are borne disproportionately by low-income or minority populations.

c. Propose mitigation measures to minimize or eliminate potential disproportionate project impacts on low-income or minority populations, as appropriate.

15. Cumulative Impacts

a. Identify and evaluate the cumulative impacts of the relevant past, present, and reasonably foreseeable future actions that make up the cumulative condition for each resource.

b. Determine the incremental contribution of the proposed rail line to the cumulative impacts for each resource. The cumulative impacts discussion will only include direct or indirect impacts found to result from one or more alternatives.

c. Identify reasonable, feasible options for avoiding or mitigating the alternatives' considerable contribution to cumulative impacts.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–26878 Filed 12–12–19; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1–31, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f)(13) and 18 CFR 806.22(f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)(13)

1. Beech Resources, LLC, Montoursville Borough Water Works; NOI–2019–0330; Montoursville Borough, Lycoming County, Pa.; Obtain Up to 0.4000 mgd; Approval Date: October 30, 2019.

Approvals by Rule—Issued Under 18 CFR 806.22(f)

1. Repsol Oil & Gas USA, LLC; Pad ID: SHERMAN (03 144) M; ABR–201910001; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 7, 2019.

2. EOG Resources, Inc.; Pad ID: Houseknecht 2H; ABR–20090419.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 10, 2019.

3. EOG Resources, Inc.; Pad ID: Ward M 1H; ABR–20090421.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 10, 2019.

4. EOG Resources, Inc.; Pad ID: Housknecht 3H; ABR–20090422.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 10, 2019.

5. EOG Resources, Inc.; Pad ID: Housknecht 1H; ABR–20090423.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 10, 2019.

6. Repsol Oil & Gas USA, LLC; Pad ID: CLDC (02 178) M; ABR–201910002; Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 14, 2019.

7. Cabot Oil & Gas Corporation; Pad ID: Pijanowski J P1; ABR–201404002.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 21, 2019.

8. Cabot Oil & Gas Corporation; Pad ID: Plonski I P1; ABR–201405008.R1; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 21, 2019.

9. Cabot Oil & Gas Corporation; Pad ID: Friedland Farms P1; ABR–201405009.R1; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 21, 2019.

10. Chief Oil & Gas, LLC; Pad ID: Phelps B Drilling Pad; ABR–201409001.R1; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: October 21, 2019.

11. Cabot Oil & Gas Corporation; Pad ID: Gesford P1; ABR–20090547.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 21, 2019.

12. Cabot Oil & Gas Corporation; Pad ID: Greenwood; ABR–20090548.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 21, 2019.

13. Cabot Oil & Gas Corporation; Pad ID: Gesford P4; ABR–20090550.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 21, 2019.

14. Seneca Resources Company, LLC.; Pad ID: PHC 23H/24H; ABR–20090917.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 21, 2019.

15. Seneca Resources Company, LLC.; Pad ID: PHC 28H/29H; ABR–20090918.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 21, 2019.

16. Seneca Resources Company, LLC.; Pad ID: D. M. Pino Pad H; ABR–20090933.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: October 21, 2019.

17. Cabot Oil & Gas Corporation; Pad ID: Heitsman P1; ABR–20090537.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 24, 2019.

18. Cabot Oil & Gas Corporation; Pad ID: Lathrop P1; ABR–20090538.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 24, 2019.

19. Cabot Oil & Gas Corporation; Pad ID: Hubbard P1; ABR–20090545.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 24, 2019.

20. Cabot Oil & Gas Corporation; Pad ID: HeitsmanA P2; ABR–20090552.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 24, 2019.

21. Cabot Oil & Gas Corporation; Pad ID: SevercoolB P1; ABR–20090536.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 25, 2019.

22. Cabot Oil & Gas Corporation; Pad ID: Ratzel P1; ABR–20090539.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 25, 2019.

23. Cabot Oil & Gas Corporation; Pad ID: Smith P1; ABR–20090540.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 25, 2019.

24. Cabot Oil & Gas Corporation; Pad ID: Rozanski P1; ABR–20090553.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 25, 2019.

25. Cabot Oil & Gas Corporation; Pad ID: Smith P3; ABR–20090554.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: October 28, 2019.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 10, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–26927 Filed 12–12–19; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at December 5, 2019, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 5, 2019, in Harrisburg, Pennsylvania, the Commission approved the applications of certain water resources projects, and took additional actions, as set forth in the Supplementary Information below.

DATES: December 5, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Informational presentation on the Chiques Creek Watershed in Lancaster County, Pa.; (2) adoption of a Regulatory Fee Schedule to become effective January 1, 2020; (3) approval of three contractual agreements; (4) a report on a delegated settlement; (5) approval of a regulatory waiver request; and (6) approval of Regulatory Program projects.

Project Applications Approved

The Commission approved the following project applications:

1. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20151201).

2. *Project Sponsor and Facility:* Town of Cortlandville, Cortland County, NY Application for groundwater withdrawal of up to 1.300 mgd (30-day average) from Lime Hollow Well 2.

3. *Project Sponsor and Facility:* Town of Cortlandville, Cortland County, NY Application for groundwater withdrawal of up to 1.300 mgd (30-day average) from Lime Hollow Well 7.

4. *Project Sponsor and Facility:* Town of Cortlandville, Cortland County, NY Application for groundwater withdrawal of up to 1.008 mgd (30-day average) from the Terrace Road Well.

5. *Project Sponsor:* Graymont (PA) Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Modification to increase consumptive use by an additional 0.098 mgd (30-day average), for a total consumptive use of up to 0.720 mgd (30-day average), and change limits from peak day to 30-day average (Docket No. 20050306).

6. *Project Sponsor:* Hazleton City Authority. Project Facility: Hazleton Division, Hazle Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.354 mgd (30-day average) from Barnes Run Well 3.

7. *Project Sponsor and Facility:* Leola Sewer Authority (will be issued to Upper Leacock Township Municipal Authority), Upper Leacock Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.263 mgd (30-day average) from Well 16 (Docket No. 19890702).

8. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of consumptive use of up to 2.622 mgd (peak day) (Docket No. 19890106).

9. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN–33 (Docket No. 19890106).

10. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.678 mgd (30-day average) from Well UN–34 (Docket No. 19890106).

11. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN–35 (Docket No. 19890106).

12. *Project Sponsor and Facility:* Sugar Hollow Water Services LLC (Susquehanna River), Eaton Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20151204).

13. *Project Sponsor and Facility:* SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20151205).

Projects Approved Involving a Diversion

1. *Project Sponsor and Facility:* City of Aberdeen, Harford County, Md. Modifications to extend the approval term of the consumptive use, surface water withdrawal, and out-of-basin diversion approval (Docket No. 20021210) to allow additional time for evaluation of the continued use of the source for the Aberdeen Proving Ground-Aberdeen Area.

2. *Project Sponsor and Facility:* New York State Canal Corporation (Middle Branch Tioughnioga Creek), Towns of DeRuyter and Cazenovia, Madison County, and Town of Fabius, Onondaga County, NY Applications for surface water withdrawal of up to 4.300 mgd (peak day), consumptive use of up to 4.300 mgd (peak day), and out-of-basin diversion of up to 4.300 mgd (peak day) from Middle Branch Tioughnioga Creek.

3. *Project Sponsor:* Seneca Resources Company, LLC. Project Facility: Impoundment 1, receiving groundwater from various sources, Sergeant and Norwich Townships, McKean County, Pa. Application for into-basin diversion from the Ohio River Basin of up to 2.517 mgd (peak day) (Docket No. 20141216).

Commission Initiated Project Approval Modifications

1. *Project Sponsor and Facility:* Bucknell University, East Buffalo

Township, Union County, Pa. Conforming the grandfathering amount with the forthcoming determination for a groundwater withdrawal up to 0.046 mgd (30-day average) from Well 2 and up to 0.116 mgd (30-day average) from Wells 2 and 3 (Docket No. 20021008).

2. *Project Sponsor and Facility:* Manada Golf Club, Inc., East Hanover Township, Dauphin County, Pa. Conforming the grandfathered amount with the forthcoming determination for a withdrawal of up to 0.071 mgd (30-day average) from the 4th Tee Well, up to 0.036 mgd (30-day average) from the 5th Tee Well, and up to 0.036 mgd (30-day average) from the Barn Well (Docket No. 20020614).

3. *Project Sponsor:* Pennsylvania Fish & Boat Commission. Project Facility: Pleasant Gap State Fish Hatchery, Benner Township, Centre County, Pa. Conforming the grandfathering amount with the forthcoming determination for a withdrawal of up to 5.056 mgd (30-day average) from Blue and East Springs, up to 0.930 mgd (30-day average) from Hoy and Shugert Springs, and up to 1.000 mgd (30-day average) from Logan Branch (Docket No. 20000601).

Project Applications Tabled

1. *Project Sponsor and Facility:* Chester Water Authority, East Nottingham Township, Chester County, Pa. Application for an out-of-basin diversion of up to 60.000 mgd (peak day).

2. *Project Sponsor and Facility:* New Holland Borough Authority, New Holland Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.860 mgd (30-day average) from Well 5.

3. *Project Sponsor:* Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (Codorus Creek—New Filter Plant Intake), Spring Grove Borough, York County, Pa. Applications for consumptive use of up to 3.650 mgd (peak day) and surface water withdrawal of up to 19.800 mgd (peak day).

4. *Project Sponsor:* Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (Codorus Creek—Old Filter Plant Intake), Spring Grove Borough, York County, Pa. Application for surface water withdrawal of up to 6.000 mgd (peak day).

5. *Project Sponsor:* Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (unnamed tributary to Codorus Creek—Kessler Pond Intake), Spring Grove Borough, York County, Pa. Application for surface water withdrawal of up to 0.750 mgd (peak day).

6. *Project Sponsor and Facility:* Chester Water Authority, East Nottingham Township, Chester County, Pa. Application for an out-of-basin diversion of up to 60.000 mgd (peak day) from the Susquehanna River and Octoraro Reservoir.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 10, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–26929 Filed 12–12–19; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1–30, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above: *Grandfathering Registration Under 18 CFR part 806, subpart E:*

1. Byler Golf Management, Inc.—Blue Mountain Golf Course, GF Certificate No. GF–201911052, Bethel Township, Lebanon County, Pa.; Well 1; Issue Date: November 13, 2019.

2. Crown Club LP—Colonial Golf & Tennis Club, GF Certificate No. GF–201911053, Lower Paxton Township, Dauphin County, Pa.; Paxton Creek and consumptive use; Issue Date: November 13, 2019.

3. Dover Township—Public Water Supply System, GF Certificate No. GF–201911054, Dover Township, York County, Pa.; Wells 2, 3, 4, 5, 6, and 7; Issue Date: November 13, 2019.

4. SUEZ Water Pennsylvania Inc.—Shavertown Operation, GF Certificate No. GF–201911055, Dallas and Kingston Townships, Luzerne County, Pa.; Hassold Well; Issue Date: November 13, 2019.

5. Towanda Country Club, GF Certificate No. GF–201911056, Wysox Township, Bradford County, Pa.; Well 1 and Ponds 1, 2, and 3; Issue Date: November 13, 2019.

6. Williamsburg Municipal Authority—Public Water Supply System, GF Certificate No. GF–201911057, Woodbury Township, Blair County, Pa.; Wells 1 and 2; Issue Date: November 13, 2019.

7. Village of Homer—Public Water Supply System, GF Certificate No. GF–201911058, Village of Homer, Cortland County, N.Y.; Wells 2 and 3; Issue Date: November 20, 2019.

8. Pennsylvania Fish & Boat Commission—Tylersville State Fish Hatchery, GF Certificate No. GF–201911059, Logan Township, Clinton County, Pa.; Tylersville Spring; Issue Date: November 20, 2019

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: December 10, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–26928 Filed 12–12–19; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1–31, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above:

Grandfathering Registration Under 18 CFR Part 806, Subpart E

1. Fairview Golf Course, Inc., GF Certificate No. GF–201910049, West Cornwall Township, Lebanon County, Pa.; On-site Well; Issue Date: October 17, 2019.

2. Hegins-Hubley Authority—Public Water Supply System, GF Certificate No. GF–201910050, Hegins and Hubley Townships, Schuylkill County, Pa.; Wells 1, 2, and 3, and Spring 1; Issue Date: October 17, 2019.

3. T.A. & Son, LLC, GF Certificate No. GF–201910051, Pine Creek Township, Clinton County, Pa.; West Branch Susquehanna River and Pine Creek; Issue Date: October 17, 2019.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: December 10, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–26926 Filed 12–12–19; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1–30, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f)(13) and 18 CFR 806.22(f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Cabot Oil & Gas Corporation; Pad ID: Teel P1; ABR–20090541.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: November 12, 2019.

2. Cabot Oil & Gas Corporation; Pad ID: Teel P5; ABR–20090542.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: November 12, 2019.

3. Cabot Oil & Gas Corporation; Pad ID: Teel P6; ABR–20090543.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: November 12, 2019.

4. Cabot Oil & Gas Corporation; Pad ID: Ely P1; ABR–20090546.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: November 12, 2019.

5. Cabot Oil & Gas Corporation; Pad ID: ButlerL P1; ABR–201405010.R1; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 12, 2019.

6. Chief Oil & Gas, LLC; Pad ID: SGL–12 B Drilling Pad; ABR–201410005.R1; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: November 12, 2019.

7. Chesapeake Appalachia, L.L.C.; Pad ID: Jayne; ABR–20091021.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 18, 2019.

8. Chesapeake Appalachia, L.L.C.; Pad ID: Roundwood; ABR–201410001.R1; Braintrim Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 18, 2019.

9. Chesapeake Appalachia, L.L.C.; Pad ID: James Smith; ABR–20091020.R2; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 21, 2019.

10. Chesapeake Appalachia, L.L.C.; Pad ID: Gowan; ABR–20091001.R2; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 25, 2019.

11. Chesapeake Appalachia, L.L.C.; Pad ID: Harry; ABR–20091017.R2; West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 25, 2019.

12. Seneca Resources Company, LLC; Pad ID: DCNR 595 Pad D; ABR–20090827.R2; Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 1.0001 mgd; Approval Date: November 25, 2019.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 10, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–26930 Filed 12–12–19; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Not To Reinstate Action in Connection With the European Union's Measures Concerning Meat and Meat Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In December 2016, the U.S. Trade Representative initiated a proceeding to reinstate action against the European Union (EU) in order to exercise the WTO authorization to suspend concessions in connection with the dispute *EC-Measures Concerning Meat and Meat Products.* In light of successful negotiations with the EU to resolve U.S. concerns with the operation of the U.S.-EU Beef MOU, the U.S. Trade Representative has determined to conclude the proceeding with a determination not to reinstate action.

DATES: The proceeding is terminated effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Roger Wentzel, Deputy Assistant U.S. Trade Representative for Agricultural Affairs at (202) 395–6127, David Weiner, Deputy Assistant U.S. Trade Representative for Europe at (202) 395–9679, or Amanda Blunt, Assistant General Counsel at (202) 395–9579.

SUPPLEMENTARY INFORMATION:

A. Background

For background prior to December 2016, please see the notice initiating this proceeding (81 FR 95724). On December 9, 2016, representatives of the U.S. beef industry requested that the U.S. Trade Representative reinstate action against the EU pursuant to Section 306(c) of the 1974 Trade Act, as amended (Trade Act) (19 U.S.C. 2416(c)). The primary concern of the U.S. industry was that non-U.S. exporters had been filling a substantial part of the 45,000 MT tariff-rate quota (TRQ) for high-quality beef (HQB) products established by the 2009 U.S.-EU Beef MOU, which denied the benefits to the United States expected under the MOU. Pursuant to this request, the U.S. Trade Representative initiated a proceeding under Section 306(c) to consider a reinstatement of

action. The interagency Section 301 Committee held a public hearing on February 15 and 16, 2017, and received public comments in connection with the request.

Following the initiation of this proceeding, the United States entered into negotiations with the EU to address U.S. concerns with the operation of the HQB TRQ. The negotiations concluded successfully, with an agreement to allocate most of the HQB TRQ to the United States. On August 2, 2019, the EU and United States signed the *Agreement on the Allocation to the United States of a Share in the Tariff Rate Quota for High Quality Beef Referred to in the Revised MOU Regarding the Importation of Beef from Animals Not Treated with Certain Grown-promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union.* Pursuant to this agreement, the EU will allocate to the United States 35,000 metric tons of the 45,000 metric tons HQB TRQ established under the 2009 U.S.-EU Beef MOU. The agreement is scheduled to go into effect on January 1, 2020.

B. Determination Not To Reinstate Action

In light of the successful negotiation to allocate the HQB TRQ established by the 2009 U.S.-EU Beef MOU, the U.S. Trade Representative has decided to conclude this proceeding under Section 306(c) of the Trade Act with a determination not to reinstate action, effective January 1, 2020. This determination has been made in consultation with the U.S. beef industry, and in accordance with the advice of the interagency Section 301 committee.

The United States continues to have an authorization to suspend concessions in connection with the dispute *EC-Measures Concerning Meat and Meat Products.* The U.S. Trade Representative will continue to monitor EU implementation of the MOU and other developments affecting market access for U.S. beef products. If implementation of the MOU and other developments do not proceed as contemplated, the Trade Representative may consider additional actions under Section 301 of the Trade Act.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

[FR Doc. 2019–26924 Filed 12–12–19; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0278]

Hours of Service of Drivers: Application for Exemption; Harris Companies, Inc. (Harris)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Harris Companies, Inc. (Harris) has requested an exemption from the electronic logging devices (ELDs) rule for all its employees who are required to prepare records of duty status (RODS). This includes elevator technicians, electricians, other general laborers, and welders that operate commercial motor vehicles (CMVs) in interstate commerce. FMCSA requests public comment on Harris' application for exemption. A copy of Harris' application for exemption is available for review in the docket for this notice.

DATES: Comments must be received on or before January 13, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2019–0278 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its exemptions process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0278), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0278'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. An option to upload a file is provided. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material

received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA is required to publish notice of exemption requests in the **Federal Register** (49 U.S.C. 31315(b)(6)(A)). This notice seeks public comment on the request posted to the docket referred to above; the Agency takes no position on its merits. FMCSA will review the request and all comments submitted to the docket before deciding whether to grant or deny the exemption.

Harris' Application for Exemption

Harris, a family-owned and operated company comprised of an elevator division and an electric division, applied for an exemption from 49 CFR 395.8. The exemption would cover the company's 14 elevator technicians and electricians and seven general laborers and welders that operate CMVs. The company currently uses electronic devices to document hours of service and requested the exemption to allow it to resume the use of paper RODS. A copy of the application is included in the docket referenced at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Harris' application for an exemption from the ELD requirements. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: December 5, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26881 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24015; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2017–0017; FMCSA–2017–0023; FMCSA–2017–0024]

Qualification of Drivers; Exemption Applications; Vision

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 90 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before January 13, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1999–6156, Docket No. FMCSA–1999–6480, Docket No. FMCSA–2000–7006, Docket No. FMCSA–2001–9258, Docket No. FMCSA–2001–10578, Docket No. FMCSA–2003–15268, Docket No. FMCSA–2003–15892, Docket No. FMCSA–2003–15892, Docket No. FMCSA–2005–21254, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2005–22727, Docket No. FMCSA–2006–24015, Docket No. FMCSA–2007–0017, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2009–0121, Docket No. FMCSA–2009–0154, Docket No. FMCSA–2009–0206, Docket No. FMCSA–2009–0303, Docket No. FMCSA–2010–0372, Docket No. FMCSA–2011–0189, Docket No. FMCSA–2011–0298, Docket No. FMCSA–2011–0299, Docket No. FMCSA–2011–26690, Docket No. FMCSA–2013–0166, Docket No. FMCSA–2013–0167, Docket No. FMCSA–2013–0168, Docket No. FMCSA–2013–0169, Docket No. FMCSA–2013–0170, Docket No. FMCSA–2014–0297, Docket No. FMCSA–2014–0303, Docket No. FMCSA–2015–0049, Docket No. FMCSA–2015–0055, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0070, Docket No. FMCSA–2015–0071, Docket No. FMCSA–2015–0072, Docket No. FMCSA–2015–0344, Docket No. FMCSA–2015–0345, Docket No. FMCSA–2017–0017, Docket No. FMCSA–2017–0023 or Docket No. FMCSA–2017–0024 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* 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–1999–6156; FMCSA–1999–6480; FMCSA–2000–

7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24015; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2017–0017; FMCSA–2017–0023; or FMCSA–2017–0024), 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,* put the docket number, FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24015; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2017–0017; FMCSA–2017–0023; or FMCSA–2017–0024, in the keyword box, and click ''Search.'' When the new screen appears, 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.* Insert the docket number, FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24015; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2017–0017; FMCSA–2017–0023; or FMCSA–2017–0024, 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 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 vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 90 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), 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 90 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 57 FR 57266; 64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 65 FR 57230; 66 FR 17743; 66 FR 33990;

66 FR 53826; 66 FR 66966; 66 FR 66969; 67 FR 17102; 68 FR 35772; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 69 FR 62741; 70 FR 30999; 70 FR 33937; 70 FR 46567; 70 FR 48801; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 4632; 71 FR 14566; 71 FR 30227; 71 FR 62147; 72 FR 32705; 72 FR 39879; 72 FR 40359; 72 FR 52419; 72 FR 52421; 72 FR 58359; 72 FR 62897; 72 FR 64273; 72 FR 67340; 72 FR 71995; 73 FR 1395; 73 FR 5259; 73 FR 20245; 73 FR 27014; 73 FR 75806; 74 FR 26461; 74 FR 26464; 74 FR 34074; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 60022; 74 FR 62632; 74 FR 64124; 74 FR 65845; 74 FR 65847; 75 FR 1451; 75 FR 4623; 75 FR 50799; 76 FR 7894; 76 FR 8809; 76 FR 20078; 76 FR 34135; 76 FR 37168; 76 FR 44653; 76 FR 53708; 76 FR 54530; 76 FR 55465; 76 FR 62143; 76 FR 64169; 76 FR 64171; 76 FR 66123; 76 FR 67246; 76 FR 70210; 76 FR 70213; 76 FR 70215; 76 FR 73769; 76 FR 75942; 76 FR 75943; 76 FR 78728; 76 FR 79760; 77 FR 541; 77 FR 543; 77 FR 545; 77 FR 3547; 78 FR 16762; 78 FR 18667; 78 FR 51268; 78 FR 62935; 78 FR 63302; 78 FR 64271; 78 FR 64274; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 67454; 78 FR 68137; 78 FR 74223; 78 FR 76395; 78 FR 76704; 78 FR 76705; 78 FR 76707; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 2247; 79 FR 2748; 79 FR 4531; 79 FR 4803; 79 FR 63211; 80 FR 2471; 80 FR 14240; 80 FR 16500; 80 FR 31636; 80 FR 33324; 80 FR 37718; 80 FR 44188; 80 FR 48402; 80 FR 48413; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 76345; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 11642; 81 FR 15401; 81 FR 15404; 81 FR 16265; 81 FR 44680; 81 FR 60117; 82 FR 18818; 82 FR 20962; 82 FR 32919; 82 FR 37499; 82 FR 43647; 82 FR 47312; 82 FR 58262; 83 FR 2289; 83 FR 2306; 83 FR 3861; 83 FR 4537; 83 FR 6922; 83 FR 15232). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below. As of January 3, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 51 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (57 FR 57266; 64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 65 FR 57230; 66 FR 17743; 66 FR 33990; 66 FR 53826; 66 FR 66966; 66 FR 66969; 67 FR 17102; 68 FR 35772; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 69 FR 62741; 70 FR 30999; 70 FR 33937; 70 FR 46567; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 14566; 71 FR 30227; 71 FR 62147; 72 FR 32705; 72 FR 39879; 72 FR 40359; 72 FR 52419; 72 FR 52421; 72 FR 62897; 72 FR 64273; 72 FR 71995; 73 FR 20245; 73 FR 27014; 73 FR 75806; 74 FR 26461; 74 FR 26464; 74 FR 34074; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 62632; 74 FR 65847; 75 FR 50799; 76 FR 7894; 76 FR 8809; 76 FR 20078; 76 FR 34135; 76 FR 37168; 76 FR 44653; 76 FR 53708; 76 FR 54530; 76 FR 55465; 76 FR 62143; 76 FR 64169; 76 FR 64171; 76 FR 66123; 76 FR 67246; 76 FR 70210; 76 FR 70215; 76 FR 75942; 76 FR 75943; 76 FR 79760; 78 FR 16762; 78 FR 18667; 78 FR 51268; 78 FR 62935; 78 FR 63302; 78 FR 64274; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 68137; 78 FR 76395; 78 FR 76705; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 63211; 80 FR 2471; 80 FR 14240; 80 FR 16500; 80 FR 31636; 80 FR 33324; 80 FR 37718; 80 FR 44188; 80 FR 48402; 80 FR 48413; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 80443; 81 FR 1284; 81 FR 11642; 81 FR 15401; 81 FR 15404; 81 FR 16265; 82 FR 18818; 82 FR 20962; 82 FR 32919; 82 FR 37499; 82 FR 43647; 82 FR 47312; 83 FR 2289; 83 FR 2306; 83 FR 3861; 83 FR 4537; 83 FR 6922):

Juan D. Adame (TX)
Michael J. Altobelli (CT)
Lawrence A. Angle (MO)
Stephen W. Barrows (OR)
Jason W. Bowers (OR)
Kenneth E. Bross (MO)
Stacey J. Buckingham (ID)
Benny J. Burke (AL)
Ryan J. Burnworth (MO)
Michael D. Champion (VT)
Ryan M. Coelho (RI)
David J. Comeaux (LA)
Duane C. Conway (NV)
William J. Corder (NC)
Jose C. Costa (WA)
Thomas R. Crocker (SC)
Kenneth D. Daniels (PA)
James D. Davis (OH)
Brad M. Donald (MI)
Dominic F. Giordano (CT)
Jeffrey A. Keefer (OH)
Martin D. Keough (NY)
Purvis W. Kills Enemy At Night (SD)
Richard L. Loeffelholz (WI)
Herman G. Lovell (OR)
Thomas P. Maio (MA)
Herman C. Mash (NC)
Christopher V. May (GA)
James F. McMahon, Jr. (NH)
Terry W. Moore (LA)
Steven D. O'Donnell (NJ)
Dennis R. Ohl (MO)
John R. Price (AR)
Francis D. Reginald (NJ)
Danilo A. Rivera (MD)
Michael J. Robinson (WV)
Ronald L. Roy (IL)
Ralph J. Schmitt (CO)
Jarrod R. Seirer (KS)
Eugene D. Self, Jr. (NC)
Levi A. Shetler (OH)
Roye T. Skelton (MS)
Paul D. Stoddard (NY)
Stanley W. Tyler, Jr. (NC)
Cesar Villa-Navarrete (NM)
James H. Wallace, Sr. (FL)
Stephen H. Ward (MO)
Dennis E. White (PA)
Lorenzo A. Williams (DE)
James J. Wyles (NC)
Walter M. Yohn, Jr. (AL)

The drivers were included in docket numbers FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2006–24015; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2017–0017; and FMCSA–2017–0023. Their exemptions are applicable as of January 3, 2020, and will expire on January 3, 2022.

As of January 5, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for

interstate CMV drivers (76 FR 70213; 77 FR 541; 78 FR 74223; 80 FR 80443; and 83 FR 6922):

George G. Ulferts, Jr. (IA)

The driver was included in docket number FMCSA–2011–0298. The exemption is applicable as of January 5, 2020, and will expire on January 5, 2022.

As of January 8, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 67340; 73 FR 1395; 74 FR 65845; 76 FR 78728; 78 FR 76704; 80 FR 76345; 80 FR 80443; 81 FR 60117; and 83 FR 6922):

Wayne A. Burnett (NC)
George R. Cornell (OH)
Thomas E. Gross (PA)
Steven G. Hall (NC)
Jason Huddleston (TX)
Martin Postma (IL)
Phillip D. Satterfield (GA)

The drivers were included in docket numbers FMCSA–2007–0017 and FMCSA–2015–0344. Their exemptions are applicable as of January 8, 2020, and will expire on January 8, 2022.

As of January 11, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 58262 and 83 FR 15232):

Eric J. Andersen (FL)
Darin P. Ball (NY)
Larry W. Buchanan (NM)
Christopher T. Peevyhouse (TN)

The drivers were included in docket number FMCSA–2017–0024. Their exemptions are applicable as of January 11, 2020, and will expire on January 11, 2022.

As of January 15, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 64271; 79 FR 2748; 80 FR 80443; and 83 FR 6922):

Terry L. Cliffe (IL)
Adam S. Larson (CO)
Glenn H. Lewis (OH)
Leonardo Lopez (NE)
Roy A. Whitaker (TX)

The drivers were included in docket number FMCSA–2013–0167. Their exemptions are applicable as of January 15, 2020, and will expire on January 15, 2022.

As of January 21, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 79414; 81 FR 44680; and 83 FR 6922):

Therron K. Billings (VA)

The driver was included in docket number FMCSA–2015–0345. The exemption is applicable as of January 21, 2020, and will expire on January 21, 2022.

As of January 23, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 67454; 79 FR 4803; 81 FR 15401; and 83 FR 6922):

Leonard A. Martin (NV)

The driver was included in docket number FMCSA–2013–0170. The exemption is applicable as of January 23, 2020, and will expire on January 23, 2022.

As of January 24, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 73769; 77 FR 3547; 79 FR 2247; 80 FR 80443; and 83 FR 6922):

Marion J. Coleman, Jr. (KY)
Lex A. Fabrizio (UT)
Mark A. Ferris (IA)

The drivers were included in docket number FMCSA–2011–0299. Their exemptions are applicable as of January 24, 2020, and will expire on January 24, 2022.

As of January 27, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 52811; 68 FR 61860; 70 FR 48801; 70 FR 61165; 70 FR 71884; 71 FR 4632; 72 FR 58359; 73 FR 1395; 73 FR 5259; 74 FR 64124; 74 FR 65845; 75 FR 1451; 77 FR 545; 78 FR 78475; 80 FR 80443; and 83 FR 6922):

John E. Kimmet, Jr. (WA)
Jason L. Light (ID)
Michael J. Richard (LA)
Robert E. Sanders (PA)

The drivers were included in docket numbers FMCSA–2003–15269; FMCSA–2003–15892; and FMCSA–2005–22727. Their exemptions are applicable as of January 27, 2020, and will expire on January 27, 2022.

As of January 28, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 60022; 75 FR 4623; 77 FR 543; 78 FR 76707; 80 FR 80443; and 83 FR 6922):

James A. DuBay (MI)
Donald E. Halvorson (NM)
Phillip J. Locke (CO)
Brian T. Nelson (MN)

The drivers were included in docket number FMCSA–2009–0303. Their exemptions are applicable as of January 28, 2020, and will expire on January 28, 2022.

As of January 29, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 67454; 79 FR 4803; 80 FR 80443; and 83 FR 6922):

Calvin J. Barbour (NY)
Walter A. Breeze (OH)
Donald G. Carstensen (IA)
Jamie D. Daniels (IA)
Michael L. Fiamingo (PA)
Randy G. Kinney (IL)
Hector Marquez (TX)
Hershel D. Volentine (LA)
Gary D. Vollertsen (CO)

The drivers were included in docket number FMCSA–2013–0170. Their exemptions are applicable as of January 29, 2020, and will expire on January 29, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. 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.

VI. Conclusion

Based upon its evaluation of the 90 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. 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: December 10, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26941 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2019–0051]

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Request for Comment; Effects of Education on Speeding Behavior

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comments on a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on August 30, 2019. NHTSA received one comment, from the Insurance Institute of Highway Safety (IIHS), that was critical of the proposed information collection.

DATES: Comments must be received on or before January 13, 2020.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NHTSA, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kelly Sheppard, Research Psychologist, Office of Behavioral Safety Research (NPD–320), National Highway Traffic Safety Administration, Department of Transportation, 1200 New Jersey Avenue SE, W46–499, Washington, DC 20590. Dr. Sheppard's phone number is 202–366–6401, and her email address is *kelly.sheppard@dot.gov.*

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on August 30, 2019.[1] NHTSA received one comment, from the Insurance Institute of Highway Safety (IIHS), that was critical of the proposed information collection. IIHS stated that stand-alone education programs have not been found to be effective at addressing driver behaviors like speeding and that pursuing an education program is not an effective use of the agency's resources. They cited NHTSA's *Speed Management Program Plan* as having other activities with more promise for reducing speeding.[2] They also indicated that NHTSA's *Countermeasures that Work* report promotes communications in support of enforcement but not education alone.[3] They stated their view that incentives for intelligent speed adaptation outlined in the National Transportation Safety Board's (NTSB) *Reducing Speeding-Related Crashes Involving Passenger Vehicles* safety report was a more effective use of resources.[4]

We appreciate the comments from IIHS and thank them for thoughtfully considering the described collection. We agree with IIHS that stand-alone education programs that are not part of a larger comprehensive approach tend to have limited effects. However, as IIHS points out, NHTSA has a *Speed Management Program Plan* that includes an education component as well as a variety of other strategies. The program associated with this collection is one potential education program that could be part of a larger speeding management strategy that includes many of the additional elements IIHS describes. NHTSA's *Countermeasures that Work* indicates that communications and outreach supporting speeding enforcement is a promising strategy (p. 3–31), and NTSB's *Reducing Speeding-Related Crashes Involving Passenger Vehicles* concluded that ''traffic safety campaigns that include highly publicized, increased enforcement can be an effective speeding countermeasure'' (p. 55). Additionally, NTSB recommended that NHTSA ''collaborate with other traffic safety stakeholders to develop and implement an ongoing program to increase public awareness of speeding as a national traffic safety issue'' (p. 57).

A 2011 meta-analysis by Phillips, Ulleberg, and Ross found that traffic safety public information and education campaigns reduced crashes by 9% on average but that campaigns focused on speeding did not indicate a statistically significant reduction.[5] Many of the education programs described by IIHS and included in the meta-analysis above are public awareness campaigns where messages are delivered through mass media or at the roadside. These education programs are not focused on drivers who speed but rather on all drivers. These broad education programs may appear less effective, especially on their own, because many drivers who receive the messages do not tend to speed. Education focused on people who have already received a

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[1] 84 FR 45827.

[2] National Highway Traffic Safety Administration, Federal Highway Administration, & Federal Motor Carrier Safety Administration. (2014, May). *Speed management program plan* (Report No. DOT HS 812 028). Washington, DC: National Highway Traffic Safety Administration. Available at *http://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812028-speedmgtprogram.pdf.*

[3] Richard, C.M., Magee, K., Bacon-Abdelmoteleb, P., & Brown, J. L. (2018, April). *Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition* (Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration. Available at *https://rosap.ntl.bts.gov/view/dot/36719.*

[4] National Transportation Safety Board. (2017, July). *Reducing Speeding-Related Crashes Involving Passenger Vehicles* (Safety Study NTSB/SS–17/01). Washington, DC: National Transportation Safety Board. Available at *https://www.ntsb.gov/safety/safety-studies/Documents/SS1701.pdf.*

[5] Phillips, R.O., Ulleberg, P., & Vaa, T. (2011). Meta-analysis of the effect of road safety campaigns on accidents. *Accident Analysis & Prevention, 43,* 1204–1218.

speeding citation, such as proposed in this collection, could produce larger effects because they are designed to address the specific issues found with speeding drivers. Furthermore, NHTSA's *Countermeasures that Work* chapter on Speeding and Speed Management recommends more comprehensive strategies for drivers already cited for speeding or repeat offenders and mentions several programs that included interventions specifically designed to teach drivers about attitudes, skills, and knowledge related to speeding and personality traits associated with the behavior. These programs showed promise in reducing speeding among drivers who had received citations (p. 3–10). Therefore, education specifically for drivers who speed as well as more broad education to promote public awareness of the dangers of speeding are part of comprehensive programming referenced throughout NHTSA's *Countermeasures that Work* and *Speed Management Program Plan.*

The proposed speeding education program has two main elements that make it scientifically strong and likely to contribute to our ability to develop an effective program. The first element is that it will target individuals with a speeding citation instead of being broadly presented to all drivers. This step ensures that the audience who stands to benefit most from the education will receive it and that the content aligns with promising programs discussed in *Countermeasures that Work.* The second element is that naturalistic and objective data will be collected to determine if the program had an effect. Instead of relying on self-report, which IIHS rightly indicates can be biased, the proposed data collection will use instrumentation in the vehicle to evaluate speeding while the participants drive as they normally would both before and after the educational course. This step will ensure that conclusions drawn about the effect of the program will be based on objective driving data and not on reports of how people believe they drove or will drive in the future. By undertaking this collection, NHTSA will take steps towards an evidence-based education program that can be included in comprehensive speed management plans and contribute to reducing speeding-related injuries and fatalities.

Title: Effects of Education on Speeding Behavior.

OMB Clearance Number: New.

Type of Review: Regular.

Form No.: NHTSA Form 1492, NHTSA Form 1493, NHTSA Form 1494, NHTSA Form 1495, NHTSA Form 1496, and NHTSA Form 1497.

Type of Information Collection Request: Approval of a new information collection.

Requested Expiration Date of Approval: 3 years from date of approval.

Abstract: The National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation is seeking approval to collect information from licensed drivers who have at least one speeding citation or conviction in the previous three years for a one-time voluntary study of the effects of an education course being developed that covers vehicle speeds, laws, and the risks of speeding on speeding behavior. NHTSA proposes to approach up to 250 drivers appearing at the Wake County, NC district court because of speeding infractions to ascertain their interest in participating in the study after their case has been adjudicated. Of those 250, we expect to collect information from 150 potential participants determine their eligibility for the study with the goal of recruiting 100 voluntary participants. The 100 participants will complete an informed consent form, three driver speeding questionnaires (before the course, right after the course, and one month after the course) to explore the effects of the course on their attitudes and beliefs regarding speeding as well as their tendency to speed, a course evaluation, and sensation-seeking questionnaire to measure psychological factors related to risky behaviors. In addition, NHTSA will collect naturalistic driving data, which involves unobtrusive observation of driving in a natural, on-road setting using a vehicle instrumented with position, speed, and other sensors. This collection is solely reporting, and there are no record-keeping costs to the respondents. NHTSA will use the information to produce a technical report that presents the results of the study. The technical report will provide aggregate (summary) statistics and tables as well as the results of statistical analysis of the information, but it will not include any personal information. The technical report will be shared with State highway offices, local governments, and those who develop driver education and traffic safety communications that aim to reduce speed-related crashes. The total estimated burden for recruiting 250 participants (42 hours), for screening 150 participants (23 hours) and for 100 participants to complete the study (600 hours) is 665 total hours.

Respondents: Participation in this study will be voluntary, and 100 participants will be recruited from drivers that attend the Wake County, NC district court because of speeding infractions after their case has been adjudicated. An estimated 250 people will be approached and have the study described to them, and 150 people will be screened to recruit the 100 who will complete the study. Participants will be licensed drivers over 18 years old who have had a speeding citation in the past 3 years.

Estimated Time per Participant: The estimated time for recruiting 250 possible participants is 10 minutes per person. The estimated time for screening the 150 possible participants is nine minutes per person to complete the screener questionnaire and provide contact information. The estimated time for the 100 study participants is six hours per person to complete the informed consent, take the three-hour and 30-minute course, complete all questionnaires, and wait for equipment to be installed and uninstalled from their vehicles.

Total Estimated Burden Hours: The total estimated annual burden is 665 hours for the project activities. Participation in this study is voluntary, and there are no costs to respondents beyond the time spent completing the questionnaires and visits to the study facility.

Frequency of Collection: This study is one-time data collection, and there will be no recurrence.

Description of the Need for the Information and Proposed Use of the Information: NHTSA was established to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research for the development of traffic safety programs. In 2018, there were 9,378 fatalities in speeding-related crashes—26% of all traffic deaths. Public information and education are important elements of any effective speed management program. Recent NHTSA research has indicated that many drivers feel they lack sufficient knowledge about speeding and would like more information on stopping distances, laws, and risks involved. This project is designed to examine the effectiveness of education covering speed, laws, and risks of speeding in changing driver attitudes and behaviors regarding speeding. This information will be useful to State highway offices, local governments, and those who develop driver education and training that aim to reduce speed-related crashes.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a)

whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued in Washington, DC.

Jon Krohmer,

Associate Administrator, Acting, Research and Program Development.

[FR Doc. 2019–26823 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–RSPA–2005–20323; Docket No. PHMSA–2008–0141]

Pipeline Safety: Request for Special Permit; Northern Natural Gas Company

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on two (2) requests received from the Northern Natural Gas Company to renew previously issued special permits. These special permit renewal requests seek relief from compliance from certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit renewal requests.

DATES: Submit any comments regarding these special permit renewal requests by January 13, 2020.

ADDRESSES: Comments should reference the docket number for the specific special permit renewal request and may be submitted in the following ways:

- *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit renewal request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received the following two (2) special permit renewal requests:

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–RSPA–2005–20323.	Northern Natural Gas Company (Northern Natural).	49 CFR 192.625(b)(1)	To reauthorize Northern Natural to continue its operation of special permit segment 2 as defined in the original special permit issued on April 10, 2010, and renewed on April 7, 2015, for the non-odorization of a pipeline lateral. Special permit segment 1 is not being requested for permit renewal as this pipeline was abandoned and relocated. The special permit renewal request seeks to continue waiving compliance from 49 CFR 192.625(b)(1) for the exclusion from installing and operating odorization equipment on special permit segment 2 defined as 0.369 miles of 4½-inch diameter La Crescent Branch Line (MNB 73701) located in Houston County, Minnesota. The special permit conditions that were imposed would continue to remain in effect. This special permit segment has a maximum allowable operating pressure (MAOP) of 800 pounds per square inch gauge (psig).

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2008–0141	Northern Natural Gas Company (Northern Natural).	49 CFR 192.625(b)(1)	To reauthorize Northern Natural to continue its operation as defined in the original special permit issued on April 10, 2010, and renewed on April 7, 2015, for the non-odorization of a pipeline lateral. The special permit renewal request seeks to waive compliance from 49 CFR 192.625(b)(1) for the exclusion from installing and operating odorization equipment on a 2.031-mile segment of the 14-inch diameter Sioux Falls Pipeline located in Lincoln County, South Dakota. The special permit conditions that were imposed would continue to remain in effect. This special permit segment has a MAOP of 446 psig.

The Northern Natural Gas Company requests for special permit renewals and the existing special permits are available for review and public comment in the respective dockets. We invite interested persons to review and submit comments on the special permit renewal requests in the dockets. Please include any comments on potential safety and environmental impacts that may result if the renewals of the special permits are granted.

Before issuing a decision on the special permit renewal requests, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny these requests.

Issued in Washington, DC, on December 10, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–26896 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–29078; Docket No. PHMSA–2009–0319]

Pipeline Safety: Request for Special Permit; Kern River Gas Transmission Company

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on two (2) requests received from the Kern River Gas Transmission Company to renew previously issued special permits. These special permit renewal requests are seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit renewal requests.

DATES: Submit any comments regarding these special permit renewal requests by January 13, 2020.

ADDRESSES: Comments should reference the docket number for the specific special permit renewal request and may be submitted in the following ways:

- *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit renewal request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Ms. Kay McIver, DOT, PHMSA PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Chris Hoidal by telephone at 303–807–8833, or by email at *chris.hoidal@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received the following two (2) special permit renewal requests:

Docket No.	Requester	Regulation(s) Affected	Nature of special permit
PHMSA–2007–29078.	Kern River Gas Transmission Company (Kern River).	49 CFR § 192.111, 192.201, 192.505, and 192.619.	To reauthorize Kern River to continue its operation as defined in the original special permit issued on March 29, 2010, and renewed on March 29, 2015, to operate up to an alternative maximum allowable operating pressure (MAOP) based upon 80 percent of specified minimum yield strength (SMYS) in Class 1 locations, 67 percent SMYS in Class 2 locations, and 56 percent of SMYS in Class 3 locations of the pipeline system. The special permit renewal request seeks to waive compliance from certain Federal regulations found in 49 CFR § 192.111, 192.201, 192.505, and 192.619. The special permit conditions that were imposed would continue to remain in effect, with the exception that the special permit renewal includes a request from Kern River to modify Condition 35(b) of the special permit to allow close interval and depth of cover surveys to be conducted in the same year as inline inspection (ILI) tool assessments. Also, Kern River has requested to modify Condition 35(h) of the existing special permit to allow using ILI tool calibrations from previously excavated pipeline features with documented dimensions, externally re-coated, and cathodic protection maintained. The pipeline features would be used to confirm the accuracy of each ILI tool run. The number of required ILI tool calibrations would be defined based upon the run length of the ILI tool assessment. The special permit renewal request is for the Kern River Pipeline System, which begins at the discharges of the Muddy Creek and Painter compressor stations, and at the Anschutz meter station in Lincoln County, Wyoming, routed through Utah and Nevada, to the outlet side of the Daggett meter station located in San Bernardino County, California where it interconnects with the Mojave Pipeline. The Kern River Pipeline System consists of 682 miles of a 36-inch diameter mainline, 635 miles of 36-inch diameter loop lines, 10 compressor stations, 48 meter stations, six (6) receipt laterals, and seven (7) delivery laterals. Kern River has been allowed to operate at a MAOP of 1,333 pounds per square inch gauge (psig) on the mainline pipeline (up to 1,350 psig in compressor and meter station piping) since November 6, 2008, under the Alternative MAOP special permit. The Kern River Pipeline System under the special permit is in the following counties and states: • Lincoln and Uintah Counties, Wyoming; • Salt Lake, Utah, Millard, Beaver, Washington Counties, Utah; • Clark County, Nevada; and • San Bernardino County, California.
PHMSA–2009–0319	Kern River Gas Transmission Company (Kern River).	49 CFR 192.625(b)	To reauthorize Kern River to continue its operation as defined in the original special permit issued on March 19, 2010, and renewed on March 19, 2015, for non-odorization of a pipeline lateral. The special permit renewal request seeks to waive compliance from certain Federal regulations found in 49 CFR 192.625(b) for the continued non-odorized operation of Kern River's Centennial Lateral, a 12-inch diameter natural gas transmission pipeline. The Centennial Lateral main line tap valve is located on a corner lot near the intersection of Centennial Parkway and North 5th Street in Clark County, Nevada. The special permit renewal request is for a 1,083-foot segment of Kern River's Centennial Lateral, a 12-inch diameter natural gas transmission pipeline. The special permit conditions that were imposed would continue to remain in effect. The Centennial Lateral operates at a MAOP of 1,333 psig. The Centennial Lateral special permit segment is in Clark County, Nevada.

The Kern River Gas Transmission Company requests for special permit renewals and the proposed modifications to the special permit conditions are available for review and public comment in the respective dockets. We invite interested persons to review and submit comments on the special permit renewal requests in the dockets. Please include any comments on potential safety and environmental impacts that may result if the renewals of the special permits are granted.

Before issuing a decision on the special permit renewal requests, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny these requests.

Issued in Washington, DC, on December 10, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–26895 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0174]

Pipeline Safety: Request for Special Permit; Gulf South Pipeline Company, LP

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for a special permit from Gulf South Pipeline Company, LP. The special permit request seeks relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by January 13, 2020.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: *General:* Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Joshua Johnson by telephone at 816–329–3825, or by email at *joshua.johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from Gulf South Pipeline Company, LP (GSPC), a subsidiary of Boardwalk Pipeline Partners, LP, to deviate from 49 CFR 192.625(b) to apply alternative risk control measures to the length of the Index 129–72 Pipeline in lieu of odorization. The Federal pipeline safety regulations in 49 CFR 192.625(b) requires a gas transmission pipeline to be odorized when 50 percent of the downstream mileage is in a Class 3 or a Class 4 location. The proposed special permit would allow the Index 129–72 Pipeline to operate without odorization. The GSPC Index 129–72 Pipeline is a 30-inch-diameter natural gas transmission pipeline, 1.31 miles in length, and is located in Fort Bend County, Texas. The maximum allowable operating pressure for the Index 129–72 Pipeline is 1,100 pounds per square inch gauge. GSPC would like to be able to flow gas bi-directionally between the Katy Storage Facility and the mainline Index 129 Pipeline. The direction of gas flow at any given time will be determined based on whether GSPC's customers are transporting gas into or out of the Katy Storage Facility.

The request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the GSPC Index 129–72 Pipeline are available for review and public comments in the Docket No. PHMSA–2019–0174. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result, if the special permit is granted.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny this request.

Issued in Washington, DC, on December 9, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–26886 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Opportunity for Letters of Interest for the RRIF Express Pilot Program Under the Railroad Rehabilitation & Improvement Financing Program

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation (DOT).

ACTION: Notice of funding opportunity.

SUMMARY: This notice establishes a pilot Railroad Rehabilitation and Improvement Financing (''RRIF'') Express Program (''RRIF Express'') aimed at increasing access to the RRIF program by short line and regional railroads. The RRIF Express Program will be administered by the DOT's National Surface Transportation and Innovative Finance Bureau (the ''Build America Bureau'' or ''Bureau''). The overall RRIF program finances development of railroad infrastructure, and is authorized to have up to $35 billion in outstanding principal amounts from direct loans and loan guarantees at any one time.

The 2018 Consolidated Appropriations Act [1] appropriated $25 million in budget authority to the DOT to cover the cost to the Federal Government (''the Government'') of RRIF credit assistance (Credit Risk Premium (''CRP'') Assistance or ''CRP Assistance''). Additionally, the 2016 Consolidated Appropriations Act [2] and the 2018 Consolidated Appropriations Act [3] provided $1.96 million and $350,000, respectively (of which approximately $1 million remains available), to the DOT to fund certain expenses incurred by prospective RRIF borrowers in preparation of their applications for RRIF credit assistance (this approximately $1 million assistance, collectively, ''Cost Assistance''). Using existing authorities and these new budget authorities, the DOT has established the RRIF Express Program.

Subject to the availability of funds, applicants accepted into the RRIF Express Program may benefit from two types of financial assistance: (a) Cost Assistance up to $100,000 per application to pay for a portion of the Bureau's advisor expenses borne by applicants; and (b) for those applicants that ultimately receive RRIF credit assistance, CRP Assistance up to 5% of the final RRIF loan amount to offset the CRP paid by the borrower. Any costs beyond $100,000 and any CRP beyond 5% would be paid by the prospective RRIF borrower. These funds will be made available to benefit applicants accepted into the RRIF Express Program on a first come, first served basis until each source of funding is expended or this notice is superseded by a new Notice of Funding Opportunity. Letters of Interest will be accepted in the order received and will be allocated cost assistance based on the date of acceptance into the pilot program. CRP assistance will be allocated in the order of financial close. For more information about potential financial assistance for RRIF Express applicants, see **SUPPLEMENTARY INFORMATION:** Section II. Funding of CRP and Cost Assistance.

This notice solicits Letters of Interest from prospective RRIF borrowers seeking acceptance into the RRIF Express Program, establishes eligibility criteria and describes the process that prospective borrowers must follow when submitting Letters of Interest.

DATES: Letters of Interest from prospective RRIF borrowers for the RRIF Express Program must be submitted during the following submission window: From January 13, 2020 to April 13, 2020.

Prospective RRIF borrowers that have previously submitted a Letter of Interest but that also seek acceptance into the RRIF Express Program should resubmit a Letter of Interest during the submission window above and follow the instructions below.

Irrespective of the above, the Bureau continues to accept Letters of Interest on a rolling basis from *any* prospective RRIF borrower interested in receiving RRIF credit assistance *only* (*i.e.,* without participation in the RRIF Express Program).

ADDRESSES: Applicants to the RRIF Express Program must use the latest version of the Letter of Interest form available on the Build America Bureau website: *https://www.transportation.gov/content/build-america-bureau* (including applicants who have previously submitted Letters of Interest and who are now seeking participation in the RRIF Express Program). Letters of Interest must be submitted to the Build America Bureau via email at: *RRIFexpress@dot.gov* using the following subject line: ''Letter of Interest for RRIF Express Program.'' Submitters should receive a confirmation email, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via email at the above email address with the subject line listed above shall be deemed properly filed.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact William Resch via email at *william.resch@dot.gov* or via telephone at 202–366–2300. A TDD is available at 202–366–3993.

SUPPLEMENTARY INFORMATION: RRIF Express pilot program information, including any additional resources, terms, conditions and requirements when they become available, can be found on the Build America Bureau website at: *https://www.transportation.gov/buildamerica/rrif-express.* For further information about the overall RRIF program in general, including details about the types of credit assistance available, eligibility requirements and the creditworthiness review process, please refer to the *Build America Bureau Credit Programs Guide* (''*Programs Guide*''), available on the Build America Bureau website: *https://www.transportation.gov/buildamerica/programs-services/tifia/program-guide.*

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I. Background

The Transportation Equity Act for the 21st Century,[4] established the RRIF program, authorizing the DOT to provide credit assistance in the form of direct loans and loan guarantees to public and private applicants for eligible railroad projects. The RRIF program is a DOT program and final approval of credit assistance is reserved for the Secretary of the DOT. The 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; [5] the Rail Safety Improvement

[1] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

[2] Public Law 114–113, div. L, tit. I, § 152, 129 Stat. 2242, 2856.

[3] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

[4] Public Law 105–178, 7203, 112 Stat. 107, 471.

[5] Public Law 109–59, 9003, 119 Stat. 1144, 1921.

Act of 2008;[6] and the 2015 Fixing America's Surface Transportation Act[7] (the ''FAST Act'') each made a number of changes to the RRIF program. In addition, the FAST Act authorized the creation of the Bureau to consolidate administration of certain DOT credit and grant programs, including the RRIF program.

II. Funding of CRP Assistance and Cost Assistance

Through the RRIF program, the DOT is authorized to have, at any one time, up to $35 billion in unpaid principal amounts of obligations under direct loans and loan guarantees to finance development of railroad infrastructure.

CRP Assistance

Prior to the 2018 Consolidated Appropriations Act, the RRIF program did not have an appropriation of budget authority to pay the cost to the Government of providing RRIF credit assistance. As a result, the RRIF borrower or a third party was required to bear this cost through the payment of a CRP. The 2018 Consolidated Appropriations Act[8] provided $25 million to the DOT to cover the cost to the Government of RRIF credit assistance. The DOT will use this funding to pay or offset the CRP (up to 5% of the RRIF loan amount) payable by participants in the RRIF Express Program, until this funding is expended or this notice is superseded by a new Notice of Funding Opportunity.

Cost Assistance

As described in the *Programs Guide,* RRIF borrowers are required to pay (or reimburse the DOT) for costs incurred by the Bureau in connection with the review of Letters of Interest and applications for RRIF credit assistance. The 2016 Consolidated Appropriations Act[9] and the 2018 Consolidated Appropriations Act[10] collectively provided $2.31 million to the DOT to be used to fund expenses incurred by prospective RRIF borrowers in preparation to apply for RRIF credit assistance. A portion of these funds have already been allocated for prior RRIF projects. The DOT is reserving approximately $1 million of remaining funds from these appropriations to offset the cost of DOT advisors (up to $100,000 per application) that would be payable by participants in the RRIF Express Program, until this funding is expended or this notice is superseded by a new Notice of Funding Opportunity.

III. Eligibility Requirements for RRIF Credit Assistance

The RRIF statute and implementing rules set forth eligibility requirements for applicants and projects. These requirements as well as other applicable federal requirements are described in detail in the *Programs Guide* and apply to all applicants and projects, including those seeking acceptance into the RRIF Express Program. In addition, for prospective borrowers seeking RRIF Express Program benefits, the requirements set forth in section IV (Eligibility Criteria for the RRIF Express Program) of this notice also apply.

IV. Eligibility Criteria for the RRIF Express Program

The DOT has identified the following strategic objectives for the RRIF Express Program: Encouraging increased utilization of RRIF credit assistance by Class II and Class III railroads; reducing transaction costs for Class II and Class III railroads; and streamlining the underwriting process for Class II and Class III railroads. These priorities are reflected in the eligibility criteria below. Generally, projects most suitable for the RRIF Express Program are rail line modernization projects where the borrower has a well-documented financial history and easily identified revenue stream(s) for loan repayment.

To differentiate among Letters of Interest received for projects under this notice of funding opportunity, the DOT will consider whether the project satisfies the following eligibility criteria as demonstrated by the Letter of Interest:

(i) *Applicant:* The applicant must be a Class II railroad, a Class III railroad, or a joint venture with a Class II or III railroad.

(ii) *Project Size:* The project must have eligible project costs of $50 million or less.

(iii) *Project Scope:* The project scope, as described in Section B4 of the Letter of Interest, must be limited to the activities below:

(a) Track improvement predominantly within existing railroad right-of-way, including stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, improving grade crossings and warning devices, and the installation of ancillary equipment such as for communication, signals and train control;

(b) Bridge rehabilitation, including reconstruction or replacement, the rehabilitation of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects that are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges;

(c) Rolling stock acquisition including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment;

(d) Planning and design related to the project activities included under items (a)–(c) above;

(e) Refinancing of non-federal debt (incurred at least three years prior to December 13, 2019 and for the purpose of one or more of the activities listed in 45 U.S.C. 822(b)(1)(A) or (C). Refinancing is limited to up to 40% of the final RRIF loan amount. Letters of Interest including refinancing must demonstrate with specificity in Section D5 how the refinancing would improve the creditworthiness of the applicant and document how such improvement would facilitate the activities referenced in items (a)–(c) above and would increase the applicant's ability to repay a RRIF loan and the overall financial health of the applicant.

(iv) *Applicant Financial History and Projections:* Attachment D–1 of the Letter of Interest must include audited financial statements (by a qualified third party, *e.g.,* a certified public accountant) for the consecutive five years preceding the year of application and that have no significant unresolved findings. Attachment D–1 must also include five years of prospective financial projections (pro-forma).

(v) *Collateral:* If collateral will be pledged for the RRIF loan, Section D9 of the Letter of Interest must be supported with an independent appraisal of the collateral that must have been completed within the past 12 months preceding submission of an LOI. Section D9 of the Letter of Interest must demonstrate that the collateral will be unencumbered at time of closing,

[6] Public Law 110–432, 701(e), 122 Stat. 4848, 4906.

[7] Public Law 114–94, Subtitle F, 129 Stat. 1312, 1693.

[8] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

[9] Public Law 114–113, div. L, tit. I, § 152, 129 Stat. 2242, 2856.

[10] Public Law 115–141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

including a description of any lien release process that would occur prior to closing on the RRIF loan to render currently pledged collateral unencumbered.

(vi) *Environmental Clearance:* Section B6 and Attachment B–6 of the Letter of Interest must demonstrate that either NEPA review is complete or the project qualifies for a Categorical Exclusion under NEPA, in which case Attachment B–6 must include a completed Federal Railroad Administration Categorical Exclusion worksheet with its Letter of Interest. For projects involving replacement of existing railroad bridges, supporting documentation must be provided that assesses the eligibility of the bridge for listing in the National Register of Historic Places and addressing compliance with Section 106 of the National Historic Preservation Act.

(vii) *Domestic Preference:* Section B4(a) of the Letter of Interest must demonstrate that the steel, iron, and manufactured goods used in the project will be produced in the United States in accordance with the Federal Railroad Administration ''RRIF Buy America'' policy, which follows 49 U.S.C. 24405(a). Projects that require a waiver are not eligible for the RRIF Express Program, however, prospective borrowers can seek a loan from the overall RRIF program for projects that require a waiver.

(viii) *Project Readiness:* Section B4(c) of the Letter of Interest must demonstrate the prospective borrower's ability to commence the contracting process for construction of the project (*e.g.,* issuance of a final RFP) by not later than 90 days after the date on which a RRIF credit instrument is obligated for the project.

V. Letter of Interest Process and Review and Next Steps

A. Submission of Letters of Interest

All prospective borrowers seeking acceptance into the RRIF Express Program should submit a Letter of Interest following the instructions described in this notice of funding opportunity. The Letter of Interest should be annotated with ''RRIF EXPRESS'' immediately following the Applicant Name in the **SUMMARY INFORMATION** section on page one of the Letter of Interest. The Letter of Interest must, among other things:

(i) Describe the project and its components, location, and purpose in Section B, and include as Attachment B–2 the project budget organized according to construction elements from preliminary engineering estimates, and including costs as appropriate for property, vehicles, professional services, allocated and unallocated contingency, and finance charges;

(ii) Outline the proposed financial plan in Section C, and include the financial model, that addresses such aspects as model assumptions, annual cash flows, balance sheets, income statements and repayment schedules for the duration of the loan, as well as coverage ratios and debt metrics. The model should allow reviewers the flexibility to evaluate scenarios in the native spreadsheet (Microsoft Excel, or equivalent) format and be included in the application as Attachment C–1;

(iii) Provide information regarding satisfaction of other statutory eligibility requirements of the RRIF credit program; and

(iv) Provide information regarding satisfaction of the RRIF Express Program eligibility criteria (as described in Section IV above).

Prospective RRIF Express borrowers should describe in Letter of Interest Section D8 if the project will (1) decrease transportation costs and improve access, especially for rural communities or communities in Opportunity Zones,[11] through reliable and timely access to employment centers and job opportunities; (2) improve long-term efficiency, reliability or costs in the movement of workers or goods; (3) increase the economic productivity of land, capital, or labor, including assets in Opportunity Zones; (4) result in long-term job creation and other economic opportunities; or (5) help the United States compete in a global economy by facilitating efficient and reliable freight movement. Projects that bridge gaps in service in rural areas, and projects that attract private economic development, all support local or regional economic competitiveness.

Letters of Interest must be submitted using the latest form on the Build America Bureau website: *https://www.transportation.gov/content/build-america-bureau.* Other RRIF Express pilot program information including any additional terms, conditions, and requirements can be found on the Build America Bureau website at: *https://www.transportation.gov/buildamerica/rrif-express.* The Bureau may contact a prospective borrower for clarification of specific information included in the Letter of Interest. The Bureau will review all Letters of Interest properly filed and received in the submission time window provided herein.

B. Review and Evaluation

Each Letter of Interest that is properly filed and received will be evaluated for completeness and eligibility for the RRIF Express Program using the criteria in this notice. This initial step of the review process will include (1) an evaluation as to whether the proposed project and applicant satisfy RRIF statutory eligibility requirements, and (2) an evaluation as to whether the proposed project and applicant satisfy the RRIF Express Program eligibility criteria.

The Letters of Interest determined to be eligible for the RRIF Express Program will then be advanced to the Bureau's creditworthiness review process, which is an in-depth creditworthiness review of the project sponsor and the revenue stream proposed to repay the RRIF credit assistance as described in the *Programs Guide.* The Secretary reserves the right to limit the number of applications from a single entity or subordinates of a single parent or holding company. Prospective RRIF borrowers whose RRIF Express Program Letters of Interest are determined to be ineligible, but whose projects are otherwise statutorily eligible for standard RRIF credit assistance, have the option to be considered under the overall RRIF program.

Issued in Washington, DC, on November 12, 2019.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2019–26743 Filed 12–12–19; 8:45 am]

BILLING CODE 4910–9X–P

[11] See *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx* for more information on Opportunity Zones.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to Escrow Funds and Other Similar Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is

soliciting comments concerning the burden related to requirements that escrow accounts, settlement funds, and similar funds be subject to current taxation either as grantor trusts or otherwise.

DATES: Written comments should be received on or before January 13, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Escrow Funds and Other Similar Funds.

OMB Number: 1545–1631.

Regulation Project Number: TD 9249.

Abstract: This document contains final regulations relating to the taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, and other related rules. The final regulations affect qualified settlement funds, escrow accounts established in connection with sales of property, disputed ownership funds, and the parties to these escrow accounts, trusts, and funds.

Current Actions: There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,300.

Estimated Time per Respondent: 24 min.

Estimated Total Annual Burden Hours: 3,720.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 10, 2019.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2019–26914 Filed 12–12–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Pilot Program for Dental Health Care Access

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent and request for comments.

SUMMARY: Upon Congressional approval, VA intends to develop and implement a pilot program designed to increase veteran access to health care and support services at no additional cost to VA or veterans. The initial demonstration project VA proposes under this pilot program is to improve dental health care access for veterans by connecting them with community-based, pro bono or discounted, dental service providers. The objective of this pilot demonstration is to improve overall health by increasing access to dental services for enrolled veterans currently ineligible for dental services through VA. Improving the state of veteran health will be evaluated through assessment of emergency medical care visits. Thus, the anticipated impact of this pilot program is to improve quality of health while decreasing health care related costs associated with the provision of emergency care.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the 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. Comments should indicate that they are submitted in response to ''Notice of Intent and request for comments''. During the comment period, comments may also be viewed online through the Federal Docket Management System at *www.regulations.gov.*

DATES: Comments must be received on or before January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Akinyele, MBA, SES, VA Chief Innovation Officer, VA Innovation Center (VIC) (008E), Office of Enterprise Integration, 810 Vermont Ave. NW, Washington, DC 20420. Email: *innovation@va.gov*; Phone: (202) 461–0462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Introduction

On June 6, 2018, section 152 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018 (hereinafter the MISSION Act), amended title 38 of the United States Code (U.S.C.) by adding a new section 1703E, Center for Innovation for Care and Payment (the Center). Section 1703E(f) allows VA to waive requirements in subchapters I, II, and III of chapter 17, title 38, U.S.C., as VA determines necessary for the purposes of carrying out pilot programs under this section. Before waiving any such authority, VA will submit to Congress a report on a request for a waiver that describes the specific authorities to be waived, the standard or standards to be used in lieu of the waived authorities, the reasons for such waiver or waivers, and other matters including metrics, cost estimates (both budgets and savings), and schedules.

VA published a proposed rule (RIN 2900–AQ56) on the Center on July 29, 2019 (84 FR 36507). VA published a final rule implementing its authority on October 25, 2019 (84 FR 57327); this

rule became effective on November 25, 2019.

On December 6, 2019, VA submitted to Congressional leadership its first waiver request. This Notice is published to share this waiver request with the public, to solicit public feedback, and to comply with section 17.450(e)(2) of title 38, Code of Federal Regulations (CFR).

VA seeks to develop and implement a pilot program designed to increase veteran access to health care and support services at no additional cost to VA or veterans. The initial demonstration project VA proposes under this pilot program is to improve dental health care access for veterans by connecting them with community-based, pro bono or discounted, dental service providers. The objective of this pilot demonstration is to improve overall health by increasing access to dental services for enrolled veterans currently ineligible for dental services through VA under 38 U.S.C. 1712. Improving the state of veteran health will be evaluated through assessment of emergency medical care visits. Thus, the anticipated impact of this pilot program is to improve quality of health while decreasing health care related costs associated with the provision of emergency care.

Under 38 U.S.C. 1712, VA has limited authority to furnish outpatient dental care. Generally, veterans must either have a dental issue that is service-connected or qualify based on narrow criteria (*e.g.,* the veteran is a former prisoner of war, the veteran has a service-connected disability rated as total, or treatment is medically necessary in preparation for hospital admission or for a veteran otherwise receiving VA care or services or reasonably necessary to complete dental care that began while the veteran was receiving hospital care). Under this authority, VA provides dental services on an annual basis to approximately only eight percent of veterans who are enrolled in the VA health care system. Poor oral health can have a significant negative effect on overall health. Neglecting oral health can lead to health problems, including oral cancer. Clinical researchers have found possible connections between gum problems and heart disease, bacterial pneumonia, and stroke (Mayo Clinic. (2019). Oral health: A window to your overall health. Retrieved from *https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/dental/art-20047475*). Upon approval of this pilot, VA will work with groups such as the American Dental Association (ADA) and with Federally Qualified Health Centers (FQHC) across the U.S. to offer pro bono and discounted dental services to veterans.

38 U.S.C. 523 authorizes VA to coordinate the provision of VA benefits and services (and information about such benefits and services) with appropriate programs (and information about such programs) conducted by private entities at the State and local level. Under section 523, VA may furnish local veterans with information about the free dental screening and care being offered by local providers and encourage them to make appointments for a screening but may not provide administrative support to local providers who agree to furnish the care.

This waiver seeks to expand VA's authority under section 1712 and would allow VA to more effectively serve veterans. Specifically, VA administrative staff would be authorized to coordinate community-provided care for enrolled veterans who are not eligible for VA provided dental care under 38 U.S.C. 1712 while educating them on the dental care options available in their local community. VA administrative staff would be authorized to work with other entities that would facilitate the connection between veterans and dental providers. The expected impact is that the minimal increase of the full-time employee equivalents (FTEE) to support pilot program implementation, reporting, and analysis will be less than the appreciated cost savings.

2. Effective Date, Duration, and Extension or Expansion of Pilot Program

VA is authorized by 38 U.S.C. 1703E(a)(2) to carry out pilot programs the Secretary determines to be appropriate to develop innovative approaches to testing payment and service delivery models in order to reduce expenditures while preserving or enhancing the quality of care furnished by the Department. VA is also directed by law to test models in implementing pilot programs. See 38 U.S.C 1703E(f)(1), (h)(1). This pilot program is focused on VA collaborations with community entities or providers that connect veterans to pro bono and discounted services. The demonstration model that requires a waiver for implementation is focused on Care Coordination for Dental Benefits (CCDB). This would be the initial demonstration project for the Community Provider Collaborations for Veterans (CPCV) Pilot Program. CCDB would aim to improve access to needed dental care in a cost neutral way. The demonstration model's success would inform whether a different demonstration under CPCV connecting veterans to additional pro bono and discounted services would be beneficial. Upon Congressional approval of this pilot program and the waiver request necessary to implement the demonstration model, VA would begin taking necessary preliminary steps to commence the pilot program and demonstration model. These steps would include development of measurement tools and metrics, outreach to non-VA entities who can participate in the pilot program, and other administrative actions needed to support the pilot program. When VA is ready to commence the pilot program VA would notify the public of the date of the start of the pilot program. The pilot program's period of performance would commence upon the date identified in the notification to the public. The pilot program period of performance would be 5 years.

VA may expand the scope or duration of a pilot program if, based on an analysis of the data developed pursuant to 38 CFR 17.450(g) for the pilot program, VA expects the pilot program to reduce spending without reducing the quality of care or expects to improve the quality of patient care without increasing spending. The pilot is designed to reduce utilization of emergency care by veterans to address dental care and subsequently reduce costs for these services. Expansion may only occur if VA determines that expansion would not deny or limit the coverage or provision of benefits for individuals under chapter 17. Consistent with 38 CFR 17.450(h), expansion of a pilot program may not occur until 60 days after VA has published a document in the **Federal Register** and submitted an interim report to Congress stating its intent to expand a pilot program. Examples of potential program expansions might include, but are not limited to, the geographic location of the pilot and the range of services provided. In general, pilot programs are limited to 5 years of operation. VA may extend the duration of a pilot program by up to an additional 5 years of operation. Any pilot program extended beyond its initial 5-year period must continue to comply with the provisions of this section regarding evaluation and reporting under 38 CFR 17.450(g).

3. Context for Prioritizing This Pilot Program

While VA has a unique mission and framework, the Department is challenged by the same variability in access, escalating health care costs, and need for modernization faced by the

entire U.S. health care system. VA dental care is one facet of the overarching VA health care system that seeks to overcome these barriers via the CPCV Pilot Program.

Problem Statement: Due to defined eligibility for dental care, VA only provides dental benefits to 8 percent of the veterans enrolled in the VA health care system every year. The remaining 92 percent of veterans use private dental insurance, pay out of pocket for dental services, rely on pro bono or discounted dental clinics and services, or forego critical dental services.

Proposed Eligibility: Veterans currently enrolled in VA health care but who are ineligible for VA dental care under 38 U.S.C. 1712.

Proposed Intervention: Provision of administrative support for accessing community-based dental care.

Implementation Steps:

(Step 1) Direct notice of eligibility to veterans.

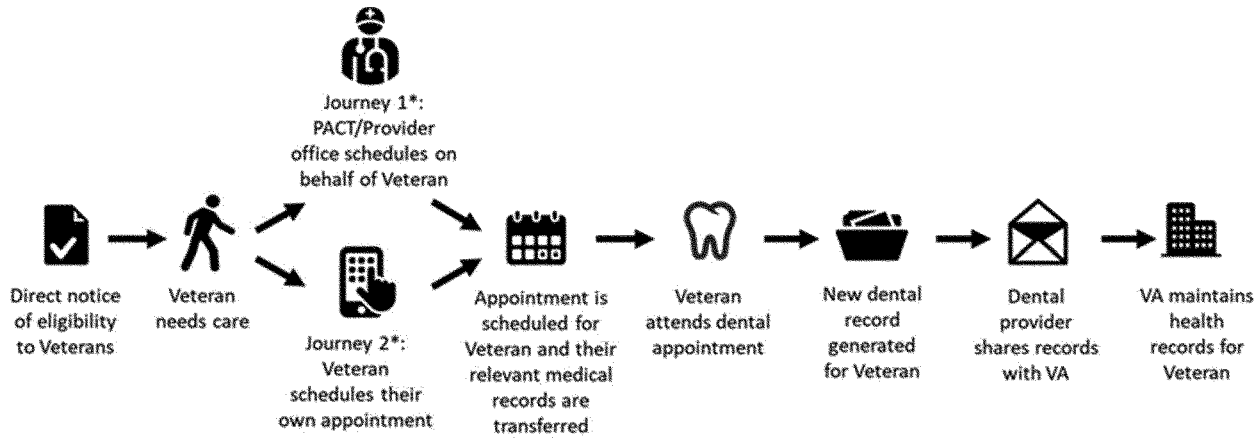
(Step 2) Veteran or Patient-Aligned Care Team (PACT) determines need for oral health care and contacts the CPCV Pilot Program Call Center and/or Portal.

(Step 3) VA staff or CPCV Pilot Program Call Center and/or Patient Portal identify providers based on availability and location, and schedules necessary appointment for the veteran.

(Step 4) Following the dental appointment, dental visit records are provided to the VA primary care provider.

Proposed Sites: The CPCV Pilot Program will be delivered to eligible veterans at selected pilot sites which may include Veterans Integrated Service Networks (VISN) 2, 8, 10, 12, based on the following criteria: Current availability of pro bono and discounted dental service providers; Current demand for dental services; Number of veterans represented; Urban vs. rural population distribution.

Figure 1: Care Coordination for Dental Benefits (CCDB) Journey Map



VA offers comprehensive dental care benefits to certain qualifying veterans under 38 U.S.C. 1712; it also offers limited services to certain qualifying veterans under the same. In addition, veterans enrolled in VA health care may purchase dental insurance at a reduced cost through VADIP under 38 U.S.C. 1712C (U.S. Department of Veterans Affairs. (n.d.). VA Dental Insurance Program. Retrieved from *https://www.va.gov/healthbenefits/VADIP.* (Note: VADIP offers eligible individuals the opportunity to purchase discounted dental insurance coverage that includes diagnostic services, preventive services, endodontic and other restorative services, surgical services and emergency services)). According to an article in the Journal of Oral Microbiology, periodontal treatment may have a beneficial impact on health and wellbeing (Rydén, L., et al. (2016). Periodontitis Increases the Risk of a First Myocardial Infarction: A Report From the PAROKRANK Study. 2016 Feb 9; 133(6): 576–583. 13. doi: 10.1161/CIRCULATIONAHA.115.020324). The Journal cites a 2016 Swedish study where 805 patients, less than 75 years of age with first-time acute myocardial infarction (AMI), were matched against 805 patients without AMI; clinical dental examinations and panoramic x-rays were conducted on all participating patients, and periodontitis (PD) was found to be more common among patients with AMI than the control group (Rydén, L., et al. (2016). Periodontitis Increases the Risk of a First Myocardial Infarction: A Report From the PAROKRANK Study. 2016 Feb 9; 133(6): 576–583. 13. doi: 10.1161/CIRCULATIONAHA.115.020324.) The Mayo Clinic reiterates the range of diseases and conditions that have been linked to oral health including endocarditis, cardiovascular disease, pregnancy and birth complications, and pneumonia (Mayo Clinic. (2019). Oral health: A window to your overall health. Retrieved from *https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/dental/art-20047475*).

4. Statement of Need

In 2018, VA spent approximately $1.1 billion on veteran dental care, averaging approximately $2,185 per veteran (U.S. Department of Veterans Affairs. (n.d.). VA Dental Insurance Program. Retrieved from *https://www.va.gov/healthbenefits/VADIP/.* (Note: VADIP offers eligible individuals the opportunity to purchase discounted dental insurance coverage that includes diagnostic services, preventive services, endodontic and other restorative services, surgical services and emergency services). Currently, VA is operating at near maximum capacity providing dental care for eligible veterans and would require a significant budget increase to provide dental access to all veterans.

While dental care is imperative to overall health and well-being, 92 percent of veterans enrolled in VA health care are not eligible for VA dental care (U.S. Department of Veterans

Affairs. (2019). VA Dental Care. Retrieved from *https://www.va.gov/health-care/about-va-health-benefits/dental-care/*). Dental treatments occurring outside of VA may be fragmented and the data related to these visits is outside of VA's purview, potentially creating uncoordinated care and duplication of services. There were 115,000 veterans enrolled in VADIP as of January 31, 2017. However, it is unclear exactly how many veterans are without access to dental care or services, which could be correlated with poor oral health.

Poor oral health is correlated with potentially avoidable and costly emergency department (ED) visits, causing more than two million visits to the ED each year (Lee, H.H., Lewis C.W., Saltzman B., Starks H. (2012). Visiting the emergency department for dental problems: Trends in utilization, 2001 to 2008. Am. J. Public Health. 2012; 102:e77–e83. doi:10.2105/AJPH.2012.300965). This could be attributed to low oral health awareness, whereby individuals lack understanding around the importance of preventable dental services and the associated health care outcomes (V. Bowyer, et. al. (2011). Oral health awareness in adult patients with diabetes: A questionnaire study. British Dental Journal. [PDF file]. doi: 10.1038/sj.bdj.2011.769). In a study analyzing ED usage in New Jersey, individuals classified as ''high users,'' who had four or more visits during the study period, represented only 4.2 percent of all users but accounted for 21 percent of the visits. The study found that almost all the high users (94.3 percent) had a diagnosis of ''dental disorder not otherwise specified.'' (DeLia, D., Lloyd, K., Feldman, C.A., & Cantor, J.C. (2016). Patterns of emergency department use for dental and oral health care: Implications for dental and medical care coordination. Journal of public health dentistry, 76(1), 1–8. doi: 10.1111/jphd.12103) We believe there is an opportunity for cost savings to be realized through reduction in ED utilization caused by increasing access to dental care.

Amid public calls for modernization, VA is transitioning to a more automated health care system (U.S. Department of Veterans Affairs. (2019). Accelerating VA IT Modernization through DevOps. Retrieved from *https://www.oit.va.gov/reports/year-in-review/2018/stabilizing-and-streamlining/devops*). An online platform connecting veterans to pro bono or discounted dental care services could provide veterans increased access to quality care while possibly reducing costs associated with ED visits linked to oral health. To stay at the forefront of modernization, under this pilot program, VA would explore opportunities to enable and expand veteran access to a network of pro bono and discounted care dental providers. The CPCV Pilot Program aims to improve access to dental services, overall coordination of care, and beneficiary outcomes through an automated system or a call center that would facilitate pro bono or discounted services for veterans or VA employees providing direct administrative support to veterans.

5. Current Approach to Service Delivery and/or Payments

5.1 Dental Care

VA is required to furnish dental care in accordance with 38 U.S.C. 1712, as noted in Sections 1 and 3 above.

5.2. Community Entities and Providers

Historically, community entities and providers have demonstrated a desire and willingness to support veterans through pro bono or discounted services. In the community, veterans have access to legal services, employment and training services, health and social services, supportive housing programs, income support services, and dental care. While various veteran-centered services exist, veterans are not always aware of and/or connected to these programs and services. Given the public's support of veterans and the available pro bono or discounted services for veterans, VA has identified a unique opportunity to engage with community entities and providers to help connect veterans to pro bono or discounted dental care programs and services.

VA tracks dental care provided to veterans directly by VA or by authorized community care providers. However, VA has no mechanism to track dental care provided on a pro bono or discounted basis or dental care received by veterans not eligible for VA dental services. There are currently several non-profit organizations and companies who provide pro bono dental care for veterans. Veterans can receive pro bono or discounted dental care from providers if they meet the requirements of the program.

In September 2019, the U.S. Department of Health and Human Services (HHS) Health Resources and Services Administration (HRSA) awarded over $85 million to 298 health centers to expand their oral health service capacity (U.S. Department of Health and Human Services. (2019). HHS Awards over $85 Million to Help Health Centers Expand Access to Oral Health Care. Retrieved from *https://www.hhs.gov/about/news/2019/09/18/hhs-awards-over-85-million-help-health-centers-expand-access-oral-healthcare.html*). These investments could enable HRSA-funded health centers to provide new, or enhance existing, oral health services to communities that include veterans.

6. Proposed Pilot Program

This section describes the details and defines the terms of this pilot program and conditions that would justify pilot program expansion or termination. This demonstration model would be the initial demonstration being developed and tested for the CPCV Pilot Program. This demonstration model seeks to expand coordination and access to dental care for veterans not currently eligible for VA dental care.

The demonstration model aims to enable VA to more effectively serve enrolled veterans not eligible for VA dental care under 38 U.S.C. 1712. In this demonstration model, VA would collaborate with community entities and providers to develop and implement interventions that are cost neutral to VA. The designed interventions would facilitate the referral and scheduling of pro bono and discounted services for veterans who need dental care and services but are not eligible to receive such dental care and services from VA. VA will work closely with OMB to refine the design and scope of the pilot demonstration and provide an update to Congress at a later date.

6.1. Terms and Details of the Pilot Program

This proposal outlines a pathway for veterans who are enrolled in VA health care but do not qualify for coverage through VA to schedule pro bono or discounted dental care using either a call center model or an automated self-service portal that would connect veterans to pro bono or discounted dental services, thus expanding access. The call center or portal would be administered by non-VA entities, but would likely not be administered by the community providers or entities furnishing pro bono or discounted dental services under this program. Additionally, the pilot would connect veterans to HRSA working with Federally Qualified Health Centers (FQHC), Community Health Centers (CHC), free dental clinics, or other parties to provide dental services on a pro bono or discounted basis.

VA staff at selected sites would provide care coordination services between VA, community entities, and providers to support veterans

participating in this demonstration model. Care coordination is the deliberate organization of patient care activities between two or more participants involved in a patient's care to facilitate the appropriate delivery of health care services (McDonald, K.M., et al. (2007). Closing the Quality Gap: A Critical Analysis of Quality Improvement Strategies. AHRQ Technical Reviews and Summaries, Vol 9.7. Retrieved from: *https://www.ncbi.nlm.nih.gov/books/NBK44015/*). VA would work with other entities in the community to provide a number to a call center or a web address for a self-service portal to schedule dental services. We anticipate there would be minimal impact on the current duties of VA staff. Any community entities or providers engaged in the development and implementation of this demonstration model should have proven experience with and commitment to serving veterans.

A tiered approach to care could be implemented, where veterans have access to one-time, acute dental care options as well as longer term care options focused on preventative care and long-term dental management; decisions regarding what services will be provided would be subject to the decisions of private entities and providers offering pro bono or discounted dental services to eligible veterans. VA would collaborate with community entities to engage dental providers and non-profit organizations to build a coalition of pro bono or discounted dental care providers willing to share their availability and service offerings with VA and provide their availability in the self-service portal. The portal would allow dental providers to indicate which tier of care they are willing to provide. The call center or online self-service portal would improve access by connecting veterans with conveniently located community entities and providers offering dental services. It is expected that when the call center or self-service portal becomes available, information regarding the self-service portal would be relayed to veterans via a multisource campaign.

The targeted benefits of the demonstration model are: Veterans ineligible for VA dental care experience improved access to dental care services; veterans benefit from enhanced care coordination with community dental providers and improved access to oral health care and benefits; Possibility of improved health outcomes by addressing oral health needs that impact and interact with other physical health and social determinants of health.

6.1.1. Deficits in Care and Affected Populations

The demonstration model would focus on the expansion and coordination of access to dental care benefits for veterans who are not eligible for VA dental care. We estimate that approximately 92 percent of veterans who are enrolled in VA health care do not have access to comprehensive dental care through VA and are thus at an elevated risk for oral health issues and complications.

The Healthy People 2020 Report highlighted limited access to and availability of dental services, and lack of awareness of the need for care, as critical barriers that impact a person's use of preventive dental health interventions. Social determinants that impact oral health include having lower levels of education and income, disabilities, other health conditions such as diabetes, and people from specific racial/ethnic groups (Office of Disease Prevention and Health Promotion. (2019). Oral Health. Retrieved from *https://www.healthypeople.gov/2020/topics-objectives/topic/oral-health*).

The ADA reports that 28 percent of adults between the ages of 35–44 and 18 percent of adults 65 and older have untreated tooth decay (American Dental Association. (2013). Action for Dental Health: Bringing Disease Prevention into Communities. [PDF file]. Retrieved from *https://www.ada.org/~/media/ADA/Public%20Programs/Files/bringing-disease-prevention-to-communities_adh.ashx*). Additionally, the Centers for Disease Control and Prevention (CDC) report that nearly 70 percent of American adults 65 years and older have periodontal disease (Centers for Disease Control and Prevention. (2016). Oral Health Conditions: Periodontal Disease. Retrieved from *https://www.cdc.gov/oralhealth/periodontal-disease.html*).The prevalence of dental health issues reinforces the importance of addressing dental health in a timely fashion. The CDC reports that over 80 percent of adults have had at least one cavity by age 34. There are significant cost impacts arising from poor dental care for patients and VA, both in medical claims (*e.g.,* emergency department visits) and work productivity loss.

6.1.2. Pilot Program Interventions

The core tenets of the demonstration model include developing and enhancing trusted collaborations with community dental providers, prioritizing care and interventions, and individualizing the approach to improving veterans' oral health care needs. This demonstration model enables a standardized and streamlined approach to facilitating veterans' access to pro bono dental care and services. VA intends to pursue a phased approach to developing and implementing interventions for this demonstration model. It is anticipated that the phased development and implementation approach would follow the sequence listed below.

(1) Expanding on VA's experience establishing relationships with community entities to furnish services to VA and veterans at only nominal cost to VA, we intend to collaborate with community entities to establish a call center to schedule and coordinate appointments for veterans with high quality dental service providers participating in this demonstration model.

(2) In addition to utilizing a call center to connect veterans to community providers participating in the CPCV pilot program, VA will also collaborate with community entities to develop and implement a patient portal that allows veterans to directly schedule visits and own their individual data on the platform. An additional feature of the self-service portal would be the control the veteran would have over granting access to dental providers, caregivers, and community support team members of their choice. While the patient portal would not be owned and operated by VA, VA would have access to the veteran data contained on the platform. The platform will ensure that all Privacy Act, Health Insurance Portability and Accountability Act of 1996 (HIPPA), and VA information security standards are satisfied.

We believe a self-service patient portal and/or call center would present an opportunity for VA to enable veteran care coordination with pro bono dental services in a manner that is cost neutral to VA with minimal impact on current VA operations even if this service offering is scaled nationwide through subsequent expansion after determining that the pilot program has been successful. This strategic approach would expand on previously demonstrated interest in collaborations with private entities as demonstrated by the success of VA's recent efforts with organizations such as Walmart, T-Mobile, and Microsoft. A non-VA owned self-service patient portal or call center also would allow VA to enable the development and implementation of a national directory of dentists who are already providing pro bono care in their communities. Additionally, the national directory would create opportunities to

promote further research on the impact of oral health on other health and well-being outcomes.

Finally, a self-service patient portal or call center could encourage increased participation from existing pro bono providers, such as those affiliated with Dentists for Veterans, and the participation of additional dentists who do not currently offer pro bono services to veterans (Dentists for Veterans. (n.d.). About Us. Retrieved from *http://www.dentistsforveterans.org/about-us/.* (Note: Dentists for Veterans is an existing non-profit organization that provides low- to no-cost dental services to veterans and targets low income, physically disabled, and mentally ill veterans in Southern California.). Other groups, for example, include Everyone for Veterans, a private, non-profit organization based in the State of Washington, that connects veterans and their spouses to local community services and dental care (Everyone for Veterans (n.d.). About Us. Retrieved from *https://www.everyonefor veterans.org/about-us.html*), and Dental Lifeline, which has a network of 15,000 volunteer dentists and 3,700 volunteer laboratories that provides care to those who cannot afford dental care and have either a permanent disability, a medically fragile condition, or are over 65 (Dental Lifeline Network. (2019). About Us. Retrieved from *https://dentallifeline.org/about-us/*). Non-profit organizations that provide pro bono or discounted dental care to the general population could also be utilized in the demonstration model.

VA staff could also provide direct administrative support, either using the call center or portal or through other means, to help veterans access these pro bono or discounted dental services.

Where VA refers a veteran to specific providers, which would occur if the call center or portal is not operational, then the Department will provide the veteran with a list of providers which includes a prominent disclaimer that, ''The list is provided for informational purposes. The Department of Veterans Affairs does not endorse any listed provider.''

6.1.3. Pilot Program Costs

VA would collaborate with community entities or providers and dental providers to create multiple avenues for veterans to access pro bono dental care and discounted dental services provided by community providers. Information in this section is considered acquisition sensitive and therefore excluded, however, VA anticipates expending between $5 million and $10 million annually on the execution of the CPCV pilot program. VA would bear the impact evaluation and strategic execution and performance management/oversight of the pilot program.

6.1.4. Pilot Program Implementation

VA anticipates executing this pilot program in metropolitan areas with greater access to pro bono and discounted dental services in the community and in areas with access to FQHCs. Any enrolled veteran ineligible for VA dental benefits in participating areas would be eligible to participate, and any veteran affected by this program would receive direct notice about the program. It is anticipated that veterans would be able to self-identify their need for this program. VA staff working on a veterans' care team would receive information about this demonstration model and could recommend that veterans use the available resources.

VA would provide direct notice to veterans in selected areas regarding the CPCV Pilot Program through hard copy materials and informational advertisements in predetermined VA facilities and on VA's website. VA would also explore opportunities with media organizations to promote the demonstration model and the available resources. Finally, VA would include information on several national VA websites about this pilot program, how to access the portal, and eligibility criteria for qualifying veterans (U.S. Department of Veterans Affairs. (2019). VA Dentistry—Improving Veterans' Oral Health. Retrieved from *https://www.va.gov/dental/*) and VA Innovation Center (VIC) (U.S. Department of Veterans Affairs. (n.d.). VA Innovation Center. Retrieved from *https://www.innovation.va.gov/*).

VA, supporting providers, and participating veterans would have full access to self-reported beneficiary data. Veterans would be enabled and authorized to expand or limit the access to this data. The beneficiary data collected will be subject to the Privacy Act, HIPAA, and VA's information security requirements.

This pilot program would start upon the date identified in VA's notification to the public announcing the commencement of the program. The time between Congressional approval and VA's notification to the public announcing the start of the program would allow VA to engage the community, develop intervention requirements (such as available capacity of certified providers willing to provide services), and execute any necessary agreements with other entities; it would also give VA time to address other administrative requirements for the program. VA would engage dental care entities and providers willing to offer pro bono services or discounted dental care services to veterans and discuss how the pilot would operate while addressing any provider concerns. Initial outreach would focus on dental associations and dental provider organizations that have a history of working with veterans.

6.1.5. Pilot Program Beneficiaries

Enrolled veterans who are not eligible to receive dental care from VA under 38 U.S.C. 1712 would be eligible for the CCDB demonstration model. Initial veteran outreach and education would focus on enrolled veterans in metropolitan areas with access to discounted services and pro bono providers, but if this pilot program proves successful, VA could look for rural areas with available pro bono providers or those offering discounted services as well.

6.1.6. Pilot Program Evaluation

To evaluate the CCDB demonstration model, the performance of the intervention group would be compared to at least one control group.

Intervention group: Veterans that are not currently eligible to receive VA dental services.

Control group: Risk-stratified, randomized, and prospectively matched veteran enrolled in VA health care who are eligible to receive dental benefits in VA; or are ineligible to receive dental benefits in VA and not enrolled in the CCDB demonstration.

Sample performance data includes: Cost savings from reducing ED visits linked to oral health issues; Impact on access and veteran experience; Impact on patient satisfaction and customer experience measures mapped to Office of Management and Budget (OMB) Circular A–11 domains and applicable Consumer Assessment of Healthcare Providers and Systems (CAHPS) Dental Plan survey results (OMB approval would be needed to distribute the CAHPS Dental Plan survey to demonstration participants.) Examples of data sources include: VA claims, encounters, and commercial claims.

Sample evaluation questions: Will experience outcomes for the intervention group exceed the control group? Which of the interventions utilized in this demonstration model will be most effective for veterans to access pro bono dental care? Will VA achieve cost savings as a result of a reduction in the number of ED visits linked to oral health issues?

6.1.7. Potential for Impact on Center for Innovation for Care and Payment Priorities

Section 1703E(a)(3) identifies specific objectives for pilot programs. This demonstration model would focus on improving access to, and quality, timeliness, and patient satisfaction of care and services, and creating cost savings for VA by expanding the availability of dental services through administrative support to veterans currently ineligible for VA dental care. The care would be provided by high-quality providers with oversight provided by HRSA and FQHCs in a timely fashion, and we expect patient satisfaction would improve as a result. Better care should also reduce costs to VA for ED visits linked to oral health issues. The following table contains key measures and desired outcomes that were identified by VA leadership to determine the success of care delivery.

Table 1: Key Factors and Desired Outcomes

Key Factors / Desired outcomes	Access	Quality	Timeliness	Patient Experience	Cost Savings
Addresses deficits in care?	Yes	No	No	Yes	Yes
Geographic considerations?	Yes	No	No	Yes	No
Patient-centeredness focus?	Yes	Yes	Yes	Yes	Yes
Technology-enabled care coordination?	Yes	No	No	Yes	No
Pilot program 5 years or less?	Yes	Yes	Yes	Yes	Yes

6.1.8. Impact on Desired Outcomes

Connecting veterans to pro bono and discounted dental care would enable enrolled veterans that are ineligible for VA dental care to access the services they need at no cost or reduced cost, filling a significant deficit in care. Providing needed dental care to veterans through local community providers would simplify access to care for patients. The self-service automated platform would centralize information related to the availability and specialty of dental care providers in the community willing to provide pro bono or discounted services to veterans. This pilot program would be expected to occur over a period of 5 years to allow adequate time to design and test interventions and aggregate relevant metrics for evaluation.

6.2 Responsibilities of Key Stakeholders

The key stakeholders and associated responsibilities of related parties involved in the operation of the CCDB demonstration model include:

Table 2: Key Stakeholders, Roles, and Responsibilities

Role	Role Description	Responsibilities
Secretary of Veterans Affairs	Serves as the Executive Sponsor and provides final Department level approval to pilot programs authorized by section 1703E.	• Serves as final approving authority at the Department level.
VA Innovation Center	Leads pilot program development, implementation, and day-to-day oversight. Collaborates with relevant stakeholders across the Department, other public and private sector parties in the development and evaluation of pilot program proposals and reports.	• Operates the Center for Innovation for Care and Payment established by section 1703E. • Provides strategic and tactical oversight to ensure requirements of section 1703E are met in the development and implementation of pilot programs authorized by section 1703E. • Leads stakeholder engagement efforts associated with the development and implementation of pilot programs authorized by section 1703E. • Collaborates with HRSA, FQHCs, and other parties to provide oversight.
VA Program Office	Collaborates with VIC on the development and implementation of pilot programs authorized by section 1703E.	• Serves as a Subject Matter Expert required to provide technical evaluation of pilot program interventions.
Other VA Offices	Department employees actively engaged in the implementation of the pilot program.	• Advocates for broad stakeholder support of the pilot program. • VA OIT establishes mutually beneficial information exchange processes to support the pilot program. • Works with pilot program implementation support and other entities and providers to establish communication needs and approaches required by the pilot program.
Pilot Program Participants	Beneficiaries participating in the pilot program.	• Participates in the pilot program. • Provides qualitative and quantitative data to support pilot program analysis and impact evaluation.
Operating Sites	Facilities participating in the pilot program.	• Supports the efforts of the pilot program as outlined in the pilot program and as requested by Department leadership. • Provides qualitative and quantitative data to support pilot program analysis and impact evaluation.
Pilot Program Implementation Support	Vendors actively engaged in the implementation of the pilot program.	• Performs agreed upon duties and responsibilities in a timely fashion and in a high-quality manner in accordance with the terms and conditions of the pilot program. • Fulfills the contracted statement of work in a timely manner and in accordance with the terms and conditions of the pilot program. • Works with VA to establish communication needs and approaches required by the pilot program.
Pilot Program Development Entities or Provider(s)	Other public and private sector individuals and organizations who establish a formal agreement to collaborate with VA in the joint exploration and development of pilot programs authorized by section 1703E.	• Entities or providers offer resources and expertise to support the design of the pilot program and work with other participants to ensure successful launch and ongoing operations of the demonstration. • Entities or providers perform Veteran outreach, education, and cultural competency to support the pilot program.

6.3. Pilot Program Expansion or Termination

6.3.1.1. Terms

This is a demonstration model of the CPCV Pilot Program. Consistent with 38 CFR 17.450(h), VA may expand the scope or duration of a pilot program if, based on an analysis of the data and analysis developed for the CCDB demonstration model, VA expects this pilot program to (1) reduce spending without reducing the quality of care, (2) improve the quality of patient care without increasing spending, or (3) improve the quality of care while reducing spending. Expansion of the pilot program may occur if the combined results of the impact analysis and evaluation of the demonstration models tested under a pilot program indicate that the desired outcomes of the pilot program were achieved. VA may not expand a pilot program if VA determines that such expansion would deny or limit the coverage or provision of benefits for individuals receiving benefits under chapter 17 of title 38, U.S.C. Expansion of a pilot program may not occur until 60 days after VA has published a document in the **Federal Register** and submitted an interim report to Congress stating its intent to expand a pilot program. Examples of potential program expansions might include, but are not limited to, the geographic location of the pilot and the range of services provided. VA may also extend the duration of a pilot program by up to an additional 5 years of operation, and any pilot program extended beyond its initial 5-

year period must continue to comply with the provisions in section 17.450 regarding evaluation and reporting.

6.3.1.2. Conditions

VA would continuously monitor the performance of this demonstration model. This demonstration model is designed to reduce spending without reducing the quality of care and improve the quality of patient care without increasing spending. The metrics to be measured and compared to the study population include but are not limited to improved veteran satisfaction and reduced ED utilization.

6.3.1.3. Implementation Approaches

The demonstration model would evaluate veteran populations, access requirements, deficits in care assessments, and available provider networks in determining geographic expansion selection.

6.3.2. Pilot Program Termination or Cessation

6.3.2.1. Terms

Pilot termination is defined as ending the pilot program earlier than its authorized period (in this case, 5 years from commencement) upon a determination by the Secretary that the pilot program is not producing quality enhancement or quality preservation, or is not resulting in the reduction of expenditures, and that it is not possible or advisable to modify the pilot program either through submission of a new waiver request or through modification under section 17.450(i). Section 17.450(j) establishes these conditions. If VA determined that the CCDB demonstration model was not producing quality enhancement or quality preservation, or was not resulting in the reduction of expenditures, and that it was not possible or advisable to modify the demonstration model, VA would terminate the demonstration model within 30 days of submitting an interim report to Congress that stated such determination. VA would also publish a document in the **Federal Register** regarding the pilot program's termination.

Cessation of a pilot program is defined as the on-schedule ending of a pilot program, and it may occur if the combined results of the independent impact analysis of the demonstration model tested under a pilot program indicate that the desired outcomes of the pilot program were not achieved or are inconclusive. VA would also publish a document in the **Federal Register** regarding the pilot program's cessation.

6.3.2.2. Implementation Approaches

For the demonstration model, VA would initiate termination with written notification to all beneficiaries, stakeholders, and vendors contractually engaged to support the implementation of this demonstration model. This termination would occur within 30 days of VA submitting an interim report to Congress stating that VA has determined a pilot program is not producing quality enhancement or quality preservation, or is not resulting in the reduction of expenditures, and that it is not possible or advisable to modify the pilot program either through submission of a new waiver request or through modification under section 17.450(i). Notification would be provided to allow for appropriate announcements and initiation of demonstration model termination activities. VA would provide notification 90 days in advance of the cessation of a pilot program.

7. Request for Waivers

To implement the CPCV Pilot Program, we require Congressional approval of a waiver from current restrictions in VA statutes.

7.1. Statutory Requirements

7.1.1. Specific Authorities To Be Waived

Specifically, Congress must waive the limitations in 38 U.S.C. 1712 concerning the population of veterans eligible for VA dental care and services to permit VA to offer administrative support to enrolled veterans otherwise ineligible for this care.

7.1.2. Standard(s) To Be Used in Lieu of Waived Authorities

Congressional approval of this waiver would allow VA to operate the pilot program as though 38 U.S.C. 1712 were revised as described below:

(a) By redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(b) by inserting after subsection (c) the following new subsection (d):

''(d)(1) Through collaboration with community entities and providers approved by the Secretary, the Secretary may provide administrative support for the provision of dental care to enrolled veterans for care that they are not eligible to receive from the Department.

''(2) Notwithstanding any other provision of law, the Secretary shall incur no liability (including under section 1151 of this title) for any disability, injury, or death resulting from care furnished by a non-Department entity or provider pursuant to this subsection.''

7.1.3. Reason(s) for Waivers

As previously explained, VA has limited statutory authority to furnish dental care. This waiver would authorize VA to provide administrative support for the provision of needed outpatient dental care in the community to enrolled veterans who are not eligible to receive that dental care from VA under 38 U.S.C. 1712. This waiver would authorize VA staff, in the scope of their normal duties, to work with community entities or providers approved by the Secretary to refer veterans to dental care resources that are provided pro bono or at a discount. This waiver would also expressly exempt VA from any liability that may arise from tortious conduct by a community provider. A veteran's sole remedy in such a situation would be recovery against the provider of services.

This waiver would expand VA's authority under section 1712 and would allow VA to more effectively serve veterans ineligible for VA dental benefits. Specifically, VA administrative staff would be authorized to educate veterans who are not eligible for VA dental care on the dental care options available to them from the community. VHA administrative staff would be authorized to connect veterans to resources that can schedule veterans for dental care.

7.1.4. Metrics To Be Used To Determine the Impact of Waivers

Metrics used to assess the pilot would include utilization of care and services related to oral care, ED utilization, ED outcomes, and patient satisfaction. These would be used to assess the effect of the waiver upon the quality, timeliness, or patient satisfaction of care and services furnished through the pilot program.

Table 3: Sample Metrics and Sources

Outcome Category	Metric	Desired Performance	Source(s)
Cost Savings	Spend on care and services related to oral care	Decrease	VA, key stakeholders
Quality	ED utilization Veteran satisfaction	Decrease Increase	VA, key stakeholders

Assumptions

Funds spent on care and services related to oral health and ED utilization would include both data on community care utilization and VA internal data.

Quality would be measured through monitoring of ED utilization for oral health. Veteran experience would be measured by sources such as customer experience measures mapped to OMB Circular No. A–11 domains and applicable CAHPS survey results. Consistent with 38 CFR 17.450(g), evaluation of this pilot will include a survey of participants or beneficiaries to determine their satisfaction with the pilot program. VA will make the evaluation results available to the public on the VA Innovation Center website. All collections of information will be conducted in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

7.1.5. Anticipated Cost Savings

Anticipated benefits for the CCDB demonstration model are improved patient care and satisfaction, as well as reduced expenditures associated with ED visits linked to oral health issues. Improving ED utilization is a quality metric because by eliminating time spent on dental services that could have been treated in a clinic, ED Physicians can devote their time to higher priority patients.

VA anticipates that reduced expenditures associated with ED visits linked to oral health issues would reduce costs for other related Federal programs, but we anticipate that VA would be unable to measure the impacts to other related Federal programs.

This waiver would have minimal to no net cost impact to VA, as VA would not be paying for the pro bono or discounted dental services and would not be liable for any tortious conduct by community providers. This provision would have no impact on VA clinicians (medical doctors and nurse practitioners), as they routinely provide general oral assessment for enrolled veterans eligible for dental benefits as part of their examination. VA also anticipates this would have no impact on clinic medical support assistants that might recommend the scheduling portal or otherwise provide administrative support.

Improved access to care should lead to better dental health outcomes and reduced unnecessary utilization of care and services associated with poor oral health that could lead to cost savings. Improved access to dental health services could lead to a reduction in ED utilization for dental health care needs. Drivers of these cost savings would include improved access to care, increased use of preventative oral care, and improved care coordination.

VA does not have a reliable actuarial basis to identify the estimated cost savings. Further analysis would be required to determine potential savings over current expenditures for participating veterans. Development of a comprehensive financial impact model could be pursued once the details of this demonstration model are finalized. Factors that would influence the financial predictions include: Overall acuity and health risk factors of the demonstration population; Participation strategies and speed of uptake (pilot elements); Specific services offered by pro bono care providers, location of service, etc.; Comorbidities associated with oral health care; Operational plans for VHA pilot program sites and Office of Information and Technology.

The detailed budgetary impact and anticipated cost savings analysis associated with these cost factors will be provided at a later date.

Based on information from ADA from private providers, there are significantly lower costs for common preventive services compared to common restorative services, as represented below (American Dental Association. (2013). Action for Dental Health: Bringing Disease Prevention to Communities. Retrieved from *https://www.ada.org/~/media/ADA/Public%20Programs/Files/bringing-disease-prevention-to-communities_adh.ashx*).

Table 4: Preventive Service Compared to Restorative Service

Cost of Common Preventive Service	
Topical fluoride (adult)	$32.59
Periodic exam	$44.10
Cleaning (adult)	$82.08
Sealant application (per tooth)	$44.12
Cost of Common Restorative Service	
Amalgam filling, two-surface	$146.61
Resin-based filling, rear tooth	$197.09
Root canal on molar	$918.88
Porcelain crown	$1,026.30

7.1.6. Schedule of Interim Reports

VA would submit interim reports to the Committees on Veterans' Affairs of the House of Representatives and the Senate no later than once every 6 months from the date of the commencement of the pilot program. These interim reports would describe the results of the pilot program so far and the feasibility and advisability of continuing the pilot program.

7.1.7. Schedule for Cessation of Pilot Program and Submission of Final Report

Absent any extension of the pilot program pursuant to 38 CFR 17.450(h), VA would end the pilot program 5 years after the date on which it commences. VA would submit a final report on the pilot program describing the results of the pilot program and the feasibility and advisability of making the pilot program permanent no later than 6 months after the end date of the pilot program.

7.1.8. Estimated Budget of Demonstration Model

VA would not be paying for the pro bono dental services so there would be no costs related to care. However, the direct costs to VA of operating the CCDB demonstration model would depend on participation, duration, and other factors.

Assumptions

VA would incur only nominal costs associated with monitoring the results of the program. Section 1703E(g)(2)(A) states the Secretary may not expend more than $50 million in any fiscal year from amounts provided in advance in appropriations acts for the Veterans Health Administration and for information technology systems. In section 17.450(d), VA clarified this authority to state that it will obligate no more than $50 million in any fiscal year for the conduct of the pilot programs (including all administrative and overhead costs, such as measurement, evaluation, and expenses to implement the pilot programs themselves) operated under this authority; VA also will not actively operate more than 10 pilot programs at the same time.

7.2. Regulatory Requirements

7.2.1. Geographic Location

This pilot would serve enrolled veterans who are not eligible for dental care from VA in metropolitan areas with greater access to pro bono and discounted dental services in the community. Metropolitan areas generally have more dental providers, and more dental providers who are willing to provide pro bono or discounted services, than other areas. The veteran population in metropolitan areas is also more densely located, allowing more veterans to be served by these providers. It is believed that operating this pilot program in metropolitan areas would address deficits in care related to oral health by expanding access to quality dental care at no cost or at a discounted cost. In Section 3, we identified VISN 2, 8, 10, and 12 as possible areas in which the pilot program would be operated.

7.2.2. Any Applicable Provision of Existing Regulations Implementing Any Laws To Be Waived

No existing regulations would need to be waived to execute this pilot program.

7.2.3. Notice of Eligibility

An initial outreach communication plan would focus on introducing this demonstration model and building program awareness. VA would take reasonable actions to provide direct notice to veterans eligible to participate in this demonstration model and would provide general notice to other individuals who are also eligible to participate. Direct notice would include hard copy materials and informational advertisements in VA health care facilities selected for this model. VA would also explore opportunities with media organizations to promote the demonstration model and the available resources. Finally, VA would include information on several national VA websites about this pilot program, how to access the portal, and information about how eligible veterans could participate. VA would engage dental care entities and providers willing to offer pro bono or discounted services to veterans and discuss how the pilot would operate while addressing any provider concerns. Initial outreach would focus on dental associations and dental provider organizations that have a history of working with veterans. During the initial period, strategic monthly outreach campaigns would be identified and presented for approval. Each communication outreach plan would include outreach goals, target groups, release dates, and campaign distribution details.

7.2.4. Definitions

VA's regulations at 38 CFR 17.450(b) provide general definitions of terms in the statute and VA's regulations, but also permit further definition through the pilot program proposal. VA offers no further definition of terms in its regulations, but it has previously identified the metrics it would use to determine whether the program is successful.

7.2.4.1. Patient Satisfaction of Care and Services

Patient satisfaction of care and services refers to patients' rating of their experiences of care and services. Patient satisfaction of care and services would not be further defined for this pilot program.

7.2.4.2. Payment Models

Payment models refer to the types of payment, reimbursement, or incentives that VA deems appropriate for advancing the health and well-being of beneficiaries. Payment models would not be further defined for this pilot program.

7.2.4.3. Quality Enhancement

Quality enhancement refers to improvement or improvements in such factors as quality, beneficiary-level outcomes, and functional status as documented through improvements in measurement data from a reliable and valid source. Quality enhancement would not be further defined for this pilot program.

7.2.4.4. Quality Preservation

Quality preservation refers to the maintenance of such factors as oral health, beneficiary-level outcomes, and functional status as documented through maintenance of measurement data from an evidence-based source. Quality preservation would not be further defined for this pilot program.

7.2.4.5. Reduction in Expenditure

Reduction in expenditure refers to, but is not limited to, cost stabilization, cost avoidance, or decreases in long- or short-term spending. Reduction in expenditure would not be further defined for this pilot program.

7.2.5. Measures

Measures to assess whether VA is achieving its goals would include the following: Reducing costs of ED utilization related to oral health; and improving veteran satisfaction.

7.2.6. Schedule of the Release of Evaluation Results in the Proposal

In addition to interim and final status reports, an evaluation would be completed at the end of the demonstration model and the pilot program to determine if the tested models and interventions were more effective than the status quo. Interim reports would be submitted every 6 months, and a final report would be submitted within 6 months of the completion of the pilot program.

8. Additional Considerations

8.1. Sustainable Value Creation and Capture

Veterans participating in the CCDB demonstration model would gain coordinated access to high quality pro bono or discounted dental services, enabling them to receive preventative and restorative dental care. Value creation may occur after the successful implementation of the CCDB demonstration model by: Addressing deficits in care resulting from underutilization of preventative care, geographic barriers, and poor clinical outcomes for the veterans participating in the demonstration model; Addressing availability of pro bono or discounted community dental care services for veterans ineligible for dental care under 38 U.S.C. 1712; Enhancing access to dental care and improved satisfaction with the availability of dental services; Improving the coordination of care and benefits for veterans to increase their access to dental care benefits, thereby improving overall health outcomes.

8.1.1. Impacted Stakeholders

VA anticipates that the CCDB demonstration model would create cost savings related to overall veterans health, increased access to care, and improved health outcomes through the delivery of pro bono or discounted dental services and care coordination. Due to the current statutory eligibility criteria for VA's dental program, the impact to VA dental care expenditures would be limited. However, we expect that this demonstration model would result in reduced overall VA health care expenditures due to the relationship between improved oral health and comorbid disease states. Pro bono dental providers and those offering discounts would benefit from a well-coordinated scheduling process that allowed them to list their availability on a platform where veterans could schedule appointments directly.

8.1.2. Maximizing Pilot Program Impact

The impact of the pilot program could be enhanced by developing a culture of cooperation. Further, this pilot program would: (1) Increase the availability of dental health benefits to veterans, and (2) Improve the coordination, execution, and efficiency of dental health care delivery.

Existing non-profit organizations and pro bono providers or those offering discounted services should be encouraged to recruit their peers to expand the care coordination platform. There is potential for this demonstration model to expand to include coordination of other needed services for veterans over time.

8.2. Pilot Program Modifications

Consistent with section 17.450(i), the Secretary may modify elements of this pilot program in a manner that is consistent with the parameters of the Congressional approval of the waiver described above. Such modifications would not require a new submission to Congress for approval.

8.3. Record Keeping

VA would maintain all pilot program records and relevant analysis in accordance with applicable record control schedules.

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. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on December 10, 2019, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–26901 Filed 12–12–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 240 December 13, 2019

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–03; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–03. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov*.

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2020–03, FAR case 2018–017.

RULE LISTED IN FAC 2020–03

Subject	FAR case	Analyst
Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2020–03 amends the FAR as follows:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018–017)

This second interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). The first interim rule was published August 13, 2019.

This rule reduces the information collection burden imposed on the public by making updates to the System for Award Management (SAM) to allow offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. The burden to the public is reduced by allowing an offeror that responds ''does not'' in the new annual representation at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of 52.212–3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation within the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

The provision at 52.204–26 requires that offerors review SAM prior to completing their required representations. The Government will add to SAM the entities that provide equipment or services listed in the definition of ''covered telecommunications equipment or services'', with an appropriate notation to identify that the prohibition is limited to certain products and services—the entity itself is not excluded.

Offerors shall consult SAM to validate whether the products they are offering are from an entity covered under the definition of ''covered telecommunications equipment or services'', including any known subsidiaries or affiliates.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–03 is effective December 13, 2019.

Linda W. Neilson,

Director, Defense Acquisition Regulations System, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2019–26578 Filed 12–12–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 2020–03; FAR Case 2018–017; Docket No. FAR–2018–0017, Sequence No. 2]

RIN 9000–AN83

Federal Acquisition Regulation: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing a second interim rule amending the Federal Acquisition Regulation (FAR) to require offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. These provisions implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

DATES:

Effective Date: December 13, 2019.

Applicability: Contracting officers shall include the provision at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation—

- In solicitations issued on or after the effective date; and
- In solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before February 11, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–017 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2018–017''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2018–017''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2018–017'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR Case 2018–017'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAR Case 2018–017.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Acquisition Regulations System codifies and publishes uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.

In order to combat the national security and intellectual property threats that face the United States, section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA) (Pub. L. 115–232) prohibits the Federal Government from procuring or obtaining, or extending or renewing a contract to procure or obtain, ''any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system'', on or after August 13, 2019.

''Covered telecommunications equipment or services,'' as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

To implement section 889(a)(1)(A) of the NDAA, DoD, GSA, and NASA published the first interim rule at 84 FR 40216 on August 13, 2019. This rule added a provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, which required, in part, that an offeror represent on an offer-by-offer basis if the offeror will or will not provide any covered telecommunications equipment or services to the Government and, if it will, require the offeror to provide additional disclosures.

This second interim rule reduces burden on the public by allowing an offeror that represents ''does not'' in the new annual representation at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation or in paragraph (v) of FAR 52.212–3, Offeror Representations and Certifications—Commercial Items to skip the offer-by-offer representation within the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

In order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA have made updates to the System for Award Management (SAM) to require offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. SAM is used by anyone interested in the business of the Federal Government, including—

- Entities (contractors, Federal assistance recipients, and other potential award recipients) who need to register to do business with the Government, look for opportunities or assistance programs, or report subcontract information;
- Government contracting and grants officials responsible for activities with contracts, grants, past performance reporting and suspension and debarment activities;
- Public users searching for Government business information.

Representations and Certifications are FAR requirements that anyone wishing to apply for Federal contracts must complete. Representations and Certifications require entities to represent or certify to a variety of statements ranging from environmental rules compliance to entity size representation.

Agencies use the SAM entity registration information to verify recipient compliance with requirements. This reduces the duplicative practice of contractors filling out in full all the representations and certifications with the submission of each offer. Instead the representations and certifications may be filled out annually and electronically.

Offerors shall consult SAM to validate whether the equipment or services they are offering are from an entity providing equipment or services listed in the definition of ''covered telecommunications equipment or services'' (see FAR 4.2101), including any known subsidiaries or affiliates.

This rule is a further implementation of section 889(a)(1)(A). The prohibition in section 889(a)(1)(B) regarding entities

that use covered telecommunications equipment or services is not effective until August 13, 2020, and will be implemented through separate rulemaking under FAR Case 2019–009.

II. Discussion and Analysis

This second interim rule proposes to add the new annual representation, 52.204–26, Covered Telecommunications Equipment or Services—Representation, which requires an offeror to represent annually if it does or does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government. If an offeror represented ''does not,'' it shall not complete the offer-by-offer representation at FAR 52.204–24; if the offeror represented ''does,'' or has not made any representation in FAR 52.204–26 or 52.212–3(v), it shall complete the representation at FAR 52.204–24. This annual representation is prescribed at FAR 4.2105(c) for use in all solicitations.

The provision at FAR 52.204–26 requires that offerors shall review the list of excluded parties in SAM for entities excluded from receiving Federal awards for ''covered telecommunications equipment or services'' prior to completing their required representations. The Government will add to SAM entities that provide equipment or services listed in the definition of ''covered telecommunications equipment or services'' (see FAR 4.2101), with an appropriate notation to identify that the prohibition is limited to certain products and services—the entity itself is not excluded.

In addition, the rule amends the FAR to make the existing provision at FAR 52.204–24 not apply if an offeror represents ''does not'' to the new annual representation, FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation, or if an offeror represents ''does not'' in a new paragraph (v), under the existing FAR clause FAR 52.212–3, Offeror Representations and Certifications—Commercial Items. The purpose of this change is to require only offerors that provide covered telecommunications equipment or services to the Government to complete the representation at FAR 52.204–24.

This interim rule provides procedures at FAR 4.2103 for contracting officer handling of offeror representations in the provisions at FAR 52.204–24 and 52.204–26. A contracting officer may generally rely on an offeror's representation in the provisions at FAR 52.204–24 and 52.204–26 that the offeror does not or will not provide covered telecommunications equipment or services to the Government, unless the contracting officer has a reason to question the representation. In such cases the contracting officer shall follow agency procedures (*e.g.,* consult the requiring activity and legal counsel).

Conforming changes are made to add the provision at FAR 52.204–26 to the provision at FAR 52.204–8, Annual Representations and Certifications, and the list at FAR 4.1202 of representations and certifications that should not be included in solicitations when the provision at 52.204–7, System for Award Management, is used. In addition, the prescription for FAR 52.204–24 at FAR 4.2105(a)(2) is amended to clarify that subpart 8.4 and 16.505 are examples of the procedures that may be used to place an order.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

In the first interim rule, the FAR Council determined that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the simplified acquisition threshold (SAT), commercial item contracts, and contracts for the acquisition of commercially available off-the-shelf (COTS) items, from the provision of law. As the second interim rule makes only administrative changes to the process of collecting information, and does not affect the scope of applicability of the prohibition, those determinations remain applicable. This rule adds a new provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, in order to implement section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits the purchase of any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver has been granted.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

In issuing the first interim rule, the FAR Council determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items, and the Administrator for Federal Procurement Policy determined that it is in the best interest of the Government to apply that rule to contracts for the acquisition of COTS items. The changes made in this rule are administrative changes to the process of collecting required information, and do not alter those determinations.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory

action'' under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is subject to the requirements of E.O. 13771. The designation, as regulatory or deregulatory under E.O. 13771, of any final rule resulting from this interim rule will be informed by comments received. Details of estimates of costs or savings can be found in sections VI and VII of this preamble.

VI. Regulatory Flexibility Act

For the first interim rule, the DoD, GSA, and NASA performed an Initial Regulatory Flexibility Analysis (IRFA). No public comments on the IRFA for the first interim rule were received.

Although the second interim rule would on aggregate reduce burdens, DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The second interim rule would require an offeror to represent annually if it does or does not provide covered telecommunications equipment or services as part of the products or services it offers to the Government. Specifically, the solicitation provision at 52.204–26 is prescribed for use in all solicitations and requires all vendors to represent, at least annually, that it ''does'' or ''does not'' provide covered telecommunications equipment or services as a part of its offered products or services to the Government. Offerors shall consult the System for Award Management (SAM) to validate whether the equipment or services they are offering are from an entity providing equipment or services listed in the definition of ''covered telecommunications equipment or services'', including any known subsidiaries or affiliates.

The objective of the rule is to provide an information collection mechanism that relies on an annual representation, thereby reducing the burden of providing information, in some cases, that is required to enable agencies to determine and ensure that they are complying with section 889(a)(1)(A). The legal basis for the rule is section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits Government procurement of such equipment, systems, and services on or after that date, unless an exception applies or a waiver has been granted.

Of the total vendors, 318,695 are estimated to be small entities. A data set was generated from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2016, 2017, and 2018 and data from SAM from August 2019 for use in estimating the number of small entities affected by this rule.

Data from the System for Award Management (SAM) indicates that there were 424,927 active registrants in August 2019. In order to maintain an active registration in SAM, all entities will be required to complete the 52.204–26 representation in SAM. Therefore, DoD, GSA, and NASA estimate that at least 424,927 entities will complete the representation in the provision at 52.204–26. Of the total vendors, 318,695 are estimated to be small entities based on the percentage of small business entities registered in SAM in 2017, which was 75 percent of all active registrants.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

It is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy may be obtained from the Regulatory Secretariat Division upon request. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–017) in correspondence.

VII. Paperwork Reduction Act

As part of the first interim rule, the FAR Council was granted emergency processing of a collection currently approved under OMB control number 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. A 60-day notice was published for additional public comment on this collection on October 9, 2019 (84 FR 54146).

In the first interim rule, the burden consisted of a representation at FAR 52.204–24 to identify whether an offeror will or will not provide covered telecommunications equipment or services for each offer, and a report of identified covered telecommunications equipment and services during contract performance, as required by FAR 52.204–25. In this second interim rule, the burden consists of a representation at FAR 52.204–26 to identify whether an offeror does or does not provide covered telecommunications equipment and services to the Government in the performance of any contract, and a representation at FAR 52.204–24 to identify whether an offeror will or will not provide covered telecommunications equipment or services for each offer unless the offeror selects ''does not'' in response to the provision at FAR 52.204–26 (or its commercial item equivalent at paragraph (v) of FAR 52.212–3).

With this second interim rule, this existing collection is being revised to reflect a reduction in burden. The FAR Council expects the total public reporting burden to decrease from $45,420,020 to $5,952,369 as a result of amending FAR 52.204–24 so it is only filled out if a new solicitation provision FAR 52.204–26 (or its commercial item equivalent at paragraph (v) of FAR 52.212–3) has a response of ''does.''

With this change in who must complete a representation at FAR 52.204–24, the FAR Council has estimated the number of entities affected by this provision will drop from 190,446 to 9,522. With this decrease in responses needed, the burden is expected to decrease from $43,527,522 to $2,183,185.

The representation added by this rule at 52.204–26 is estimated to average 0.08333 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and complete the representation. The representation at FAR 52.204–24 is estimated to average 0.105 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and either provide a response of ''will not'' in the majority of cases or provide a response of ''will'' and complete the additional detailed disclosure.

As part of this interim rule, the FAR Council is soliciting comments from the public in order to:

- Evaluate whether the proposed revisions to this collection of information are necessary for the proper performance of the functions of the FAR Council, including whether the information will have practical utility;
- Evaluate the accuracy of the FAR Council's estimate of the burden of the revised 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 collection techniques.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments to the Regulatory Secretariat Division (MVCB) not later than February 11, 2020, by either of the following methods:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405. Reference: IC 9000–0007, Subcontracting Plans.

Instructions: All items submitted must cite Information Collection 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that notice and public procedure thereon is unnecessary.

In the first interim rule published on August 13, 2019, the FAR Council solicited comment regarding on-going work then contemplated to reduce the burden imposed on the public through updates to the System for Award Management (SAM). System changes to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services could not be implemented by the statutory deadline of August 13, 2019. Therefore, the first interim rule was published without this representation in order to meet the statutory deadline and in order to provide the contracting community with as much notice as possible. With this second interim rule, and with the modifications to SAM, only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task and delivery orders under indefinite delivery contracts.

The FAR Council provided a description of the plans to decrease burden in the first interim rule in August and received public comment which is supportive of this approach. All comments on the first interim rule can be found in the docket at *www.regulations.gov.* Moreover, commenters encouraged the FAR Council to take this burden-reducing action as quickly as possible. Other comments associated with the first interim rule as well as this second interim rule will be addressed in a subsequent FAR Council action.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Amend section 4.1202, by redesignating paragraphs (a)(8) through (33) as paragraphs (a)(9) through (34) and adding a new paragraph (a)(8) to read as follows:

4.1202 Solicitation provision and contract clause.

(a) * * *

(8) 52.204–26, Covered Telecommunications Equipment or Services—Representation.

* * * * *

■ 3. Amend section 4.2102 by adding paragraph (d) to read as follows:

4.2102 Prohibition.

* * * * *

(d) *Recording prohibitions in the System for Award Management (SAM).*

(1) Prohibitions on purchases of products or services produced or provided by entities identified in paragraphs (1) and (2) of the definition of ''covered telecommunications equipment or services'' (including known subsidiaries or affiliates) at 4.2101 will be recorded in SAM (see 9.404).

(2) Prohibitions on purchases of products or services produced or provided by entities identified pursuant to paragraph (4) of the definition of ''covered telecommunications equipment or services'' (including known subsidiaries or affiliates) at 4.2101 are recorded by the Department of Defense in SAM (see 9.404).

■ 4. Amend section 4.2103 by revising paragraph (a) to read as follows:

4.2103 Procedures.

(a) *Representations.* (1)(i) If the offeror selects ''does not'' in response to the provision at 52.204–26 or 52.212–3(v), the contracting officer may rely on the representation, unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If the offeror selects ''does'' in response to the provision at 52.204–26 or 52.212–3(v), the offeror must complete the representation at 52.204–24.

(2)(i) If the offeror selects ''will not'' in paragraph (d) of the provision at 52.204–24, the contracting officer may rely on the representation, unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If an offeror selects ''will'' in paragraph (d) of the provision at 52.204–24, the offeror must provide the information required by paragraph 52.204–24(e), and the contracting officer shall follow agency procedures.

* * * * *

■ 5. Amend section 4.2105 by—

■ a. Revising the section heading;

■ b. Removing from paragraph (a)(2) ''*i.e.*'' and adding ''*e.g.*'' in its place; and

■ c. Adding paragraph (c).

The revision and addition reads as follows:

4.2105 Solicitation provisions and contract clause.

* * * * *

(c) The contracting officer shall insert the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, in all solicitations.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.204–8 by—
■ a. Revising the date of the provision;
■ b. Redesignating paragraphs (c)(1)(vi) through (xxiv) as paragraphs (c)(1)(vii) through (xxv); and
■ c. Adding a new paragraph (c)(1)(vi).

The revision and addition reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Dec 2019)

* * * * *

(c)(1) * * *

(vi) 52.204–26, Covered Telecommunications Equipment or Services—Representation. This provision applies to all solicitations.

* * * * *

■ 7. Amend section 52.204–24 by—
■ a. Revising the date of the provision;
■ b. Adding an undesignated paragraph before paragraph (a);
■ c. Removing from paragraph (a) ''*Critical technology*'', and ''*Substantial or*'' and adding '', ''*critical technology*'', and ''*substantial or*'' in its place;
■ d. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c);
■ e. Revising the newly redesignated paragraph (d); and
■ f. Revising the introductory text of the newly redesignated paragraph (e), and removing from paragraph (e)(1) ''All'' and adding ''A description of all'' in its place;

The revisions and additions read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Dec 2019)

The Offeror shall not complete the representation in this provision if the Offeror has represented that it ''does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument'' in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items.

* * * * *

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (*https://www.sam.gov*) for entities excluded from receiving federal awards for ''covered telecommunications equipment or services''.

(d) *Representation.* The Offeror represents that it [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it ''will'' provide covered telecommunications equipment or services'', the Offeror shall provide the following information as part of the offer—

* * * * *

■ 8. Add section 52.204–26 to read as follows:

52.204–26 Covered Telecommunications Equipment or Services—Representation.

As prescribed in 4.2105(c), insert the following provision:

Covered Telecommunications Equipment or Services—Representation (Dec 2019)

(a) *Definitions.* As used in this provision, ''covered telecommunications equipment or services'' has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (*https://www.sam.gov*) for entities excluded from receiving federal awards for ''covered telecommunications equipment or services''.

(c) *Representation.* The Offeror represents that it [ ] does, [ ] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

■ 9. Amend section 52.212–3 by—
■ a. Revising the date of the provision;
■ b. Removing from the introductory paragraph ''paragraphs (c) through (u))'' and adding ''paragraphs (c) through (v))'' in its place;
■ c. In paragraph (a), adding in alphabetical order the definition ''*Covered telecommunications equipment or services*'';
■ d. Removing from paragraph (b)(2), in the first undesignated paragraph ''*(c) through (u))*'' and adding ''*(c) through (v))*'' in its place; and
■ e. Adding paragraph (v).

The revision and additions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Dec 2019)

(a) * * *

Covered telecommunications equipment or services has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

(v) *Covered Telecommunications Equipment or Services—Representation.* Section 889(a)(1)(A) of Public Law 115–232.

(1) The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (*https://www.sam.gov*) for entities excluded from receiving federal awards for ''covered telecommunications equipment or services''.

(2) The Offeror represents that it [ ] does, [ ] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

* * * * *

[FR Doc. 2019–26579 Filed 12–12–19; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–03; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA,

and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–03, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–03, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov*.

DATES: December 13, 2019.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2020–03, FAR case 2018–017.

RULE LISTED IN FAC 2020–03

Subject	FAR case	Analyst
* Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2020–03 amends the FAR as follows:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018–017)

This second interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). The first interim rule was published August 13, 2019.

This rule reduces the information collection burden imposed on the public by making updates to the System for Award Management (SAM) to allow offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. The burden to the public is reduced by allowing an offeror that responds ''does not'' in the new annual representation at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of 52.212–3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation within the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

The provision at 52.204–26 requires that offerors review SAM prior to completing their required representations. The Government will add to SAM the entities that provide equipment or services listed in the definition of ''covered telecommunications equipment or services'', with an appropriate notation to identify that the prohibition is limited to certain products and services—the entity itself is not excluded.

Offerors shall consult SAM to validate whether the products they are offering are from an entity covered under the definition of ''covered telecommunications equipment or services'', including any known subsidiaries or affiliates.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–26580 Filed 12–12–19; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 84 Friday,

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Part III

The President

Proclamation 9972—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2019

Federal Register
Vol. 84, No. 240
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Presidential Documents

Title 3—

The President

Proclamation 9972 of December 9, 2019

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2019

By the President of the United States of America

A Proclamation

Nearly two and a half centuries ago, American colonists broke free of a tyrannical monarchy and rose from the shadow of oppression, creating a new Republic predicated on liberty and the rule of law. Innate to the identity of this new Nation was a revolutionary commitment to the preservation of individual rights. The Framers drafted a Constitution that would ensure the God-given rights of the people. Nevertheless, some of them believed more was needed and insisted upon the enumeration of a set of rights that would be protected from government interference. As a result, the United States ratified 10 Amendments to our Constitution, known as the Bill of Rights. On this day, we pay tribute to these profound protections provided to all Americans, and we reaffirm our commitment to safeguarding them.

James Madison, the ''Father of the Constitution,'' was once a skeptic of the need for a Bill of Rights, pondering whether such ''parchment barriers'' could prevent government intrusion on our liberty. After some persuasion from his friend Thomas Jefferson, however, Madison eventually supported the adoption of the Bill of Rights to achieve the compromise necessary to ratify the Constitution. Jefferson famously wrote to Madison: ''A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference.'' In the 228 years since the adoption of the Bill of Rights, it has continuously served as the guarantor of some of our most cherished freedoms: the right to practice the religion we choose, the right to speak freely and openly, the right to privacy, and the right to keep and bear arms.

Since taking office, I have worked to confine government authority to its proper, constitutional scope. In May of 2017, I signed an Executive Order defending religious freedom and freedom of speech to better protect the First Amendment rights of all Americans. I signed another Executive Order in March to promote free speech on college campuses, protecting free inquiry and open debate at universities across the country. These orders recognize that freedom of speech is a fundamental right that must always be guarded vigilantly.

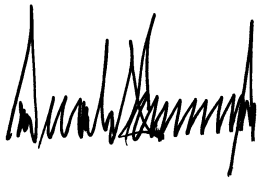
Underlying our Bill of Rights is the understanding that all human beings are endowed with certain inalienable rights and that it is the duty of every government to protect these rights. On December 10, 1948, inspired by the Bill of Rights, the United Nations General Assembly adopted the Universal Declaration of Human Rights. This historic document drew global recognition of ''the inherent dignity and of the equal and inalienable rights of all members of the human family.'' Unfortunately, however, millions around the world still suffer from unjust imprisonment, religious persecution, and countless other human rights abuses. As part of my Administration's efforts to protect human rights, in July, the Department of State hosted the second Ministerial to Advance Religious Freedom, and in October, I

was honored to be the first President to host a meeting at the United Nations on religious freedom.

During Human Rights Day, Bill of Rights Day, and Human Rights Week, we celebrate the Bill of Rights for safeguarding our God-given rights and protecting us from the abuse of government power. We also acknowledge the truth that people around the world are empowered when human rights are protected by law. The United States has long been at the forefront of this effort, and we will always stand up for individual freedoms and against all forms of oppression.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 10, 2019, as Human Rights Day; December 15, 2019, as Bill of Rights Day; and the week beginning on December 8, 2019, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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Filed 12–12–19; 11:15 am]
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